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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1900 and 1955

Delegation of Authority to the Chair of the Loan Resolution Task Force

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Administrator, Farmers Home Administration (FmHA), to delegate specific loan collection authority to the Chair of the Loan Resolution Task Force.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Office of General Counsel, (202) 720–6035.

SUPPLEMENTARY INFORMATION: The Loan Resolution Task Force was established to resolve by the end of fiscal year 1996, certain delinquent direct loans that were made under the authority of the Consolidated Farm and Rural Development Act. This document delegates to the Chair of the Loan Resolution Task Force authority to collect and settle certain delinquent loans.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act, and, thus, is exempt from the provisions of that Act.

Programs Affected

This action affects the following FmHA programs/activities listed in the Catalog of Federal Domestic Assistance under Nos.

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.408 Economic Emergency Loans

List of Subjects in 7 CFR Parts 1900 and 1955

Appeal procedure, Authority delegations (Government agencies), Foreclosure, Government acquired property, Loan payments—agriculture.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Delegations of Authority

2. Section 1900.6 is redesignated as § 1900.7 and a new § 1900.6 is added to read as follows:

§ 1900.6 Chair, Loan Resolution Task Force.

The Chair, Loan Resolution Task Force is delegated the following authorities, to be exercised until September 30, 1996:

(a) The responsibility for, under applicable Farmers Home Administration regulations, collecting and settling all delinquent direct Farmer Program loans as defined in the Consolidated Farm and Rural Development Act, as amended, that have received all primary servicing rights and pre-acceleration homestead and preservation loan servicing rights under 7 CFR part 1951, subpart S;

(b) The responsibility for making and directing the making of loan servicing decisions, under applicable Farmers Home Administration regulations, concerning delinquent direct Farmer Programs loans for which accrued principal and interest equals or exceeds one million dollars, to extend to borrowers their remaining primary servicing rights and pre-acceleration homestead and preservation loan servicing rights under 7 CFR part 1951, subpart S;

(c) Authority for approving the grant of exceptions pursuant to §§ 1951.916, 1955.21, 1956.99 and 1965.35 of this chapter, to the extent necessary to carry out the responsibilities described in paragraphs (a) and (b) of this section.

PART 1955—PROPERTY MANAGEMENT

3. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

4. Section 1955.4(a) is revised to read as follows:

§ 1955.4 Redelegation of authority.

* * * * *

(a) Except as provided in § 1900.6(c) of this chapter, any authority in this subpart which is specifically delegated to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

* * * * *

Dated: August 17, 1994.

Michael Dunn,

Administrator, Farmers Home Administration.

[FR Doc. 94–20782 Filed 8–23–94; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 112

[Docket No. 92–098–2]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to packaging and labeling of veterinary biological products by prohibiting final containers of product that are imported or that are packaged at licensed establishments in cartons or other containers from being repackaged and relabeled for sale or distribution. The rule also clarifies that,

unless otherwise authorized, labeling may only be performed at a licensed establishment or by the producer of an imported product, and amends the "Applicability" statement in the regulations on packaging and labeling to clarify its intent.

The action is necessary in order to ensure that veterinary biological products are not rendered worthless, contaminated, dangerous, or harmful because of incomplete, unclear, misleading, or inappropriate labeling. The effect of the final rule is to ensure that product integrity is maintained and that the purchasers of biological products are provided with appropriate and accurate labeling which complies with the pertinent rules and regulations.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act (21 U.S.C. 151–159; hereinafter the Act), as amended by the 1985 Food Security Act, prohibits the shipment of veterinary biological products anywhere in or from the United States that are worthless, contaminated, dangerous or harmful. It also prohibits such shipment of products unless they are prepared pursuant to USDA regulations in an establishment licensed by USDA. The term "preparation", as it is defined in the regulations, includes packaging and labeling. The 1985 amendments granted additional rulemaking authority to implement the purposes of the Act. Under the Act and regulations, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture grants licenses for veterinary biological products which are pure, safe, potent, and efficacious when used according to label instructions. Complete labeling (either on the product or accompanying the product) must be reviewed and approved by APHIS in accordance with 9 CFR 112.5 prior to its use.

On April 28, 1993, we published in the **Federal Register** a proposed rule on packaging and labeling of veterinary biologics (*see* Docket No. 92–098–1, 58 FR 25786–25788). We proposed to amend the regulations pertaining to packaging and labeling of veterinary biological products by prohibiting final containers of product packaged at licensed establishments in cartons or other containers from being repackaged for sale or distribution. We also proposed to clarify that, unless otherwise authorized, labeling may only be performed at a licensed establishment and to amend the "Applicability" statement in the regulations on packaging and labeling to clarify its intent.

We solicited comments concerning our proposal during a 60-day comment period ending June 28, 1993. We received 39 comments by that date. Comments were received from biologics manufacturers, State and national professional associations, a trade association, an educational institution, animal hospitals and clinics, veterinarians, a registered pharmacist, a practicing attorney, and private citizens.

Thirty-six commenters were in support of the rule as proposed. Three commenters were in opposition to the rule.

The issues raised by the commenters were: (1) The perceived higher cost of animal vaccinations resulting from the proposed rule; (2) the inclusion of a provision to allow repackaging if each repackaged product includes a complete copy of a package insert; (3) a question whether the proposed rule provides an adequate remedy concerning the problem of incorrect labeling; (4) the effect of the proposed rule on the ability of consumers to vaccinate their own animals; (5) the impact of the rule on veterinarians who dispense their own biologics; (6) whether licensed veterinary biologics are in compliance with the U.S. Department of Transportation's regulations; and (7) other issues related to the proposed rule.

After the close of the comment period on June 28, 1993, APHIS received a significant number of additional comment letters. These additional comment letters were read, but since they were late, they were not included as part of this rulemaking. The additional comments, however, generally expressed opinions similar to those of commenters who submitted letters before the close of the comment period.

Analysis of Comments and APHIS' Response

Thirty-six commenters were in agreement with the rule as proposed. It was the general opinion of commenters supporting the rule that it should be implemented in order to protect the health and safety of animals and animal owners. They expressed the belief that unauthorized repackaging and relabeling of licensed veterinary biologics contributes to improper handling and storage of these products, which could render them worthless and ineffective. Many also stated that unauthorized repackaging and relabeling contributes to the improper administration of vaccines and to the use of improper diluents resulting in liability problems for the manufacturer of the original product. Additionally, the commenters believe that manufacturers have a proprietary interest in the packaging and labeling of their products and in the integrity of the products that they manufacture, and that these interests are compromised by unauthorized repackaging and relabeling.

Three commenters disagreed with the rule. Their comments are discussed below.

1. The Increased Cost of Vaccinations Resulting From the Proposed Rule

One commenter stated that prohibiting repackaging would force pet owners to seek vaccination from veterinarians and thus raise the cost of vaccinations. Alternatively the increased cost would cause many pets to go unvaccinated. In the commenter's opinion, the resulting increase in unvaccinated pets would pose a much greater health risk than any minute danger brought about by the possible mispackaging of "home administered vaccines." According to the commenter, the rule would also restrict competition and threaten small businesses that repackage non-prescription pet vaccines.

APHIS does not agree with these arguments in opposition to the proposed rule. One purpose of the amendments is to clarify the intent of the packaging and labeling provisions of the regulations which is to regulate such activities in a comprehensive manner. Allowing the repackaging and relabeling of products once they have left the licensed establishment is not consistent with such intent. The rule will help to eliminate the problem of improper or unauthorized packaging and labeling after the product has left the producer's establishment. It should be noted, however, that the rule does not prohibit over-the-counter (OTC) sales of veterinary biologics. Pet owners may still purchase vaccines for their own use, so long as they are packaged and labeled according to regulations.

The rule makes it clear that persons who currently repackage multiple vial cartons or containers for further sale would no longer be able to do so. This does not mean that they could not continue to operate as distributors or to sell single dose or individual products for consumer use if such products were so packaged and labeled according to

regulations. As a matter of fact, APHIS has recently approved a number of applications for such products. If there is any additional cost to the consumer as a result of this rule, it is outweighed by the risk to animal health posed by the improper packaging and labeling of veterinary biological products after they have left the licensed establishment. Therefore, no change is made to the regulations in response to this commenter.

2. Commenter's Proposal to Allow Repackaging if Each Repackaged Product Includes a Complete Copy of a Package Insert

A commenter proposed a compromise solution to allow repackaging if every sale of a repackaged product includes a complete copy of a package insert which contains complete product information and all relevant data as to the method of administration.

APHIS does not agree with the proposed solution. Allowing repackaging in this manner could cause a number of problems and would raise many questions. For example, would the Agency need to issue a new set of regulations to regulate repackagers in order to assure that labeling and packaging inserts are consistent with regulations and that the repackaging is adequately controlled and supervised to prevent errors, and to assure that labels are legible? Would repackagers have to be licensed, since packaging and labeling is included in the regulatory definition of the term "preparation"? How would the integrity of the product be assured? And finally, who would bear the responsibility in the event of damage caused by error or mislabeling? As a matter of fact, just recently, the inclusion of wrong package inserts with repackaged products has caused death and injury to dogs. Considering these questions and the potential problems which could arise, the most practical and logical solution concerning repackaging is to issue the rule as proposed and to leave to the licensees the option of producing and offering to the distributors individually packaged or single dose products for resale.

APHIS explained in the preamble of the proposed rule that it would prohibit the repackaging of final containers of product (either single or multiple dose containers) packed in multiple container cartons if the carton label or enclosure is required to complete the labeling for the container (see 58 FR 25787, column 2, Docket No. 92–098–1, April 28, 1993). Therefore, APHIS proposed in § 112.6(e) that biological products in cartons or other containers shall not be removed from such cartons or containers and repackaged for sale or distribution unless each final container of product bears or is accompanied by complete and approved labeling, which is affixed to or included with each final container by the licensed establishment or producer of an imported product.

This rule is intended to explicitly prohibit repackaging so that mislabeling cannot occur. The final rule is slightly modified to clarify the purpose of the provision.

Final containers of a product need not be packaged one per carton when these products are distributed and sold in a multiple container carton (see current § 112.6(b)). When these products are distributed and sold as individual final containers, however, such containers of a product must be packaged and fully labeled in individual cartons with the appropriate amount of diluent, if required, in order to be in compliance with the regulations.

Section 112.1(a) of this rule requires that before they are removed from a licensed establishment or offered for importation, biological products must be packaged and labeled according to regulations. The section further provides that packaging and labeling may only be performed in a licensed establishment under an approved Outline of Production. Therefore, the removal, from a multiple container carton, of a final container of product for resale is prohibited. Labeling may not be added or removed after the product has left the licensed establishment or has been imported.

The effect of the final rule is to prohibit the unauthorized repackaging and relabeling, for sale or distribution, of final containers of veterinary biological products that are packaged in multiple container cartons or other containers, and which do not bear a complete, approved labeling affixed or included with each final container by the licensed establishment producing the product. In the case of imported products, a similar prohibition applies. In response to a comment that imports should be included under the amendments, proposed § 112.6(e) is modified to provide for this. The modification also makes the section consistent with § 112.1(a).

In addition, we are making nonsubstantive changes in § 112.6(e) in order to clarify the fact that packaging and labeling should be an integral part of product production and that final containers should bear or be packaged, in a carton with, complete and approved labeling which is affixed to or included with each container by the licensed establishment or producer of an imported product. No other amendment to the regulations is made in response to this commenter.

3. Whether the Proposed Rule Provides an Adequate Remedy to the Problem of Incorrect Labeling

In response to the statement concerning enforcement under the current regulations and the lack of an adequate remedy, APHIS notes that the current regulations prohibit false and misleading labeling and, although § 112.5 provides for the review and approval of labeling prior to use, it is not clear that repackaging and relabeling after the products have left the licensed establishment is prohibited. The explicit prohibition of repackaging and relabeling in this rule directly addresses those activities after the product has left the licensed establishment or has been imported and is intended to prevent unapproved labeling.

The commenter was also concerned that the proposed rule would unnecessarily restrict contract labeling. Labeling of licensed products is required to be performed at licensed establishments. APHIS has not allowed establishments to contract with others to apply labeling to products (see 7 CFR 112.4(c)). This rule does not change this practice and explicitly provides that all licensed products must be packaged and labeled at licensed establishments or by the producer of an imported product. This rule would not, however, prohibit the production of biological products having a distributor's label.

4. The effect of the proposed rule on the ability of consumers to vaccinate their own animals

A commenter indicated that the consumer should have the opportunity to immunize his or her own animals. The rule does not deprive the consumer of the option to immunize his or her own animals. As stated previously, the rule does not prohibit OTC sales of veterinary biologics. Animal owners will still be able to purchase single dose or individual packages of vaccines that have been prepared in licensed establishments in accordance with the regulations. Manufacturers may continue to provide products for sale OTC, so long as the products comply with the labeling and packaging requirements. Thus, the consumer is still free to immunize his or her own animals. No change to the regulations is made in response to this commenter.

5. The impact of the rule on veterinarians who dispense their own biologics

Another commenter requested clarification of the impact of the rule on products dispensed by a veterinarian.

It should be noted that the rule is not intended to interfere with the practice of veterinary medicine. The practitioner may dispense biological products under a veterinarian-client-patient relationship (VCPR) as that term is described in § 107.1 of the regulations. Therefore, in response to the comments, proposed § 112.6(e), is modified to clarify its intended scope of coverage. Veterinarians engaged solely in the mail order sale of veterinary biologics would not meet the requirements that establish a valid VCPR exemption under 9 CFR 107.1.

6. Comments concerning Department of Transportation regulations

A commenter raised the issue of compliance with the regulations of the U. S. Department of Transportation (DOT) pertaining to the shipment of hazardous materials, including infectious agents.

In response to this commenter, APHIS notes that the DOT regulations cited by the commenter provide a special exclusion for veterinary biological products prepared according to regulations. These licensed or permitted veterinary biological products are specifically exempted from the requirements for the shipment of a hazardous substance (see DOT regulations at 49 CFR 173.196(h)(2)). No change to the regulations is made in response to this commenter.

7. Consumer responsibility for used syringes and needles

Several commenters stated that individual users of veterinary biologics that require a syringe should be held responsible for the proper disposal of syringes. We are making no changes based on these comments, as the disposal of syringes is outside the scope of this rule.

8. Other comments related to the proposed rule

One commenter stated that packaging and labeling requirements in § 112.1 should apply to any person, not just the licensee, making changes to packaging and labeling. This is the intent of the rule. For example, the preamble of the proposed rule (*see* 58 FR 25787, column 2, Docket No. 92–098–1, April 28, 1993) stated that:

The regulations under proposed paragraphs (a) through (d) of § 112.1 would be applicable generally to any person and would not be restricted to licensees.

No change to the regulations is made in response to this comment.

The commenter also stated that any changes to packaging or labeling must be done by the licensed establishment and approved by APHIS. APHIS agrees with this comment. In that regard, it should be noted that § 112.1(a) provides that packaging and labeling may only be performed in a licensed establishment under an approved Outline of Production or by the producer of an imported product. No change to the regulations is made in response to this comment.

The commenter further stated that the rule should not apply to certain products that are exempted by statute and thus not subject to product licensure. APHIS agrees with this comment. This is true, since products that are exempted by statute are not required to be made in a licensed establishment, they are not subject to the provisions of this rule. No change to the regulations is made in response to this commenter.

It was the commenter's opinion that §§ 112.1, 112.4, and 112.6 should not apply to the ultimate purchaser. APHIS also agrees with this comment.

With reference to the heading of § 112.5, the commenter recommended that it should be changed from "labeling" to "labels". APHIS does not agree with this comment. The term "labeling" under the definitions of labeling terminology in 9 CFR 101.4(b) includes "all labels". Thus the term "labeling" is retained in the title of § 112.5.

The commenter also stated that the regulations should not prohibit the manufacture and sale of single dose licensed products. APHIS agrees with this comment. APHIS notes that the final rule does not prohibit the manufacture or sale of single dose or individual final containers of licensed products. No change to the regulations has been made in response to this comment.

The commenter concluded his comments with the statement that the proposed amendments to 9 CFR 112 reflect a concern on the part of licensed manufacturers that unauthorized repackaging and relabeling of licensed products was tantamount to product tampering, which adversely affects the integrity of such products and puts manufacturers at risk of damage to their reputations as a consequence of such actions.

180-day transition period

In order to provide for a reasonable transition period before this rule takes effect, we are making this rule effective 180 days after the date of publication in the **Federal Register**. APHIS believes that this transition period will allow needed time for manufacturers and distributors that wish to prepare and distribute single-dose packages of veterinary biologics to reach agreement and begin to implement the manufacture and distribution of these products.

Other changes

In order to reflect organizational changes within APHIS, the introductory paragraph of § 112.5 is amended by removing the words "Veterinary Services" and adding the words "Animal and Plant Health Inspection Service" in their place.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore has not been reviewed by the Office of Management and Budget.

The rule prohibits the repackaging of veterinary biologics packaged in multiple container cartons or other containers. Such repackaging can result in the preparation, including labeling, of a veterinary biological product in violation of the Act and regulations, and in the removal or alteration of approved labeling, thereby compromising the safety and efficacy of the biological product. In the absence of approved labeling, the safe and effective use of the veterinary biological product cannot be assured. This action benefits users in that it helps ensure that users are provided with a product that is properly labeled with approved directions, indications, and cautions for use.

This action will provide greater assurance to consumers that licensed veterinary biological products are prepared only with approved labeling with adequate directions for use. The prohibition against repackaging and relabeling outside of licensed facilities ensures that cases involving unapproved labeling of biological products such as those which resulted in the recent death and injury of dogs are avoided in the future. APHIS

believes that safety to animal health is best assured by restricting to licensed facilities and producers of imported products the preparation, which includes packaging and labeling, of veterinary biological products.

Distributors who are currently in the business of breaking apart multiple container cartons and repackaging and relabeling them for sale as individual final containers of product are provided notice that their actions will be in violation of the Act and regulations on the effective date of this rule. Distributors may still purchase from licensed manufacturers products that are already individually packaged and labeled in accordance with part 112 rather than purchasing multiple container cartons that must be broken apart and repackaged to provide a single dose final container package for distribution. This action does not prohibit the OTC distribution of products as long as the product is produced in a licensed establishment under an approved Outline of Production with approved labeling. Thus, persons currently repackaging and distributing a licensed product can seek to have a licensee produce a single dose or an individual container product for distribution. If desired, such product may be labeled with a distributor label that includes the name and address of the distributor. Based on information available to APHIS, several licensed manufacturers already have approved labeling to produce single dose veterinary biological products.

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 12778

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

Paperwork Reduction Act

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

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).

List of Subjects in 9 CFR part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 112 is amended as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for 9 CFR part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 112.1 is revised to read as follows:

§ 112.1 General.

(a) Unless otherwise authorized or directed by the Administrator, each biological product prepared at a licensed establishment, or imported, shall be packaged and labeled as prescribed in this part before it is removed from the licensed establishment or presented for importation: *Provided,* That biological products to be imported for research and evaluation shall be subject to packaging and labeling requirements in § 112.9. *Provided further,* That, unless otherwise exempted, all preparation, including packaging and labeling, of biological products shall only be performed in a licensed establishment under an approved Outline of Production.

(b) No person shall apply or affix to or include with, or cause to be applied or affixed to or included with, any carton or final container of a biological product, any label, stamp, mark or statement that is false or misleading in any particular, is not in compliance with the regulations, or is not approved by APHIS.

(c) No person shall alter, mark or remove any approved labeling affixed to or included with any biological product prior to selling or otherwise distributing such product. In addition, no person shall mark any carton, other container, or final container of a biological product so as to falsify the labeling, make it misleading, or cause it to be illegible.

(d) Labels that are stamped, printed or glued directly on cartons, other containers, or final containers shall be legible throughout the dating period. Biological products bearing labels, which have been altered, mutilated, destroyed, obliterated or removed, shall be withheld from the market.

3. In § 112.4, the introductory paragraph is revised to read as follows:

§ 112.4 Subsidiaries, divisions, distributors, and permittees.

Labels used by subsidiaries, divisions, distributors, and permittees shall be affixed by the licensee in a licensed establishment where the product is produced. Such labels shall comply with requirements for their review, approval, and filing as provided in the regulations.

* * * * *

4. In § 112.5, the introductory paragraph, the words "Veterinary Services" are removed and the words "Animal and Plant Health Inspection Service" are added in their place.

5. In § 112.6, new paragraphs (e) and (f) are added to read as follows:

§ 112.6 Packaging biological products.

* * * * *

(e) Final containers of biological product prepared at a licensed establishment, or imported, in cartons or other containers shall not be removed from such cartons or containers for sale or distribution, unless each final container bears, or is packaged in a carton with, complete and approved labeling which is affixed to or included with each container by the licensed establishment producing the product or by the producer in the case of imported product: *Provided,* That this paragraph is not intended to apply to licensed veterinary practitioners administering or dispensing biological products in the course of their practice under a veterinary-client-patient-relationship as that term is used in § 107.1.

(f) Labels which are affixed to or included with a biological product shall not be removed or altered in any manner.

Done in Washington, DC, this 17th day of August 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–20640 Filed 8–23–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–27]

Amendment to Class E Airspace; Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Lewiston, Idaho, Class E airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in southwestern Idaho. The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 U.T.C., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–27, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On May 27, 1994, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to amend the Lewiston, Idaho, Class E airspace area (59 FR 27514). This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal area in southwestern Idaho. The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations Amends Class E airspace at Lewiston, Idaho. 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 FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 19854, 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ANM ID E5 Lewiston, ID [Revised]

Lewiston-Nez Perce County Airport, ID
(lat. 46°22′29″N, long. 117°00′56″W)
Lewiston VOR/DME
(lat. 46°22′54″N, long. 116°52′11″W)
Walla Walla VOR/DME
(lat. 46°05′13″N, long. 118°17′33″W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 46°29′25″N, long. 117°34′09″W; east to lat. 46°30′45″N, long. 117°00′49″W; north to lat. 46°34′25″N, long. 117°04′44″W; thence via the arc of a 14.4-mile radius centered on the Lewiston VOR/DME to lat. 46°27′00″N, long. 116°32′09″W; east to lat. 46°25′30″N, long. 116°26′03″W; south to lat. 46°13′20″N, long. 116°30′04″W; west to lat. 46°14′33″N, long. 116°35′15″W; thence via the arc of a 14.4-mile radius centered on the Lewiston VOR/DME, to lat. 46°09′00″N, long. 116°46′54″W; north to lat. 46°17′00″N, long. 116°49′14″W; west to lat. 46°18′05″N, long. 117°00′15″W; west to lat. 46°17′42″N, long. 117°22′04″W; south to lat. 46°10′30″N, long. 117°26′24″W; west to lat. 46°12′00″N, long. 117°35′44″W; north to point of beginning; that airspace extending upward from 1,200 feet above the surface, within an area bounded by a line beginning at:

lat. 46°00′00″N, long. 116°00′04″W;
to lat. 46°00′00″N, long. 116°23′04″W;
to lat. 45°39′00″N, long. 116°10′03″W;
to lat. 45°30′00″N, long. 116°14′03″W;
to lat. 45°23′00″N, long. 116°21′03″W;
to lat. 45°25′00″N, long. 116°34′04″W;
to lat. 45°30′00″N, long. 116°46′04″W;
to lat. 46°00′00″N, long. 116°56′04″W; thence west along lat. 46°00′00″N, to the Walla Walla VOR/DME 16.6-mile radius, thence north along the 16.6-mile radius until intercepting V–536, thence northeast along V–536 and southeast along V–2 until intercepting long. 115°15′04″W, thence south along long. 115°15′04″W, until intercepting V–187, thence southwest along V–187 until intercepting long. 116°00′00″W, thence south along long. 116°00′00″W, to lat. 46°00′00″N to point of beginning; excluding Federal Airways.

* * * * *

Issued in Seattle, Washington, on July 29, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20662 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–54]

Modification of Class D: Dallas Redbird Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Dallas Redbird Airport, TX. Airspace reclassification, effective September 16, 1994, omitted a portion of the previous airport traffic area. After airspace reclassification the term "airport traffic area" was replaced with the designation "Class D airspace." This action is intended to restore that airspace which was omitted by airspace reclassification and to provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way radio communications at Dallas Redbird Airport.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Dallas Redbird Airport was published in the **Federal Register** (59 FR 14577). Airspace reclassification, effective September 16, 1994, omitted a portion of the previous airport traffic area. After airspace reclassification the term "airport traffic area" was replaced with the designation

"Class D airspace." This modification is required to restore that airspace which was omitted by airspace reclassification and to provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way radio communications at the Dallas Redbird Airport.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace at the Dallas Redbird Airport to restore the Class D airspace omitted as a result of Airspace Reclassification.

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

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69. 93–ASW–54

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ASW TX D Dallas Redbird Airport, TX. [Revised]

Dallas, Redbird Airport, TX
(lat. 32°40'51"N., long. 96°52'06"W.)
Redbird RBN
(lat. 32°40'37"N., long. 96°52'16"W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.2-mile radius of Redbirds Airport and within 2.1 miles each side of the 165° bearing from the Redbirds RBN extending from the 4.2-mile radius to 4.7 miles south of the airport excluding that airspace west of a line from lat. 32°37'40"N., long. 96°55'21"W.; to lat. 32°39'35"N., long. 96°54'16"W; to lat. 32°44'20"N., long. 96°53'59"W; excluding that airspace within the Dallas-Fort Worth, TX, Class B airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on August 5, 1994.

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–20667 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–53]

Modification of Class D: Clinton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Clinton-Sherman Airport, Clinton, OK. The Clinton-Sherman airport is used by military jet trainers. The existing vertical limit of the Class D airspace is not sufficient for these high performance aircraft. This action is intended to increase the vertical limit of the Class D airspace for all operations and require two-way radio communications at the Clinton-Sherman Airport, Clinton, OK.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 222–5595.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Clinton, OK, was published in the **Federal Register** (58 FR 62056). The existing vertical limit of the Class D airspace at Clinton-Sherman Airport is not sufficient for high performance military jet aircraft. This action is intended to increase the vertical limit of the Class D airspace for all operations, and require two-way radio communications at the Clinton-Sherman Airport, Clinton, OK.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace at Clinton, OK, to increase the vertical limit of the Class D airspace to contain all operations and require two-way radio communications at the Clinton-Sherman Airport, Clinton, OK.

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

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

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000: General

* * * * *

ASW OK D Clinton-Sherman, OK [Revised]

Clinton-Sherman Airport, OK
(lat. 35°20′23″N., long. 99°12′02″W.)
Burns Flat VORTAC
(lat. 35°14′13″N., long. 99°12′22″W.)

That airspace extending upward from the surface to and including 4,500 feet MSL within a 4.7-mile radius of the Clinton-Sherman Airport and within 1.1 miles each side of the 003° radial of the Burns Flat VORTAC extending from the 4.7-mile radius to 6.1 miles south of the airport. This Class D airspace area is effective during 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.

* * * * *

Helen Fabian Parke,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–20668 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–18]

Establishment of Class E Airspace; Leadville, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Lake County Airport, Leadville, Colorado. Establishment of a new instrument approach procedure requires controlled airspace for the procedure. Airspace reclassification, in effect as of September 16, 1994, has discontinued use of the term "transition area," replacing it with the designation "Class E" airspace. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

EFFECTIVE DATE: 0901 u.t.c. October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace for the Lake County Airport, Leadville, Colorado (59 FR 17056; April 11, 1994). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1994, has discontinued use of the term "transition area," replacing it with the designation "Class E airspace." Class E airspace designations, for airspace areas extending upward from 700 feet above the surface of the Earth, are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North American Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Leadville, Colorado. It will provide controlled airspace for a new instrument approach procedure at the Lake County Airport.

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 Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ANM CO E5 Leadville, CO [New]

Lake County Airport, CO
(lat. 39°13′13″N., long. 106°18′58″W.)
Leadville NDB CO
(lat 39°13′29″N., long. 106°18′55″W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at:

lat. 39°30′00″N., long. 106°40′00″W.;
to lat. 39°30′00″N., long. 105°58′00″W.;
to lat. 39°57′00″N., long. 105°58′00″W.;
to lat. 39°57′00″N., long. 106°40′00″W.;
to the point of beginning.

* * * * *

Issued in Seattle, Washington, on July 26, 1994.

Charles E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20670 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–21]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Fort Lewis, Washington; Olympia, Washington; Spokane, Washington; Walla Walla, Washington; Yakima, Washington; Casper, Wyoming; and Cheyenne, Wyoming. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: Effective date—0901 UTC, October 13, 1994.

Comment date: Comments must be received before September 30, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–21, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, Suite 570, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone: (206) 227–2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace and Procedures Section, System Management Branch, Air Traffic Division, ANM–530 Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone: (206) 227–2536.

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 establishes Class E airspace areas at Fort Lewis, Washington; Olympia, Washington; Spokane, Washington; Walla Walla, Washington; Yakima, Washington; Casper, Wyoming; and Cheyenne, Wyoming. Currently, these areas are designated as Class D airspace when the associated control towers are in operation. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are 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 control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class 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 establish these Class E airspace areas 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 11304; 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as surface areas for airports.

* * * * *

ANM WA E2 Fort Lewis, WA [New]

Fort Lewis, Gray AAF, WA
(lat. 47°04′45″N, long. 122°34′53″W)
McChord VORTAC
(lat. 47°08′52″N, long. 122°28′30″W)

That airspace extending upward from the surface within a 4.3-mile radius of Gray AAF, excluding the portions within the Tacoma, McChord AFB, WA, Class D airspace area and the portion east of a line 1.8 miles west of and parallel to the McChord VORTAC 182° radial. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM WA E2 Olympia, WA [New]

Olympia Airport, WA
(lat 46°58′14″N, long. 122°54′11″W)

That airspace extending upward from the surface within a 4-mile radius of the Olympia Airport. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

ANM WA E2 Spokane Felts Field, WA [New]

Spokane Felts Field, WA
(lat. 47°40'59"N, long. 117°19'21"W)

That airspace extending upward from the surface within a 4-mile radius of the Felts Field, excluding that airspace within the Spokane International Airport, WA, Class C airspace area. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM WA E2 Walla Walla, WA [New]

Walla Walla Regional Airport, WA
(lat. 46°05'40"N, long. 118°17'17"W)

That airspace extending upward from the surface within a 4.3-mile radius of the Walla Walla Regional Airport. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM WA E2 Yakima, WA [New]

Yakima Air Terminal, WA
(lat. 46°34'05"N, long. 120°32'38"W)

That airspace extending upward from the surface within a 4.2-mile radius of the Yakima Air Terminal. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM WY E2 Casper, WY [New]

Casper, Natrona County International Airport, WY
(lat. 42°54'30"N, long. 106°27'49"W)

That airspace extending upward from the surface within a 4.3-mile radius of the Natrona county International Airport. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM WY E2 Cheyenne, WY [New]

Cheyenne, Airport, WY
(lat. 41°09'21"N, long. 104°48'46"W)
Cheyenne, ILS OM
(lat. 41°08'48"N, long. 104°40'44"W)

That airspace extending upward from the surface within a 5.6-mile radius of the Cheyenne Airport, and within 1.8 miles each side of the Cheyenne ILS localizer east course extending from the 5.6-mile radius to the OM. This class E airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on July 26, 1994.

Charles E. Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20671 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–30]

Amendment to Class E Airspace; Ephrata, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Ephrata, Washington, Class E airspace. This action is necessary to correct an error in the airspace description for the Ephrata Municipal Airport, Ephrata, Washington.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–30, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On May 27, 1994, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) to amend the Ephrata, Washington, Class E airspace area (59 FR 27512). A review of the airspace description revealed an overlap of airspace between Ephrata Municipal Airport, Washington, and Moses Lake, Grant County Airport, Washington. This action corrects that error.

The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. Airspace reclassification, in effect as of September 16, 1994, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Ehprata, Washington. 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 FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ANM WA E2 Ephrata, WA [Revised]

Ephrata Municipal Airport, WA
(lat. 47°18'17"N, long. 119°30'49"W)
Ephrata VORTAC
(lat. 47°22'41"N, long. 119°25'26"W)

Within the 4.4-mile radius of the Ephrata Municipal Airport, and within 2.7 miles each side of the Ephrata VORTAC 043° and 233° radials extending from the 4.4-mile radius to

7 miles northeast of the VORTAC, excluding the Moses Lake, WA Class D airspace area. This Class E airspace area is effective during 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 Seattle, Washington, on July 26, 1994.

Charles Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20672 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–19]

Establishment of Class E Airspace, Various Locations in the FAA Northwest Mountain Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E2 airspace at Idaho Falls, Idaho; Mountain Home, Idaho; Pocatello, Idaho; Helena, Montana; Missoula, Montana; Eugene, Oregon; Medford, Oregon; Pendleton, Oregon; Portland-Hillsboro, Oregon and Salem, Oregon. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers are closed.

DATES: Effective date: 0901 UTC, October 13, 1994.

Comment date: Comments must be received on or before October 1, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, Docket 94–ANM–19, 1601 Lind Ave., S.W., Renton, WA 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, Suite 570, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone: (206) 227–2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace and Procedures Section, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; Telephone (206) 227–2536.

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 of part 71 of the Federal Aviation Regulations establishes Class E2 airspace at Idaho Falls, Idaho; Mountain Home, Idaho; Pocatello, Idaho; Helena, Montana; Missoula, Montana; Eugene, Oregon; Medford, Oregon; Pendleton, Oregon; Portland-Hillsboro, Oregon and Salem, Oregon. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at these locations when the control towers are 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 control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class 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 establish these Class E airspace areas 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. 533(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. Therefore, this regulation—(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 7400.9B, Airspace Designation and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6002 Class E airspace areas designated as surface area for airports

* * * * *

ANM ID E2 Idaho Falls, ID [New]

Idaho Falls. Fanning Field, ID
(lat. 43°30′59″N, long. 112°04′05″W)

That airspace extending upward from the surface within a 5.4-mile radius of Fanning Field. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM ID E2 Mountain Home, ID [New]

Mountain Home AFB, ID
(lat. 43°02′37″N, long. 115°52′21″W)

That airspace extending upward from the surface within a 5.9-mile radius of the Mountain Home AFB. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM ID E2 Pocatello, ID [New]

Pocatello Regional Airport, ID
(lat. 42°28'55"N, long. 112°35'42"W)

That airspace extending upward from the surface within a 4.5-mile radius of the Pocatello Regional Airport. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM MT E2 Helena, MT [New]

Helena Regional Airport, MT
(lat. 46°36'25"N, long. 111°58'58"W)

Helena VORTAC
(lat. 46°36'25"N, long. 111°57'12"W)

That airspace extending upward from the surface within a 4.4-mile radius of the Helena regional Airport, and within 2.2 miles each side of the Helena VORTAC 102° radial extending from the 4.4-mile radius to 4 miles east of the VORTAC, and within 0.9 mile each side of the 4.4-mile radius to 7 miles west of the VORTAC. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM MT E2 Missoula, MT [New]

Missoula International Airport, MT
(lat. 46°54'59"N, long. 114°05'26"W)

That airspace extending upward from the surface within a 4.4-mile radius of the Missoula International Airport. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM OR E2 Eugene, OR [New]

Eugene, Mahlon Sweet Field Airport, OR
(lat. 44°07'18"N, long. 123°13'07"W)

That airspace extending upward from the surface within a 4.6-mile radius of the Mahlon Sweet Field Airport. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

ANM OR E2 Medford, OR [New]

Medford-Jackson County Airport, OR
(lat. 42°22'20"N, long. 122°52'21"W)

That airspace extending upward from the surface within a 4.1-mile radius of the Medford-Jackson County Airport. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM OR E2 Pendleton, OR [New]

Pendleton Municipal Airport, OR
(lat. 45°21'42"N, long. 118°50'29"W)

Pendleton VORTAC
(lat. 45°41'54"N, long. 118°56'19"W)

That airspace extending upward from the surface within a 4.2-mile radius of the Pendleton Municipal Airport, and within 1.8 miles each side of the Pendleton VORTAC 273° radial extending from the 4.2-mile radius to 1.8 miles west of the VORTAC. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM OR E2 Portland-Hillsboro, OR [New]

Portland-Hillsboro Airport, OR
(lat. 45°32'25"N, long. 122°56'59"W)

That airspace extending upward from the surface within a 4.2-mile radius of the Portland-Hillsboro Airport. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM OR E2 Salem, OR [New]

Salem, McNary Field, OR
(lat. 44°54'34"N, long. 123°00'09"W)

That airspace extending upward from the surface within a 4-mile radius of McNary Field. This Class E2 airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on August 15, 1994.

Daniel A. Boyle.

Acting Manager, Air Taffic Division.

[FR Doc. 94–20798 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–38]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action establishes Class E airspace areas at the Walker Field, Colorado; Pueblo Memorial Airport, Colorado; Casper, Natrona County International Airport, Wyoming; and Cheyenne Airport, Wyoming. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: Effective date—0901 UTC, October 13, 1994.

Comment date: Comments must be received on or before September 15, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–38, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

The official docket may be examined at the Office of the Assistant Chief Counsel for the Northwest Mountain Region, Suite 570, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone: (206) 227–2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Airspace and Procedures Section, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone: (206) 227–2536.

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 establishes Class E airspace areas at Grand Junction, Walker Field, Colorado; Pueblo Memorial Airport, Colorado; Casper, Natrona County International Airport, Wyoming; and Cheyenne Airport, Wyoming. Currently, these areas are designated as Class D airspace when the associated control towers are in operation. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when the control towers are 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 control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed. (56 FR 65645.)

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 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class 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 establish these Class E airspace areas 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ANM CO E2 Grand Junction, CO [New]

Grand Junction, Walker Field, CO
(lat. 39°07′21″N, long. 108°31′36″W)

That airspace extending upward from the surface within a 4.7 mile-radius of Walker Field. This Class E airspace area shall be effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM CO E2 Pueblo, CO [New]

Pueblo Memorial Airport, CO
(lat. 38°17′21″N, long. 104°29′48″W)

That airspace extending upward from the surface within a 5.6-mile radius of the Pueblo Memorial 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.

* * * * *

ANM WY E2 Casper, WY [New]

Casper, Natrona County International Airport, WY
(lat. 46°54′59″N, long. 114°05′26″W)

That airspace extending upward from the surface within a 4.3-mile radius of the Natrona County International 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.

* * * * *

ANM WY E2 Cheyenne, WY [New]

Cheyenne, Airport, WY
(lat. 41°09′21″N, long. 104°48′46″W)
Cheyenne ILS OM
(lat. 41°08′48″N, long. 104°40′44″W)

That airspace extending upward from the surface within a 5.6-mile radius of the Cheyenne Airport, and within 1.8 miles each side of the Cheyenne ILS localizer east course extending from the 5.6-mile radius to the OM. 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 Seattle, Washington, on August 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20797 Filed 8–27–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–28]

Amendment to Class E Airspace; Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Spokane, Washington, Class E airspace. This action is necessary to provide controlled airspace for arriving and departing aircraft transitioning between the en route and terminal areas in eastern Washington. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch, ANM–530, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On May 27, 1994 the FAA proposed to amend the Spokane, Washington, Class E airspace (59 FR 27513). No comments were received with regard to that notice. However, a portion of the Spokane Class E airspace was inadvertently omitted because the updated reference data on the Spokane Class E airspace had not then been published. Except for restoring the portion which had been omitted, this

rule is the same as the notice of proposed rulemaking.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E airspace at Spokane, Washington. It will provide additional controlled airspace to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in eastern Washington. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points; dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ANM WA E5 Spokane, WA [Revised]

Spokane International Airport, WA
(lat. 47°37'12"N, long. 117°32'02"W)
Fairchild AFB, WA
(lat. 47°36'54"N, long. 117°39'29"W)
Spokane VORTAC
(lat. 47°33'54"N, long. 117°37'37"W)
Mullan Pass VOR/DME
(lat. 47°27'25"N, long. 115°38'46"W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 47°50'00"N, long. 118°00'04"W, extending to lat. 47°50'00"N, long. 117°30'04"W, to lat. 47°58'00"N, long. 117°16'04"W, to lat. 47°51'00"N, long. 117°08'04"W, to lat. 47°56'00"N, long. 116°47'04"W, to lat. 47°44'00"N, long. 116°41'04"W, to lat. 47°31'10"N, long. 116°44'50"W, to lat. 47°31'50"N, long. 116°56'50"W, to lat. 47°40'40"N, long. 116°56'50"W, to lat. 47°37'00"N, long. 117°12'50"W, to lat. 47°28'00"N, long. 117°16'04"W, to lat. 47°17'00"N, long. 117°47'04"W, to lat. 47°26'00"N, long. 118°00'04"W, thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within 45.3 mile radius of Fairchild AFB, excluding that portion southeast of Spokane bounded on the north by the 33.1-mile radius of the Fairchild AFB, on the northeast by a line 4 miles south of and parallel to the Spokane VORTAC 107° radial, on the southeast by the 45.3-mile radius of the Fairchild AFB, on the southwest by a line parallel to and 8.7 miles northeast of V–253; that airspace south of Spokane extending from the 45.3-mile radius bounded on the east by a line parallel to and 8.7 miles east of V–253, on the south V–536, on the west by the east edge of V–444; that airspace southeast of Spokane extending upward from 6,000 feet MSL, bounded on the north by the 33.1-mile radius of Fairchild AFB, on the northeast by a line 4 miles south of and parallel to the Spokane VORTAC 107° radial, on the southeast by the 45-3 mile radius of the Fairchild AFB, on the southwest by a line parallel to and 8.7 miles northeast of V–253; that airspace southeast of Spokane extending upward from 7,000 feet MSL bounded on the northwest by the 45.3 miles radius, on the north by a line 4 miles south of and parallel to the Mullan Pass VOR/DME 260° radial, on the southeast by the north edge of V–536 and on the southwest by a line parallel to and 8.7 miles northeast of V–253; excluding the Pullman, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on August 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20796 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–20]

Establishment of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at St. James Municipal Airport, St. James, MN, to accommodate a Nondirectional Beacon (NDB), Runway 32. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 22, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at St. James Municipal Airport, St. James, MN, to accommodate a Nondirectional Beacon (NDB), Runway 32 (59 FR 32146). The proposal was to add controlled airspace extending from 700 feet to 1,200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA

Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at St. James Municipal Airport, St. James, MN, to accommodate a Nondirectional Beacon (NDB), Runway 32. Controlled airspace extending from 700 to 1,200 feet AGL is needed for aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas listed below extend upward from 700 feet or more above the surface

* * * * *

AGL MN E5 St. James, MN [New]

St. James Municipal Airport, MN
(lat. 43°59'04"N., long. 94°33'23"W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the St. James Municipal Airport and within 2.5 miles each side of the 164° bearing from the airport extending from the 6.2-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on August 11, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–20795 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASO–13]

Establishment of Class E Airspace; Concord, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Concord, NC. Two Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedures (SIAPs) have been developed for the Concord Regional Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed for instrument flight rules (IFR) operations at the airport. This action is intended to provide adequate Class E airspace for IFR operations at Concord, NC.

EFFECTIVE DATE: 0901 U.T.C. September 27, 1994.

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

SUPPLEMENTARY INFORMATION:

History

On July 28, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Concord, North Carolina, was published in the **Federal Register** (59 FR 38386). The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME approaches at Concord Regional Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments relating to this Class E airspace proposal were received. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Concord, NC, to accommodate two (2) VOR/DME SIAPs to Concord Regional Airport. Controlled airspace extending upward from 700 feet to 1200 feet AGL is needed for IFR operators executing the developed SIAPs.

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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, 1994, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

ASO NC E5 Concord, NC [New]

Concord Regional Airport, NC
(lat. 35°23'07"N, long. 80°42'35"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Concord Regional Airport.

* * * * *

Issued in College Park, Georgia, on August 15, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-20793 Filed 8-23-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ANM-36]

Modification of Class D Airspace; Colorado Springs USAF Academy Airstrip, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at the Colorado Springs USAF Academy Airstrip, Colorado, by amending the area's effective hours to coincide with the associated 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 is required.

DATES: Effective date—0901 UTC, October 13, 1994. Comment date: Comments must be received on or before October 6, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM-530, Federal Aviation Administration, Docket No. 94-ANM-36, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, Suite 570, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone: (206) 227-2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace and Procedures Section, System Management Branch, Air Traffic Division, ANM-530, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone: (206) 227-2536.

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 amend the regulation, or extend the effective date of the rule.

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 the U.S. Air Force Academy, Colorado, by amending the area's effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1994, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "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 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 this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D 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 airspace area in order to promote the safe and efficient handling of air traffic in this area. 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 of 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Colorado Springs USAF Academy, CO [Revised]

Colorado Springs USAF Academy Airstrip, CO
(Lat. 38°58'11" N., long. 104°48'47" W.)

That airspace extending upward from the surface to and including 8,600 feet MSL within a 3-mile radius of the USAF Academy Airstrip, excluding that airspace within the Colorado Springs, CO, Class C airspace area. 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.

* * * * *

Issued in Seattle, Washington, on July 22, 1994.

Charles Davis,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20659 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASO–6]

Establishment of Class D Airspace: Robins AFB, GA, Amendment of Class D Airspace and Establishment of Class E Airspace: Middle Georgia Regional Airport, Macon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new and separate Class D airspace at Robins AFB, Georgia. Robins AFB has a full time air traffic control tower. This action amends the Class D airspace at Middle Georgia Regional Airport, Macon, Georgia, by removing Robins AFB from the Macon, Georgia, Class D description. This action also establishes Class E airspace at Middle Georgia Regional Airport, Macon, Georgia, when the associated control tower is closed. The intent of this action is to clarify when two-way communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when the Middle Georgia Regional Airport control tower is closed.

EFFECTIVE DATE: 0901 U.T.C., October 13, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

History

On June 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new independent Class D airspace at Robins AFB, Georgia, (59 FR 29214). Additionally, the FAA is amending Class D airspace and establishing Class E airspace at the Middle Georgia Regional Airport, Macon, Georgia. Prior to Airspace Reclassification, an Airport Traffic Area (ATA) and a control zone existed at these airports. However, Airspace Reclassification, effective September 16, 1994, discontinued the use of the terms "airport traffic area" and "control zone," replacing them with the designation "Class D airspace". Robins AFB was incorporated in the Class D airspace for Middle Georgia Regional Airport, Macon, Georgia. Robins AFB has a full time control tower. However, the Macon Radar Approach Control/Tower, which controls aircraft for the Middle Georgia Regional Airport, is part time. This action amends the Class D airspace at Middle Georgia Regional Airport by removing Robins AFB from the Macon, Georgia, Class D airspace and designation. This action also establishes Class E surface airspace at the Middle Georgia Regional Airport, Macon, Georgia, to provide adequate controlled airspace for instrument approach procedures when the Macon Radar Approach Control/Tower is closed. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice.

Designations for Class D and Class E airspace respectively are published in Paragraphs 5000, and 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Robins AFB, Georgia and amends Class D airspace at Middle Georgia Regional Airport, Macon, Georgia. This amendment also establishes Class E2 surface airspace at Middle Georgia Regional Airport, Macon, Georgia, when the associated control tower is closed. The Class D and E airspace designation listed in this document will be published subsequently in 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 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Para 5000 Class D Airspace

* * * * *

ASO GA D Robins AFB, Georgia [New]

Robins AFB, Georgia
(Lat. 32°38'25" N, long. 83°35'31" W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 5.5-mile radius of Robins AFB, excluding the portion north of a line connecting the 2 points of intersection within a 4.1-mile radius circle centered on the Middle Georgia Regional Airport, Macon, Georgia.

* * * * *

ASO GA D MACON, GA [Revised]

Macon, Middle Georgia Regional Airport, GA

(Lat. 32°41'34" N, long. 83°38'57" W)
Robins AFB, GA
(Lat. 32°38'25" N, long. 83°35'31" W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Para 6002 Class E airspace designated as an extension to a Class D surface area

* * * * *

ASO GA E2 Macon, GA [New]

Macon, Middle Georgia Regional Airport, GA
(Lat. 32°41'34" N, long. 83°38'57" W)
Robins AFB, GA
(Lat. 32°38'25" N, long. 83°35'31" W)

That airspace extending upward from the surface within 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. The Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 28, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–20666 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–8]

Alteration of VOR Federal Airway V–2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airspace designation for Federal Airway V–2 in the vicinity of Buffalo, NY. In the airspace designation, the "Aylmer 087°" radial is changed to the "Aylmer 086°" radial to correct a typographic error.

EFFECTIVE DATE: 0901 u.t.c., October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the airspace designation for VOR Federal Airway V–2. In the designation, the "Aylmer 087°" radial is changed to the "Aylmer 086°" radial. This action is editorial in nature. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary, because this action is a minor technical amendment in which the public is not particularly interested. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in 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 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 Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Drummond, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 093° and Aylmer, ON, Canada, 254° radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 094° and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 17, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–20792 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AGL–10]

Modification of Class E Airspace; Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Minneapolis, MN, to accommodate a Standard Instrument Approach Procedure (SIAP) at Airlake Airport, Lakeville, MN. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 20, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E Airspace at Minneapolis, MN (59 FR 18770). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL for Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace at Minneapolis, MN, to accommodate a Standard Instrument Approach Procedure (SIAP) at Airlake Airport, Lakeville, MN. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

AGL MN E5 Minneapolis, MN [Revised]

Minneapolis-St. Paul International (Wold-Chamberlain) Airport, MN
(Lat. 44°53′03″ N., long. 93°12′55″ W.)
Minneapolis, Anoka County-Blaine Airport (Janes Field), MN
(Lat 45°08′42″ N., long. 93°12′40″ W.)
St. Paul, Lake Elmo Airport, MN
(Lat 44°59′51″ N., long. 92°51′21″ W.)
Lakeville, Airlake Airport, MN
(Lat 44°37′40″ N., long. 93°13′41″ W.)
Minneapolis-St. Paul International (Wold-Chamberlain) Airport DME Antenna
(Lat 44°52′29″ N., long 93°12′24″ W.)
St. Paul Downtown Holman Field, MN
(Lat 44°56′04″ N., long. 93°03′36″ W.)
Farmington, MN VORTAC
(Lat 44°37′34″ N., long. 93°10′55″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of the Minneapolis-St. Paul International (Wold Chamberlain) Airport DME antenna including that airspace extending beyond the 20-mile radius of the Minneapolis-St. Paul International (Wold Chamberlain) Airport DME antenna within a 6.4 mile radius of the Anoka County-Blaine Airport (Janes Field) and within a 6.3-mile radius of the Lake Elmo Airport and within a 6.4-mile radius of the Airlake Airport and within 3.3 miles each side of the 084° bearing from the Farmington VORTAC extending from the 6.4-mile radius to 14.8 miles east of the Airlake Airport.

* * * * *

Issued in Des Plaines, Illinois, on August 11, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–20799 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–42]

Modification of Class E Airspace; Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 6, 1994, in which a portion of the airspace description was inadvertently omitted.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, System Management Branch (ANM–530), Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION: On May 6, 1994, the Federal Aviation Administration published a final rule that amended the Portland, Oregon, Class E airspace area to accommodate arrival/departure aircraft transitioning between the en route airway structure and the Portland, Oregon terminal area. However, that action inadvertently omitted the Newburg VORTAC 215° radial in the airspace description. This action corrects that error.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on May 6, 1994 (59 FR 23619; **Federal Register** Document 94–10955), and the corresponding description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 23619, in the third column, the description for the Portland International Airport, Oregon Class E airspace is corrected to read as follows:

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

* * * * *

ANM OR E5 Portland, OR [Corrected]

Portland International Airport, OR
(Lat. 45°35′19″ N., long. 122°35′51″ W.)
Newburg VORTAC, OR
(Lat. 45°21′12″ N., long. 122°58′41″ W.)
Corvallis VOR/DME, OR
(Lat. 44°29′58″ N., long. 123°17′37″ W.)
McMinnville Municipal Airport, OR
(Lat. 45°11′40″ N., long. 123°08′09″ W.)

That airspace extending upward from 700 feet above the surface within a line beginning at lat. 45°59′59″ N, long. 123°30′04″ W; to lat. 45°59′59″ N, long. 122°07′50″ W; thence via

a 6.25-mile radius centered at lat. 45°54'50" N, long. 122°02'50" W clock-wise to lat. 45°49'40" N, long. 121°58'00" W; thence via a line to lat. 45°46'30" N, long. 122°04'00" W; south along long. 122°04'00" W; bounded on the south by lat. 45°09'59" N, and on the west by long. 123°30'04" W, and within a 4.3-mile radius of the McMinnville Municipal Airport and within 2 miles each side of the Newburg VORTAC 215° radial extending from lat. 45°09'59" N, to 19.8 miles southwest of the Newburg VORTAC; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 46°30'29" N, extending from 2.7 miles offshore to V–25, and on the east by V–25, on the south by V–536 to Corvallis VOR/DME, thence via lat. 44°29'59" N, to a point 2.7 miles offshore, and on the west by a line 2.7 miles offshore to the point of beginning.

* * * * *

Issued in Seattle, Washington, on July 20, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–20658 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 93–ASW–28]

Establishment of Restricted Area-6302E, Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–6302E, Fort Hood, TX, above the existing Restricted Areas R–6302A, B, C, and D, at Fort Hood, TX. Restricted Area R–6302E will provide special use airspace to accommodate the firing of heatseeker missiles at the Fort Hood Army Airfield (AAF) weapons complex.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1994, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) by establishing Restricted Area, R–6302E, Fort Hood, TX, above the existing Restricted Areas R–6302A, B, C, and D (59 FR 23644). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.63 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area, R–6302E, Fort Hood, TX, above the existing Restricted Areas R–6302A, B, C, and D, to accommodate the firing of heatseeker missiles at the Fort Hood AAF weapons complex. The maximum altitude of the existing Fort Hood restricted area is 30,000 feet mean sea level (MSL). Restricted Area R–6302E will coincide with the existing lateral boundaries of Restricted Areas R–6302A, B, C, and D, and will extend from 30,000 feet MSL to 45,000 feet MSL. This action is a result of a Special Use Airspace Review conducted at the Fort Hood AAF in May 1993. Restricted Area R–6302E will be a joint-use restricted area, activated by NOTAM 48 hours in advance, not to exceed 90 days per year, weather makeup days included. The airspace will be returned to the controlling agency when not required for military activities. The U.S. Army does not expect any increase in the total annual usage of the area.

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.

Environmental Review

This action is not subject to environmental assessments or procedures under FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

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

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R–6302E Fort Hood, TX [New]

Boundaries. Beginning at lat. 31°24'01"N., long. 97°48'01"W.;
To lat. 31°23'01"N., long. 97°43'01"W.;
To lat. 31°22'08"N., long. 97°41'56"W.;
To lat. 31°21'01"N., long. 97°41'01"W.;
To lat. 31°20'01"N., long. 97°41'01"W.;
To lat. 31°14'01"N., long. 97°33'01"W.;
To lat. 31°06'01"N., long. 97°33'01"W.;
To lat. 31°08'01"N., long. 97°39'01"W.;
To lat. 31°10'01"N., long. 97°41'01"W.;
To lat. 31°09'01"N., long. 97°43'31"W.;
To lat. 31°09'01"N., long. 97°55'01"W.;
To lat. 31°16'01"N., long. 97°54'01"W.;
To lat. 31°19'01"N., long. 97°51'01"W.;
To the point of beginning.

Designated altitudes. 30,000 feet MSL to 45,000 feet MSL.

Times of designation. By NOTAM 48 hours in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Commanding Officer, Fort Hood, TX.

Issued in Washington, DC, on August 17, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–20791 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 270 AND 274

[Release Nos. 33–7083; IC–20486; File No. S7–26–93]

RIN 3235–AF96

Post-Effective Amendments to Investment Company Registration Statements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and form amendments; rescission of rule.

SUMMARY: The Commission is adopting rule and form amendments to revise the procedures by which investment

companies, including insurance company separate accounts, file post-effective amendments to registration statements. The Commission also is adopting a rule providing procedures by which closed-end interval companies file post-effective amendments and subsequent registration statements. The amendments simplify the operation of the current rules and expand the conditions under which post-effective amendments filed by investment companies are permitted to become effective automatically.

EFFECTIVE DATE: The amendments will become effective on October 11, 1994.

FOR FURTHER INFORMATION CONTACT: Janice M. Bishop, Attorney, or Kenneth J. Berman, Deputy Office Chief, (202) 942–0721, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting: (1) amendments to rule 485 [17 CFR 230.485] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"), the rule under which post-effective amendments to registration statements filed by open-end management investment companies ("mutual funds") and unit investment trusts ("UITs") (collectively, "funds") become effective automatically; (2) rule 486 [17 CFR 230.486], which establishes procedures similar to rule 485 for closed-end interval funds;[1] (3) conforming amendments to Form N–1A [17 CFR 239.15A, 274.11A], Form N–2 [17 CFR 239.14, 274.11a–1], Form N–3 [17 CFR 274.11b and 239.17a], and Form N–4 [17 CFR 274.11c and 239.17b], the forms used by mutual funds, closed-end management investment companies and insurance company separate accounts that offer variable annuity contracts, to satisfy the registration statement requirements of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("1940 Act") and to register securities under the Securities Act, and Form S–6 [17 CFR 239.16], the form used by UITs to register securities under the Securities Act; and (4) technical and conforming amendments to rule 6e–3(T) under the 1940 Act [17 CFR 270.6e–3(T)], rule 487 under the Securities Act [17 CFR 230.487], and rule 30–5 of the Commission's Rules of Practice and Investigations [17 CFR 200.30–5].

I. Executive Summary

The Commission is amending rule 485 under the Securities Act. Rule 485 permits post-effective amendments to registration statements filed by mutual funds and UITs to become effective automatically (*i.e.*, without Commission or staff action). The amendments simplify the operation of the current rules and expand the conditions under which post-effective amendments filed under paragraph (b) of rule 485 by mutual funds and UITs are permitted to become effective immediately ("B-Amendments").

The amendments to rule 485 permit funds to file B-Amendments for seven additional purposes—four purposes as originally proposed by the Commission and three purposes as suggested by commenters. These purposes include delaying the effective date of a previously-filed post-effective amendment, updating the fund's discussion of its performance, revising portfolio manager disclosure, and adding interim financial statements. The Commission may suspend the ability of a fund to file B-Amendments for a specified time if the fund has filed a B-Amendment under circumstances in which paragraph (b) is not available. In addition, the Commission is amending rule 485 to provide that a post-effective amendment filed pursuant to paragraph (a) ("A-Amendment") that adds a new series will not become effective until the seventy-fifth day after filing.

Finally, the Commission is adopting new rule 486 to permit closed-end management investment companies and business development companies that periodically repurchase their shares in accordance with rule 23c–3 under the 1940 Act [17 CFR 270.23c–3] to file certain post-effective amendments and registration statements that become effective automatically.

II. Background

On September 21, 1993, the Commission issued a release proposing for public comment amendments to rule 485 under the Securities Act ("Proposing Release").[2] Rule 485 permits post-effective amendments to registration statements filed by mutual funds and UITs to become effective automatically (*i.e.*, without Commission or staff action). Post-effective amendments eligible to be filed under paragraph (b) of rule 485 ("B-Amendments"), which only may be for one or more of the four purposes specified by the rule,[3] may become effective immediately upon filing or, at the option of the fund, up to 20 days after filing. All other post-effective amendments are filed under paragraph (a) of rule 485 ("A-Amendments"), and become effective 60 days after filing or, at the option of the fund, up to 80 days after filing. The 60-day period provides the staff of the Division of Investment Management ("Division") with time to review and comment on the post-effective amendments. The amendments will simplify the operation of the current rules and expand the conditions under which post-effective amendments filed by mutual funds and UITs are permitted to become effective immediately.

The Commission received 15 comment letters on the proposed amendments.[4] In general, the commenters supported the adoption of the proposed amendments and stated that the revisions would improve the process by which mutual funds file post-effective amendments. Most of the commenters, however, believed that certain aspects of the proposal should be modified or eliminated. The Commission is adopting the proposed amendments and related form changes, modified to reflect many of the comments received.

III. Discussion

A. *Additional Purposes for Filing B-Amendments*

Under rule 485, as amended, a fund may file a B-Amendment for seven additional purposes. The first four purposes, which are being adopted substantially as proposed, were supported by most of the commenters. The remaining purposes were recommended by commenters in response to the Commission's request for comment on additional purposes for

[1] Current rule 486, which is the counterpart to rule 485 for post-effective amendments filed by insurance company separate accounts that issue variable annuity and variable life insurance contracts, is being rescinded. These separate accounts are eligible to use rule 485, as amended. New rule 486 was originally proposed as rule 485a in Investment Company Act Release No. 19391 (Apr. 7, 1993) [58 FR 19361 (Apr. 14, 1993)]. The Commission is adopting separately a related amendment to rule 415 under the Securities Act that will permit closed-end interval funds to offer securities on a delayed or continuous basis. *See* Investment Company Act Rel. No. 20487.

[2] Investment Company Act Rel. No. 19722 (Sept. 21, 1993) [58 FR 50291 (Sept. 27, 1993)].

[3] These purposes include: increasing the amount of securities offered; registering an indefinite amount of securities as permitted by section 24(f) of the 1940 Act [15 U.S.C. 80a–24(f)]; updating financial statements within four to six months after the effective date of the registration statement; and amending the registration statement to update financial statements "and other information" as required by section 10(a)(3) of the Securities Act and "in conjunction therewith" to make "such other non-material changes as the registrant deems appropriate."

[4] All comment letters, including a summary of the comments prepared by the staff, have been placed in Public Comment File No. S7–26–93.

which B-Amendments would be appropriate.

1. *Delaying the Effective Date of a Post-Effective Amendment Under Paragraph (a)*

The Commission is adopting new paragraph (b)(1)(v) to permit funds to use a B-Amendment to delay the effective date of an A-Amendment for up to 30 days (rather than 20 days, as proposed). Previously, a fund had to file another A-Amendment to delay the effectiveness of an A-Amendment beyond the 60- to 80-day period and then had to request that the staff accelerate the effective date of the second A-Amendment if the desired delay was for less than 60 days.[5]

2. *Disclosure in Response to Item 5A of Form N–1A*

The Commission is adopting paragraph (b)(1)(vi), as proposed, to allow funds to file a B-Amendment to include a description of, or changes to, the management's discussion of fund performance provided in response to Item 5A of Form N–1A. The information provided in response to this item will change every year, and permitting these changes to be made pursuant to a B-Amendment will alleviate administrative burdens on both funds and the Commission.[6]

3. *Non-Material Changes to the Registration Statement*

The Commission is adopting paragraph (b)(1)(vii), as proposed, to permit B-Amendments to be filed to make any non-material change to the registration statement at any time. Previously, rule 485 only permitted certain non-material changes to be made in conjunction with an annual update of the registration statement.

The Commission solicited comment whether the "materiality" standard has proved workable for funds and whether a different standard would provide greater certainty while facilitating staff review of post-effective amendments that may raise legal or disclosure issues. Several commenters stated that the materiality standard has proved workable and that funds and their counsel are accustomed to making determinations as to materiality when drafting disclosure for prospectuses and statements of additional information. One commenter asked whether, under the materiality standard, rule 485 permits use of a B-Amendment for the purpose of converting a single prospectus that relates to several series funds to multiple prospectuses each of which relates to one or more series.[7] The Commission believes that the changes made in such a post-effective amendment (or in a post-effective amendment that combines several series that are being sold pursuant to separate prospectuses into one prospectus) generally would not be material and that the post-effective amendment could be filed as a B-Amendment.[8]

4. *Discretionary Authority to Permit Automatic Effectiveness*

The Commission is adopting paragraph (b)(1)(ix), as proposed, to allow the Commission, on a discretionary basis, to permit certain types of post-effective amendments not otherwise eligible to be filed as B-Amendments to become effective automatically without opportunity for staff review. Requests for permission to file post-effective amendments under this new paragraph should be made by a letter to the Division of Investment Management.[9]

5. *Adding Interim Financial Statements*

As suggested by two commenters, the Commission is amending paragraph (b)(1)(iii) to allow a fund to file a B-Amendment for the purpose of amending the registration statement to add interim financial statements as required by applicable accounting rules.[10] Rule 3–18 of Regulation S–X [17 CFR 210.3–18] requires a fund to add interim financial statements if the fund files a post-effective amendment under rule 485(a) that it expects to become effective more than 245 days after the date of the fund's balance sheet.[11] Under new paragraph (b)(1)(iii), a post-effective amendment otherwise eligible to be filed as a B-Amendment would not lose its eligibility because it contains interim financial statements.

6. *Disclosing a Change in Portfolio Manager*

As suggested by one commenter, the Commission is amending proposed paragraph (b)(1)(vi) to permit a fund to file a B-Amendment to reflect a change in portfolio managers.[12]

7. *Separate Account UITs*

As suggested by two commenters, the Commission is adding a new paragraph (b)(1)(viii) to permit certain separate accounts to file B-Amendments in certain additional circumstances. A separate account offering variable insurance products may be organized as a UIT ("trust account") investing all of its assets in an open-end management investment company ("underlying fund"). The trust account prospectus discloses information about the separate account and the insurance contracts being offered and also contains summary information about the underlying fund. Paragraph (b)(1)(viii) permits a trust account to amend disclosure pursuant to a B-Amendment to reflect amendments to the registration statement of an underlying fund. For example, a trust account could file a B-Amendment to add summary disclosure about an additional sub-account that would hold the shares of a new underlying fund. In such instance, the staff would have had the opportunity to review the A-Amendment filed by the underlying fund.

B. *Conditions for Filing B-Amendments*

As proposed, the Commission is deleting the list of events in paragraph (b)(2) that preclude the filing of a B-Amendment. Funds will continue to be

[5] A new note to rule 485 clarifies how to determine the date of automatic effectiveness. The note explains that funds should count the day following the filing date as the first date of the time period. For example, an A-Amendment filed on November 1 would become effective on December 31.

[6] The information required by Item 5A may be omitted from the prospectus if it is included in the fund's annual report.

[7] Mutual funds often organize themselves as series companies and offer investors an opportunity to invest in one or more "portfolios," each of which has a specific investment objective. The mutual fund will offer a series or class of shares that represents an interest in the portfolio in which the investor desires to participate.

[8] Of course, other revised disclosure may be included in such a post-effective amendment that would be material and preclude the use of a B-Amendment.

[9] As discussed in the Proposing Release, exercise of this authority would permit, for example, substantially identical revisions contained in post-effective amendments filed by a number of funds in a fund complex to become effective upon filing without Division review if the Division had previously had an opportunity to review one of them. Four commenters suggested codifying this standard as an additional purpose for filing a B-Amendment. The Commission believes that it is preferable to address these situations on a case-by-case basis since revised language in the prospectus of one type of a fund may not constitute full disclosure in a prospectus of another type of fund.

[10] Previously, paragraph (b)(1)(iii) only allowed a fund to file a B-Amendment to bring annual financial statements up to date under section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)].

[11] In addition, a UIT could file a post-effective amendment under rule 485(a) that it expects to become effective more than 135 days after the date of the UIT's balance sheet. Rule 3–12 of Regulation S–X [17 CFR 210.3–12] requires the UIT to include interim financial statements in such an amendment.

[12] Item 5(c) of Form N–1A requires funds (except money market funds and index funds) to disclose the name and title of the person or persons employed by or associated with the fund or its adviser "who are primarily responsible for the day-to-day management of the fund's portfolio." A fund would generally inform investors of a change in the portfolio manager by means of a "sticker" to the fund's prospectus. The sticker would be filed with the Commission in accordance with rule 497 under the Securities Act [17 CFR 270.497]; a post-effective amendment to the registration statement would not be necessary at that time. Investment Company Act Rel. No. 19382 (Apr. 6, 1993) [58 FR 68 (Apr. 12, 1993)] at 7. The change would typically be reflected in the next post-effective amendment filed by the fund.

required to represent that no material event requiring disclosure in the prospectus has occurred (other than one of the events specified in paragraph (b)(1)).[13] Commenters agreed that the list of events has rarely, if ever, been relevant to determining whether a filing could be made under paragraph (b), since the events described would clearly result in material changes.

One of the proposed amendments would have precluded a fund from filing a B-Amendment if the fund had failed to file a report on Form N–SAR for the most recent period for which a filing is required. This proposal was criticized as unnecessary and potentially unfair to funds. The Commission was urged to use enforcement remedies to punish late filers rather than condition rule 485, as proposed. Upon reconsideration, the Commission has decided not to adopt the proposed limitation on use of paragraph (b). Funds are reminded that failure to timely file Form N–SAR is a violation of Section 30 of the 1940 Act [15 USC 80a–30] for which penalties are prescribed.[14]

C. *Extending Time Period for B-Amendments*

As suggested by several commenters, the Commission is amending paragraph (b) of the rule to permit B-Amendments to become effective up to 30 days (rather than 20 days, as proposed) after filing.

D. *Suspension of Use of 485(b)*

The Commission is adopting, as proposed, a new provision that will permit the Commission to suspend a fund's ability to use paragraph (b) if a fund designates an amendment as a B-Amendment when it is not eligible to use that paragraph.[15] The amendment is intended to deter misuse of paragraph (b) and is similar to a provision in rule 487 under which registration statements of UITs may become effective automatically.[16]

Two commenters opposed the provision, one of which asserted that misuse of rule 485 stems from uncertainty over the availability of paragraph (b). The amendments to paragraph (b) (discussed above) that are being adopted today should clarify the requirements for filing B-Amendments. Funds and their counsel who are unsure whether a particular amendment might preclude use of paragraph (b) are encouraged to contact the Division staff prior to filing the amendment.[17]

E. *Post-Effective Amendments Adding Series*

The Commission is amending rule 485 to provide that an A-Amendment adding a new series will not become effective until 75 days after filing. Previously, A-Amendments became effective 60 days after filing or, at the option of the fund, up to 80 days after filing.

The Commission proposed an amendment to rule 485 to prohibit funds from using rule 485 for amendments that add a new series to an existing open-end investment company. Under the proposal, a post-effective amendment that added a series would not become effective automatically, but would, under section 8(c) of the Securities Act [15 U.S.C. 77h(c)], become effective only when the Division declared it effective pursuant to delegated authority. The Commission proposed this amendment because the staff and funds have often found that, due to the significance of the disclosure issues presented, the 60-day period for an A-Amendment to become automatically effective often did not provide an adequate opportunity to complete the disclosure review process.[18]

Nearly all of the commenters opposed the proposed amendment. Several commenters noted that the new disclosure in a post-effective amendment adding a new series usually is limited to the discussion of investment objectives, policies and risks of investment in the new series and thus such an amendment is not the equivalent of a new registration statement as suggested in the Proposing Release. All the commenters agreed that the level of certainty in the effective date of a post-effective amendment is important for controlling the costs of printing prospectuses and to the successful launch of a new series.

After balancing the commenters' concern for certainty in the effective date of a post-effective amendment with the need for sufficient time to review post-effective amendments adding a new series, the Commission is amending paragraph (a) to provide that post-effective amendments adding a new series become effective 75 days after filing.[19] This amendment would provide funds with a greater degree of certainty concerning when their registration statement will become effective, yet provide sufficient time for comments to be resolved.[20]

F. *Rule 486*

The Commission is adopting new rule 486 substantially as reproposed in the Proposing Release, with minor changes to conform to those made in rule 485. Rule 486 permits closed-end management investment companies and business development companies that periodically repurchase their shares in accordance with rule 23c–3 under the 1940 Act ("closed-end interval funds") to file certain post-effective amendments and registration statements that become effective automatically.[21] The initial proposal of rule 486 recognized that closed-end interval funds may need continuously effective registration statements and would benefit if certain filings could become effective automatically.[22] Most comments on the original proposal supported the rule.[23] The Proposing Release reproposed the rule to conform

[13] As under the current rule, if counsel prepares or reviews the B-Amendment, counsel must furnish a written representation that the amendment does not contain disclosure that would render it ineligible to become effective under paragraph (b) of this section. Paragraph (b)(5) of rule 485.

[14] *See* Section 42 of the 1940 Act [15 U.S.C. 80a–41].

[15] Paragraph (c)(2). The Commission is also amending the Rule 30–5 of the Rules of Organization and Program Management to delegate to the Division Director the authority to issue suspensions.

[16] Paragraph (c)(2) of rule 487.

[17] B-Amendments are generally not reviewed by the staff and the misuse of paragraph (b) may not be discovered for some time after the B-Amendment has become effective. Under paragraph (c)(2) of rule 485, as amended, the suspension would become effective on, and the period of the suspension measured from, the date on which the Commission furnishes written notice of the suspension and not on the date on which the improper B-Amendment was filed. Paragraph (c)(2) of rule 485, as amended.

[18] Although it is the policy of the staff to provide comments on post-effective amendments within 45 days of filings, funds often find it difficult to respond to the staff's comments prior to the 60th day after filing.

[19] Paragraph (a)(2) of rule 485 as amended. A fund may designate a longer period—up to 95 days—before the registration statement becomes effective. The Commission expects that a fund will designate a longer period if it believes that the filing raises issues that will require more than 75 days to resolve. In addition, a fund could file a B-Amendment pursuant to new paragraph (b)(1)(v) to extend the time period by up to 30 days. *See* Section II.A. of this Release.

[20] The Division intends to continue to seek to provide comments on post-effective amendments that add a new series within 45 days of filing.

[21] Like rule 23c–3, rule 486 originated in a recommendation of the Division of Investment Management. Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation at 453 (1992) (discussion of the possibility of subjecting closed-end companies that make repurchase offers to registration requirements like those applicable to open-end funds).

[22] Investment Company Act Rel. No. 19391, *supra* note 1.

[23] Several commenters urged the Commission to extend the proposed rule to all closed-end funds that repurchase their own securities, not just those making periodic repurchase offers under rule 23c–3, or to all closed-end funds. None of the commenters, however, identified any other group of closed-end funds with a clear need for automatically effective amendments. In the absence of a showing of such a need, the Commission has retained the proposed limitation of the rule to interval funds.

to proposed changes in rule 485.[24] Comments on the Proposing Release did not address rule 486.

G. *Technical and Conforming Changes*

The Commission is adopting revisions to the cover page of Forms N–1A, N–2, N–3, N–4 and S–6 to provide additional boxes for the fund to indicate the paragraph of rule 485 or rule 486 on which it is relying. The Commission also is adding a new paragraph 4 of Instruction E of Form N–2 which explains that closed-end interval funds may file automatically effective post-effective amendments or registration statements under rule 486, that rule 429 under the Securities Act [17 CFR 230.429] permits the use of a combined prospectus when filing a new registration statement to register additional shares, and that the filing fee for such a statement extends only to additional shares registered.

IV. Effective Date

The amendments will become effective on October 11, 1994 as to post-effective amendments (or, in the case of closed-end interval funds, new registration statements registering additional shares) filed on or after that date with the Commission.

V. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Rel. No. 19722. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Janice M. Bishop, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 200, 230, 239, 270 and 274

Administrative practice and procedure; Authority delegations (Government agencies); Investment companies; Reports and recordkeeping requirements; Securities.

Text of Final Rule and Form Amendments

In accordance with the foregoing, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

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

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. The authority citation for Subpart M is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11; E.O. 11222, 3 CFR, 1964–1965 Comp.; 5 CFR 735.104 unless otherwise noted.

3. Section 200.30–5 is amended by revising paragraph (b–2) introductory text and paragraph (b–2)(1); by redesignating paragraphs (b–3) and (b–4) as paragraphs (b–4) and (b–5); and by adding a new paragraph (b–3) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b–2) With respect to post-effective amendments filed pursuant to § 230.485(a) or § 230.486(a) of this chapter:

(1) To suspend the operation of paragraph (a) of such sections and to issue written notices to registrants of such suspensions;

* * * * *

(b–3) With respect to post-effective amendments filed pursuant to § 230.485(b) or § 230.486(b) of this chapter:

(1) To approve additional purposes for post-effective amendments which shall be eligible for immediate effectiveness pursuant to paragraph (b) of such sections.

(2) To suspend the operation of paragraph (b) of such sections and to issue written notices to registrants of such suspensions.

* * * * *

4. By amending paragraph (e)(1)(ii) of § 200.735–5 by revising the reference "17 CFR 230.486(b)" to read "17 CFR 230.485(b)".

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

6. By revising § 230.485 to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

(a) *Automatic Effectiveness.* (1) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a–2(a)(37)] shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than eighty days after the date on which the amendment is filed.

(2) A post-effective amendment filed by a registered open-end management investment company for the purpose of adding a series shall become effective on the seventy-fifth day after the filing thereof or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than ninety-five days after the date on which the amendment is filed.

(3) The Commission, having due regard to the public interest and the protection of investors, may declare an amendment filed under this paragraph (a) effective on an earlier date.

(b) *Immediate Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 USC 80a–2(a)(37)] shall become effective on the date upon which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than thirty days after the date on which the amendment is filed, except that a post-effective amendment including a designation of a new effective date pursuant to paragraph (b)(1)(v) of this section shall become effective on the new effective date designated therein, *Provided*, that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered under section 24(e)(1) of the Investment

[24] As reproposed, rule 486 generally expanded the permissible use of B-Amendments, subject to certain contingencies, including prior effectiveness of a related registration statement or post-effective amendment within the prior two years. Some changes in rule 485 were not proposed for rule 486, such as revisions concerning financial statements for a new fund, investment performance information, and adding a new series or portfolio.

Company Act of 1940 [15 U.S.C. 80a–24(e)(1)];

(ii) Registering an indefinite number or amount of securities under section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(f)] and § 270.24f–2 of this chapter;

(iii) Bringing the financial statements up to date under section 10(a)(3) of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] or Rules 3–12 or 3–18 of Regulation S–X [17 CFR 210.3–12 and 210.3–18];

(iv) Complying with an undertaking to file an amendment containing financial statements, which may be unaudited, within four to six months after the effective date of the registrant's registration statement under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*];

(v) Designating a new effective date for a previously filed post-effective amendment pursuant to paragraph (a) of this section, which has not yet become effective, *Provided,* that the new effective date shall be no earlier than the effective date designated in the previously filed amendment under paragraph (a) of this section and no later than thirty days after that date;

(vi) Disclosing or updating the information required by Items 5(c) or 5A of Form N–1A [17 CFR 239.15A and 274.11A];

(vii) Making any non-material changes which the registrant deems appropriate;

(viii) In the case of a separate account registered as a unit investment trust, to make changes in the disclosure in the unit investment trust's registration statement to reflect changes to disclosure in the registration statement of the investment company in which the unit investment trust invests all of its assets; and

(ix) Any other purpose which the Commission shall approve.

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section or one for which the Commission has approved a filing under paragraph (b)(1)(ix) of this section, has occurred since the latest of the following three dates:

(i) the effective date of the registrant's registration statement;

(ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or

(iii) the filing date of a post-effective amendment filed under paragraph (a) of this section which has not become effective.

(3) The amendment recites on its facing sheet that the registrant proposes that the amendment will become effective under paragraph (b) of this section.

(4) The representations of the registrant referred to in paragraph (b)(2) of this section shall be made by certification on the signature page of the post-effective amendment that the amendment meets all the requirements for effectiveness under paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment filed under paragraph (b) of this section, counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures that would render it ineligible to become effective under paragraph (b) of this section.

(c) *Incomplete or Inaccurate Amendments; Suspension of Use of Paragraph (b) of this section.* (1) No amendment shall become effective under paragraph (a) of this section if, prior to the effective date of the amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(2) The Commission may, in the manner and under the circumstances set forth in this paragraph (c)(2), suspend the ability of registrant to file a post-effective amendment under paragraph (b) of this section. The notice of such suspension shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue a suspension if it appears to the Commission that a registrant which files a post-effective amendment under paragraph (b) of this section has not complied with the conditions of that paragraph. Any suspension under this paragraph (c)(2) shall become effective at such time as the Commission furnishes written notice thereof to the registrant. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that has been filed but has not, at the time of such suspension, become effective, and to any post-effective amendment that may be filed after the suspension. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of this section and shall not otherwise affect any post-effective amendment. Following this action by the Commission the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

(d) *Subsequent Amendments.* (1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment that includes a prospectus shall not become effective under paragraph (a) of this section if a subsequent post-effective amendment relating to the prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment that includes a prospectus shall become effective under paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to the prospectus, *Provided,* that the following conditions are met:

(i) the subsequent amendment is filed under paragraph (b) of this section; and

(ii) the subsequent amendment designates as its effective date either:

(A) the date on which the prior post-effective amendment was to become effective under paragraph (a) of this section; or

(B) a new effective date designated under paragraph (b)(1)(v) of this section. In this case the prior post-effective amendment filed under paragraph (a) of this section and any prior post-effective amendment filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(v) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, none of such prior amendments shall become effective under this section.

(e) *Certain Separate Accounts.* For purposes of this section, a post-effective amendment to a registration statement for an offering of securities by a registered open-end management investment company or unit investment trust as those terms are used in paragraphs (a), (b), and (e) of this section and as such amendments are

referred to in paragraphs (c) and (d) of this section, shall include a post-effective amendment to an offering of securities by an insurance company funded through a separate account, as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)], where the separate account need not register under the Investment Company Act of 1940 under section 3(c)(11) thereof [15 U.S.C. 80a–3(c)(11)].

(f) *Electronic Filers.* (1) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(2) Attention is directed to the requirements of the relevant registration statement form and § 230.483 concerning certain items of financial information (the Financial Data Schedule) that may be required.

Note: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on November 1 would become effective on December 31.

7. By revising § 230.486 to read as follows:

§ 230.486 Effective date of post-effective amendments and registration statements filed by certain closed-end management investment companies.

(a) *Automatic Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) is effective, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c–3 of this chapter, shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall not be later than eighty days after the date on which the amendment or registration statement is filed, *Provided,* that the Commission, having due regard to the public interest and the protection of investors, may declare an amendment or registration statement filed under this paragraph (a) effective on an earlier date.

(b) *Immediate Effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement, or a registration statement for additional shares of common stock, filed by a registered closed-end management investment company or business development company which makes periodic repurchase offers under § 270.23c-3 of this chapter, shall become effective on the date on which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment or registration statement, which date shall be not later than thirty days after the date on which the amendment or registration statement is filed, except that a post-effective amendment including a designation of a new effective date under paragraph (b)(1)(iii) of this section shall become effective on the new effective date designated therein, *Provided,* that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Registering additional shares of common stock for which a registration statement filed on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) is effective;

(ii) Bringing the financial statements up to date under section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)] or rule 3–18 of Regulation S–X [17 CFR 210.3–18];

(iii) Designating a new effective date for a previously filed post-effective amendment or registration statement for additional shares under paragraph (a) of this section, which has not yet become effective, *Provided,* that the new effective date shall be no earlier than the effective date designated in the previously filed amendment or registration statement under paragraph (a) of this section and no later than thirty days after that date;

(iv) Disclosing or updating the information required by Item 9c of Form N–2 [17 CFR 239.14 and 274.11a–1];

(v) Making any non-material changes which the registrant deems appropriate; and

(vi) Any other purpose which the Commission shall approve.

(2) The registrant represents that the amendment is filed solely for one or more of the purposes specified in paragraph (b)(1) of this section and that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) or one for which the Commission has approved a filing under paragraph (b)(1)(vi) of this section, has occurred since the latest of the following three dates:

(i) the effective date of the registrant's registration statement;

(ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or

(iii) the filing date of a post-effective amendment or registration statement filed under paragraph (a) of this section which has not become effective; and

(3) The amendment or registration statement recites on the facing sheet thereof that the registrant proposes that the amendment or registration statement will become effective under paragraph (b) of this section.

(4) The representations of the registrant referred to in paragraph (b)(2) of this section shall be made by certification on the signature page of the post-effective amendment or registration statement that the amendment or registration statement meets all of the requirements for effectiveness under paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment or registration statement filed under paragraph (b) of this section, counsel shall furnish to the Commission at the time the amendment or registration statement is filed a written representation that the amendment or registration statement does not contain disclosure which would render it ineligible to become effective under paragraph (b) of this section.

(c) *Incomplete or Inaccurate Amendments; Suspension of Use of Paragraph (b) of this section.* (1) No amendment or registration statement shall become effective under paragraph (a) of this section if, prior to the effective date of the amendment or registration statement, it should appear to the Commission that the amendment or registration statement may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment or registration statement is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment or registration statement, the amendment or registration statement shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(2) The Commission may, in the manner and under the circumstances set forth in this paragraph (c)(2), suspend the ability of a registrant to file a post-effective amendment or registration statement under paragraph (b) of this section The notice of such suspension

shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue a suspension if it appears to the Commission that a registrant which files a post-effective amendment under paragraph (b) of this section has not complied with the conditions of that paragraph. Any suspension under this paragraph shall become effective at such time as the Commission furnishes written notice thereof to the company. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment or registration statement that has been filed but has not, at the time of such suspension, become effective, and to any post-effective amendment or registration statement that may be filed after the suspension. Any suspension shall apply only to the ability to file a post-effective amendment or registration statement under paragraph (b) of this section and shall not otherwise affect any post-effective amendment or registration statement. Following this action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

(d) *Subsequent Amendments.* (1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment or registration statement which includes a prospectus shall not become effective under paragraph (a) of this section if a subsequent post-effective amendment or registration statement relating to the prospectus is filed before such amendment or registration statement becomes effective.

(2) A post-effective amendment or registration statement which includes a prospectus shall become effective under paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment or registration statement relating to the prospectus, *Provided,* that the following conditions are met:

(i) the subsequent amendment or registration statement is filed under paragraph (b) of this section; and

(ii) the subsequent amendment or registration statement designates as its effective date either:

(A) the date on which the prior post-effective amendment or registration statement was to become effective under paragraph (a) of this section or

(B) a new effective date designated under paragraph (b)(1)(iii) of this section.

In this case the prior post-effective amendment or registration statement filed under paragraph (a) of this section and any prior post-effective amendment or registration statement filed under paragraph (b) of this section shall also become effective on the new effective date designated under paragraph (b)(1)(iii) of this section.

(3) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, if another post-effective amendment or registration statement relating to the same prospectus is filed under paragraph (a) of this section before the prior amendments or registration statements filed under paragraphs (a) and (b) of this section have become effective, none of such prior amendments or registration statements shall become effective under this section.

(e) *Condition to Use of Paragraphs (a) or (b).* A post-effective amendment or new registration statement shall not become effective under paragraphs (a) or (b) of this section unless within two years prior to the filing thereof a post-effective amendment or registration statement relating to the common stock of the registrant has become effective.

(f) *Electronic Filers.* (1) When ascertaining the date of filing, electronic filers should not presume a registration statement has been accepted until notice of acceptance has been received from the Commission.

(2) Attention is directed to the requirements of the relevant registration statement form and § 230.483 concerning certain items of financial information (the Financial Data Schedule) that may be required.

Note: To determine the date of automatic effectiveness, the day following the filing date is the first day of the time period. For example, a post-effective amendment filed under paragraph (a) of this section on November 1 would become effective on December 31.

8. By revising paragraph (c) of § 230.487 to read as follows:

§ 230.487 Effectiveness of registration statements filed by certain unit investment trusts.

* * * * *

(c)(1) The Commission may, in the manner and under the circumstances set forth in paragraph (c)(2) of this section, suspend the ability of a unit investment trust to designate the date and time of effectiveness of a series of such trust. Any such suspension, so long as it is in effect, shall apply to any registration statement that has been filed but has not, at the time of such suspension, become effective, and to any registration statement with respect to any series of such trust that may be filed after such suspension. Any suspension shall apply only to the ability to designate the date and time of effectiveness pursuant to paragraph (a) of this section and shall not otherwise affect any registration statement.

(2) Any suspension pursuant to paragraph (c)(1) of this section shall become effective at such time as the Commission furnishes written notice thereof to the company or the sponsor of the unit investment trust. The notice of such suspension shall be in writing and shall specify the period for which such suspension shall remain in effect. The Commission may issue such suspension if it appears to the Commission that any registration statement containing a designation pursuant to this section is incomplete or inaccurate in any material respect, whether or not such registration statement has become effective, or that the registrant has not complied with the conditions of this section. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for a hearing is included in the petition.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

9. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted.

* * * * *

10. By amending the undesignated paragraph following paragraph (b)(13)(iii)(F)(*4*)(*ii*)(*B*) of § 270.6e–3(T) by revising the reference "Rule 486 [17 CFR 230.486] to read "Rule 485 [17 CFR 230.485]".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

11. The Authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Forms N–1A, N–2, N–3, N–4 and S–6 do not and the amendments will not appear in the Code of Federal Regulations.

13. In Form S–6 (referenced in § 239.16) the reference to "rule (485 or 486)" on the facing sheet is revised to read "rule 485," the references to "paragraph (a)" are revised to read "paragraph (a)(i)" (two places), and the reference to "rule (485(b) or 486(b))" in the Signature block is revised to read "rule 485(b)", the period is removed following "(485 or 486)" on the facing sheet and the following is added on the facing after section D.: "If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment."

14. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N–1A

* * * * *

It is proposed that this filing will become effective (check appropriate box):

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)(i)

☐ on (date) pursuant to paragraph (a)(i)

☐ 75 days after filing pursuant to paragraph (a)(ii)

☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

* * * * *

15. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" and by adding Instruction E.4 to the General Instructions to read as follows:

FORM N–2

* * * * *

It is proposed that this filing will become effective (check appropriate box):

☐ when declared effective pursuant to section 8(c)

The following boxes should only be included and completed if the registrant is a registered closed-end management investment company or business development company which makes periodic repurchase offers under Rule 23c–3 under the Investment Company Act and is making this filing in accordance with Rule 486 under the Securities Act:

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)

☐ on (date) pursuant to paragraph (a)

If appropriate, check the following box:

☐ this [post-effective] amendment designates a new effective date for a previously filed [post-effective amendment][registration statement].

* * * * *

General Instructions

* * * * *

E. Amendments

* * * * *

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of a Registrant which makes periodic repurchase offers pursuant to Rule 23c–3 under the Investment Company Act [17 CFR 270.23c–3] may become effective automatically in accordance with Rule 486 under the Securities Act [17 CFR 230.486]. In accordance with Rule 429 under the Securities Act [17 CFR 230.429], a Registrant filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements. The filing fee required by the Act and Rule 457 under the Securities Act [17 CFR 230.457] shall be paid with respect to the additional shares only.

16. In Form N–3 (referenced in §§ 239.17a and 274.11b) all references to "Rule 486" are revised to read "Rule 485" on the facing sheet (four places), General Instruction H.5. (one place) and the Signature block (one place) and the reference "[17 CFR 230.486]" is revised to read "[17 CFR 230.485]" in General Instruction H.5. (one place) and by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N–3

* * * * *

It is proposed that this filing will become effective (check appropriate box):

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)(i)

☐ on (date) pursuant to paragraph (a)(i)

☐ 75 days after filing pursuant to paragraph (a)(ii)

☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

* * * * *

17. In Form N–4 (referenced in §§ 239.17b and 274.11c) all references to "Rule 486" are revised to read "Rule 485" on the facing sheet (four places), General Instruction H.5. (one place) and the Signature block (one place) and the reference "[17 CFR 230.486]" is revised to read "[17 CFR 230.485]" in General Instruction H.5. (one place) and by revising the facing sheet before the heading "Calculation of Registration Fee under the Securities Act of 1933" to read as follows:

FORM N–4

* * * * *

It is proposed that this filing will become effective (check appropriate box):

☐ immediately upon filing pursuant to paragraph (b)

☐ on (date) pursuant to paragraph (b)

☐ 60 days after filing pursuant to paragraph (a)(i)

☐ on (date) pursuant to paragraph (a)(i)

☐ 75 days after filing pursuant to paragraph (a)(ii)

☐ on (date) pursuant to paragraph (a)(ii) of rule 485.

If appropriate, check the following box:

☐ this post-effective amendment designates a new effective date for a previously filed post-effective amendment.

* * * * *

By the Commission.

Dated: August 17, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20624 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Part 230

[Release Nos. 33–7084; IC–20487; File No. S7–15–93]

RIN 3235–AF86

Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Securities and Exchange Commission is adopting an amendment to the "shelf registration" rule. The amendment will enable a closed-end management investment company or business development company that makes periodic repurchase offers to offer securities on a continuous or delayed basis under the shelf registration provisions of the Securities Act of 1933.

EFFECTIVE DATE: This rule amendment will become effective on September 26, 1994.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Assistant Chief, (202) 942–0686, or Thomas M. J. Kerwin, Staff Attorney, (202) 942–0692, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting substantially as proposed paragraph (a)(1)(xi) of rule 415 [17 CFR 230.415] under the Securities Act of 1933 [15 U.S.C. 77a] (the "Securities Act"). The Commission also is adopting separately a related provision, new rule 486 [17 CFR 230.486] under the Securities Act.[1] Rule 486 permits closed-end investment companies making periodic repurchase offers to file certain post-effective amendments that become effective automatically, assisting those funds that make continuous or delayed offerings in maintaining continuously effective registration statements.

I. Background and Discussion

On April 7, 1993, the Commission adopted rule 23c–3 [17 CFR 270.23c–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").[2] Rule 23c–3, among other things, authorizes certain closed-end management investment companies and business development companies ("closed-end interval funds") to make periodic repurchase offers for their own shares. The Commission recognized that closed-end interval funds may need to replenish their assets from time to time by selling new shares of common stock. To facilitate such sales, the Commission proposed to amend the shelf registration rule, rule 415 under the Securities Act, to permit closed-end interval funds to make delayed or continuous offerings.[3]

Comments generally favored the proposed amendment to rule 415. The Commission is adopting the amendment substantially as proposed.[4] New paragraph (a)(1)(xi) of rule 415 permits closed-end interval funds to register "shares of common stock which are to be offered and sold on a delayed or continuous basis." Most commenters agreed that closed-end interval funds need authority to make delayed as well as continuous offerings.[5] For example, interval funds making offerings only at specific times, such as in offerings coinciding with periodic repurchases, would require authority to make delayed offerings.[6] Offerings under paragraph (a)(1)(xi) are not subject to the two-year limitation in paragraph (a)(2).

Paragraph (a)(1)(xi) would apply only to offerings of common stock by closed-end interval funds and would not be available to other closed-end investment companies. Several commenters asserted that other closed-end companies need the ability to use shelf registration for delayed offerings.[7] Closed-end interval funds will benefit from authority to undertake continuous or delayed offerings of equity securities to replenish assets periodically depleted by repurchases. While closed-end companies other than interval funds may repurchase shares occasionally and therefore seek to sell new securities, or may wish to offer additional shares depending on market conditions, closed-end interval funds have a fundamental policy of making periodic repurchase offers. Closed-end interval funds have a clear, ongoing need to make continuous or periodic offerings of shares, evidencing the "bona fide intent to offer and sell" traditionally required for delayed shelf offerings.[8] Therefore, the Commission is retaining the limitation in paragraph 415(a)(1)(xi) to closed-end interval funds. While the Commission is not now authorizing other closed-end companies to make delayed offerings, it expects to continue to consider the matter.

II. Cost Benefit Analysis

The amendment to rule 415 will benefit closed-end interval funds by permitting them to conduct continuous or delayed offerings of their shares. Interval funds may conduct such offerings more efficiently and on shorter notice, filing fewer registration statements and other related documents. The amendment does not impose any significant new burdens on investment companies. The Commission also may benefit because its staff need not review as many registration statements as otherwise might be filed.

III. Summary of Final Regulatory Flexibility Analysis

The Commission prepared a summary of the Initial Regulatory Flexibility Analysis concerning the amendment to

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[1] *See* Post-Effective Amendments to Investment Company Registration Statements, Investment Company Act Release No. 20486.

[2] *See* Repurchase Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (April 7, 1993), 58 FR 19330.

[3] Continuous or Delayed Offerings by Certain Closed-End Management Investment Companies; Automatic Effectiveness of Certain Registration Statements and Post-Effective Amendments, Investment Company Act Release No. 19391 (April 7, 1993), 58 FR 19361.

[4] As adopted, paragraph (a)(1)(xi) adds the word "registered" before the words "closed-end management investment company" to conform to the wording of rule 23c–3.

[5] *E.g.*, Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC at 2 (June 14, 1993), File No. S7–15–93; Letter from American Bar Association to Jonathan G. Katz, Secretary, SEC at 3 (June 10, 1993), File No. S7–15–93; Letter from Dechert Price & Rhoads to Jonathan G. Katz, Secretary, SEC at 2 (June 14, 1993), File No. S7–15–93.

[6] Delayed or continuous offerings by closed-end interval funds may require careful attention to share pricing. Rule 23c–3(b)(7)(iii) applies section 23(b) to require that shares be priced by reference to the net asset value next determined after receipt of a purchase order, and generally requires daily calculation of net asset value when an interval fund is offering its shares

[7] *E.g.*, Letter from Investment Company Institute, *supra* note 3, at 2, 4 (authority should be available to all closed-end companies that repurchase their own shares, even if not under rule 23c–3); Letter from American Bar Association, *supra* note 3, at 3–4 (should be available to all closed-end companies, or at least those similar to interval funds); Letter from Dechert Price & Rhoads, *supra* note 3, at 2–3 (should be available to all closed-end funds).

[8] *E.g.*, Proposed Revision of Regulation S–K and Guides for the Preparation and Filing of Registration Statements and Reports, Securities Act Release No. 6276 § III.E. (Dec. 23, 1980), 46 FR 78, 88 (addressing proposed rule 462A, predecessor to rule 415; "essential conditions" of proposed shelf registration authority include "a bona fide intent to offer and sell"); *cf.* Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 6964, § II.A.6. (Oct. 22, 1992), 57 FR 48970, 48974 (Form S–3 registrant eligible to file "delayed basis" shelf registration should do so only if the registration statement accurately reflects the registrant's current distribution plans and arrangements).

rule 415 in accordance with 5 U.S.C. 603 and published it in the proposing release.[9] No comments addressed the analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the amendment will aid closed-end interval funds, including certain business development companies, in replenishing assets as needed in conjunction with periodic repurchases of their shares. The Analysis states that the amendment enhances flexibility and maintains investor protection in a manner that should minimize any impact on, or cost to, small entities. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Thomas M. J. Kerwin at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IV. Statutory Authority

The Commission is adopting the amendment to rule 415 pursuant to sections 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77j, and 77s(a)].

List of Subjects in 17 CFR Part 230

Investment companies, Reports and recordkeeping requirements, Securities.

Text of Adopted Rule Amendment

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.415 is amended by removing the word "or" at the end of paragraph (a)(1)(ix), removing the period and adding the word ";or" at the end of paragraph (a)(1)(x), and adding new paragraph (a)(1)(xi) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end management investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c–3 of this chapter.

* * * * *

By the Commission.

Dated: August 17, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20623 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–P

[9] Inv. Co. Act Rel. 19391, *supra* note 2, § IV, 58 FR at 19363.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AD35

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Certain Royalties and Honoraria

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations we are amending the supplemental security income (SSI) regulations to reflect the provisions of section 5034 of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The provisions of this section change the treatment of certain royalties and honoraria from unearned income to earned income. In some cases, the statutory change will permit the individual to receive a larger SSI benefit, while in other cases there will be no effect or a reduced SSI benefit may result. We are also amending the SSI regulations to clarify the definition of royalties.

EFFECTIVE DATE: August 24, 1994. The provisions of section 5034 of Pub. L. 101–508 are effective for determinations of eligibility and benefit amount beginning December 1, 1991.

FOR FURTHER INFORMATION CONTACT: Regarding this document—Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

Section 5034 of OBRA '90, enacted November 5, 1990, amended section 1612(a)(1) and (2) of the Social Security Act (the Act). Prior to this amendment, the Act provided that royalties were counted as unearned income under the SSI program unless the royalties were from self-employment in a royalty-related trade or business. Honoraria also were counted as unearned income. As unearned income, any expenses of obtaining this income were not counted. Then, the first $20 of the SSI beneficiary's income in a month was excluded, and the remaining unearned income resulted in a dollar-for-dollar reduction in benefits.

This OBRA '90 amendment provides that any royalties earned by an individual in connection with any publication of the work of the individual, as well as that portion of any honoraria received for services rendered, are earned income under the SSI program. The provisions of section 5034 are effective for determinations of eligibility and benefit amount as of December 1, 1991.

As a result of this statutory provision, the statutory earned income exclusions, which in many cases are more generous than the unearned income exclusions, will now apply to such earnings. Under the earned income exclusions, SSA will exclude the first $65 of monthly earnings plus 50 percent of the remaining earnings per month. Other earned income exclusions, such as impairment-related work expenses, also may apply.

In many cases, the application of the earned income exclusions will result in considering a smaller portion of the royalties and honoraria as countable income. However, in those cases in which the individual receives a royalty for the publication of his or her work and incurs a large amount of expenses in obtaining this income, but does not have a royalty-related trade or business, the individual may have a greater portion of his or her royalty treated as countable income. This is because there is no statutory or regulatory provision that permits the deduction of expenses from earned income that parallels the deduction of expenses for obtaining unearned income. Further, we believe the statute does not provide authority for us to permit, through regulations, the deduction of expenses from earned royalty income.

Current regulations in § 416.1121(c) state that royalties may include, among other things, payments to the owner of a mine, oil well, timber tract, or other natural resource for extraction of a product. In the past, we interpreted this provision to mean that royalties include the proceeds from timber sales as well as from timber leases.

We are clarifying this section of the regulations to make it clear that proceeds from the conversion of a resource are not income. For example,

the term royalties may include the proceeds from timber leases, but not from timber sales. A timber sale is the conversion of a resource from one form (timber) to another (cash) as provided for in §§ 416.1103(c) and 416.1207(e). Thus, royalties would include fees for the use of the land, but not payments resulting from a sale.

Under that definition of royalties, if an owner of timberland enters into a long-term lease agreement which permits the lessee to manage and cut timber, with payment to be dependent on the amount of timber actually harvested, the payments to the lessor would be considered royalties. However, a contract for the sale of standing timber would not result in royalties. We propose to amend the regulations to clarify the definition of royalties accordingly.

Final Regulations

We are revising §§ 416.1110, 416.1111, and 416.1121 to reflect the statutory changes of section 5034 of OBRA '90 and the change in the definition of royalties as follows:

- Section 416.1110, which lists what we consider to be earned income, is revised by adding a new paragraph (e) to provide that payments of royalties to an individual in connection with any publication of the work of the individual are earned income. Also, that portion of honoraria received in consideration of services rendered is included as earned income. Honoraria that are earned income include rewards and donations received in consideration of services rendered for which no payment can be enforced by law.
- Section 416.1111, which explains how we count each type of earned income, is revised by adding paragraph (e), which provides that payments of royalties to an individual in connection with the publication of the work of the individual and honoraria, to the extent received for services rendered, count at the earliest of the following points: when received, credited, or set aside for the individual's use.
- Section 416.1121(c) is revised by clarifying the definition of royalties and adding a cross-reference to show that payments of royalties to an individual in connection with the publication of the work of the individual are treated differently from other royalties.

Public Comments

These regulations were published as a Notice of Proposed Rulemaking on October 8, 1993 (58 FR 52464). A 60-day comment period was provided. We did not receive any public comments. We are, therefore, adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under E.O. 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements subject to OMB clearance.

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

List of Subjects in 20 CFR Part 416

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

Dated: June 28, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: August 11, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

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

PART 416—[AMENDED]

1. The authority citation for Subpart K of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1110 is amended by adding a new paragraph (e) as follows:

§ 416.1110 What is earned income.

* * * * *

(e) *Certain royalties and honoraria.* Royalties that are earned income are payments to an individual in connection with any publication of the work of the individual. (See § 416.1110(b) if you receive a royalty as part of your trade or business. See § 416.1121(c) if you receive another type of royalty.) Honoraria that are earned income are those portions of payments, such as an honorary payment, reward, or donation, received in consideration of services rendered for which no payment can be enforced by law. (See § 416.1120 if you receive another type of honorarium.)

3. Section 416.1111 is amended by adding a new paragraph (e) as follows:

§ 416.1111 How we count earned income.

* * * * *

(e) *Royalties and honoraria.* We count payments of royalties to you in connection with any publication of your work, and honoraria, to the extent received for services rendered, at the earliest of the following points: when you receive them, when they are credited to your account, or when they are set aside for your use. (See § 416.1111(b) if you receive royalties as part of your trade or business.)

4. Section 416.1121 is amended by revising paragraph (c) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(c) *Dividends, interest, and certain royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources such as mines, oil wells, or timber tracts. Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. (See § 416.1110(b) if you receive royalties as part of your trade or business and § 416.1110(e) if you receive royalties in connection with the publication of your work.)

* * * * *

[FR Doc. 94–20627 Filed 8–23–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R–94–1691; FR–3521–F–03]

RIN 2502–AG16

Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects

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

ACTION: Final rule.

SUMMARY: This rule requires electronic submission in a HUD-prescribed format of tenant and financial data by owners of certain subsidized multifamily projects and by the public agencies that administer the assistance contracts for HUD. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to project owners, managers and HUD.

This final rule responds to public comments received on a previous interim rule that applies to multifamily subsidized projects administered by State housing finance and development agencies and other public housing agencies under the following programs: the section 236 Interest Reduction and Rental Assistance Payments program, the section 8 Housing Assistance Payments Program (except the section 8 Existing Housing Program or the Moderate Rehabilitation Program), the section 221(d)(3) Below Market Interest Rate Loan program, and the section 101 Rent Supplement Payment program. It also applies to projects under the following programs: the section 202 program (except section 202/8 projects, for which a similar rule was already effective), and the section 811 Supportive Housing for Persons with Disabilities program.

The change made in response to comments on the interim rule to clarify the 12 month retroactive data collection is extended in this rule to comparable provisions applicable already by final rule to owners of subsidized projects that are administered directly by HUD.

EFFECTIVE DATE: This rule is effective September 23, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708–3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2502–0204 and 2502–0182.

II. Background

On November 19, 1993, a rule was published (58 FR 61017) [following previous publication of a proposed rule in June 1988] that covered both the HUD multifamily subsidized projects administered by HUD and the ones administered by State finance and development agencies or other public housing agencies as Contract Administrators (CAs) for HUD. The rule was final as to the projects administered directly by HUD and interim with no stated effective date with respect to those administered by CAs and to Section 202 and Section 811 projects. (Project owners who had already automated tenant certifications and recertifications of income were subject to an effective date of March 21, 1994, whereas project owners who had not yet automated were subject to an effective date of May 20, 1994.)

The rule was interim (§§ 208.108 (c) and (d)) with respect to the projects administered by CAs, Section 202 Elderly Housing projects, and Section 811 Supportive Housing for Persons With Disabilities projects. No effective date announcement has been published for the interim rule, and this rule makes final the provisions of that interim rule with two changes to reflect response to comments received.

III. Discussion of Public Comments From Interim Rule

Comments on the requirements applicable to contract administrators and the Section 202 projects and Section 811 projects were due January 18, 1994. In response to the publication of that rule, the Department received 6 public comments. The commenters were three management companies, two State housing finance and development agencies, and the National Council of State Housing Agencies. All commentors expressed concern about details of the conversion to electronic submission of data rather than about the overall concept. As a result of these comments, the Department has made some revisions to the rule governing automation of submission of data by project owners and contract administrators. The following discussion summarizes the comments and provides HUD's responses to those comments.

Comment: This automation of certification and recertification of tenant data (TRACS) should be put on hold or implemented as designed in the proposed rule. If this is not done, it will be impractical for many CAs to meet the current timing.

Response: The Department's intent to automate has been known since 1988, and most owners and agents have already automated the form HUD 50059. Furthermore, this effort is necessary for the Department to meet its goals of improving financial management of these important programs and enabling accurate forecasting of budget projections for these programs.

Comment: (From two management companies) HUD should consult with Contract Administrators to find out what additional data they would like to obtain, and HUD should prescribe one alternative transmission format for this additional data. This additional format would allow developers/owners to achieve the benefits of uniformity and provide them with the information they need.

Response: The Department is limited to the collection of information that is approved by OMB. The information collected must be mandated by Federal Regulations and be justified by HUD before OMB will grant approval. Therefore, HUD is not authorized to require the collection of any additional information CAs may believe it is desirable to obtain from project owners. CAs may not use HUD data collection needs as a basis for seeking additional information.

Comment: HUD should provide clear directions to CAs regarding how TRACS operates, what software will be needed by CAs and what technical assistance HUD will provide CAs to get up and running. They ask HUD to work with them to answer these questions to determine a reasonable date by which the CAs will be in full compliance with TRACS.

Response: When a project obtains HUD–50059 data on paper, it submits the certification data, either directly or by a service bureau, to the CA in the prescribed format. The certification data are submitted electronically to the CA

via modem, disk or tape, in accordance with this rule. The CA then transmits the certification data to HUD via modem, disk or tape.

HUD receives the certification data and checks the format of the transmission. Physically acceptable records are validated for conformation to HUD programmatic rules. Discrepancy records are generated for data that does not conform to programmatic rules. Discrepancy records are sent back to the CA, which are in turn forwarded to the project. (A future enhancement of the TRACS software will allow discrepancy records to be sent simultaneously to the CA and the project if desired.) Invalid certifications are corrected as required by the project and resubmitted to HUD by the CA.

There are a number of sources available to CAs that provide guidance:

The HUD–50059 Information Packet. This is also known as the Yellow Book. The HUD–50059 Information Packet contains general information on TRACS, data collection and processing, data transmission media, error correction, and the Monthly Activity Transmission (MAT) User Guide, which details the required format—record layouts and field characteristics—for all TRACS data transmitted to and from HUD.

The Release 1.1 Entity and Attribute Definition Report Reference. This contains detailed information about the data gathered by TRACS and the edits performed on the data to ensure that it is valid. (This information is technical and would be most suited for use by ADP professionals.)

The PC SprintMail Electronic Information Packet. This is also known as the *Blue Book.* The PC SprintMail Electronic Information Packet contains information regarding electronic submission of certification data to HUD, using SprintMail software. The Packet covers hardware requirements, configuration information, installation instructions, and operating instructions for PC SprintMail. The PC SprintMail software is available from the TRACS Central Facility at 1–800–767–7558.

Understanding the TRACS Automation Rule. This contains information on the programs covered by the rule, effective dates for the rule, transmission of retroactive data, options for submitting data electronically, the costs of automation, and the data to be transmitted to HUD.

TRACS Industry Bulletin Board. The Bulletin Board provides a format for open communication between HUD and third parties with an active interest in TRACS. Questions and observations of a technical or programmatic nature can be posted on the Bulletin Board, via modem, at 202–755–2189. For more information, CAs should consult the TRACS BBS User Guide.

The TRACS Central Facility. The TRACS Central Facility can provide guidance on the data transmittal process and assistance in correction of errors in the physical composition of transmissions. All of the documents referenced here are available from the TRACS Central Facility. The TRACS Central Facility can be contacted at 1–800–767–7588.

The HUD–50059 Information Packet, the Release 1.1 Entity and Attribute Definition Report Reference, and the PC SprintMail Electronic Information Packet are available from the TRACS Central Facility at 1–800–767–7588. In addition, many software vendors are now developing and offering products that automate the preparation of certification data in the prescribed format. CAs may call either or both the National Leased Housing Association (NLHA) at 202–785–8888 and the National Assisted Housing Management Association (NAHMA) at 703–683–8630 or other associations related to the management of assisted housing to obtain a listing of software developers.

Comment: Although owners and agents may voluntarily participate by submitting data electronically to CA after December 1993, the CAs who are not automated will not be able to process these payment requests.

Response: CAs will need to purchase or modify their software to be ready to receive and transmit data electronically when this rule becomes effective. After the CAs are automated they must notify projects under their jurisdiction as to when and how they are to begin electronic submission.

Comment: HUD should provide CAs with in-house TRACS edit programs that would allow the Contract Administrators to correct all field and format errors before forwarding to the HUD database. This edit program will enhance the accuracy of the housing assistance payments.

Response: The TRACS team has created several documents to assist data submitters in preparation of error-free transmissions. See above listing.

Comment: Section 208.108(c) requires CAs to transmit data electronically to HUD in a HUD specified format. To date, the CAs have not been advised of the format to be utilized.

Response: The HUD specified format is detailed in the Yellow Book. See listing of sources of information on TRACS.

Comment: In order to build the contemplated HUD database, it does not appear necessary to collect all tenant data for the previous twelve months. Rather collection of the most recent tenant certification from form HUD 50059 should provide all the necessary data.

Response: Data is requested for subsidized tenants who are currently in occupancy and have not had their assistance terminated. The transmission of retroactive data is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification). When the most recent certification for a tenant is a partial certification (gross rent change or unit transfer), both the complete and partial certifications should be transmitted so that HUD's automated system can establish a complete record for the household.

Sections 208.108(a) through (d) have been revised to reflect this clarification, both for the projects administered by CAs and those directly administered by HUD.

Comment: Current HUD handbook provisions require the CA to review supporting documentation for Special Claims before approving the claim for payment. Special claims are submitted for billing only after this review. The Interim Rule (§ 208.108(e)) does not distinguish between Special Claims that have been reviewed and approved for payment from those that have just been received from project owners. The Final Rule should clearly indicate that only previously approved Special Claims should be submitted electronically to the CA.

Response: Automation of Special Claims is contained in a future system release, and the design has not been fully developed at this time. In instances where HUD is the contract administrator, current plans call for electronic transmission of detailed data contained in the Section 8 Special Claims Worksheets (Forms 52671A-D), prior to approval by the field office. There would be a concurrent manual submission of supporting documentation as required in Handbook § 4350.3, Chapter 6. Special Claims would not be submitted for billing until after the field office has approved the claim and so noted it in the system. The billing data is contained in the Housing Owner's Certification and Application for Housing Assistance Payments (Form 52670), and Schedule of Section 8 Special Claims (Form 52670A Part 2). The system will be designed to verify that approval has been granted when special claims are billed.

Where a contract administrator other than HUD has the responsibility for reviewing and approving special claims,

it is anticipated that there will be a similar process by which the contract administrator will review the documentation and note the approval in the system. Again, the system will verify that approval has been granted by the contract administrator. More information on this function will be provided when the system design is completed.

Comment: HUD should reimburse CAs equitably for TRACS-related expenses.

Response: CAs receive an administrative fee as reimbursement for administering contracts. It is the Department's opinion that once CAs are automated, the actual costs of doing business will be reduced, since CAs will be able to reduce their clerical and administrative costs. The cost of administering contracts will be higher with the onset of automation, but the actual costs will be reduced over time, which will have a balancing effect on the overall cost of administering the contracts. Moreover, CAs will need to automate various other functions they perform just to stay current with technological improvements in management practices.

Comment: HUD should allow for a trial operating period, so the system can be tested and any difficulties resolved.

Response: Undoubtedly, once CAs start transmitting, there will be some difficulties. These will be tested and resolved during those initial months of transmission.

Comment: Requiring some projects, particularly small projects located in remote areas or projects where an owner/manager only owns one or two projects, to automate and electronically transmit the required data to HUD will place unnecessary burden on them. HUD should allow CAs to accept hard copy information directly from these projects, either by processing these projects' data forms or by operating as service bureaus.

Response: Section 208.112(e) of the current rule permits owners of small projects covered by the rule either to automate or to contract with a service bureau to perform the automated transmission function. This rule revises § 208.112(e) to extend the same option of using a service bureau to State agencies administering only one project. Even though the Department would prefer for each State agency to obtain its own hardware and software, this rule gives greater latitude to State agencies administering only one project (approximately 100 units) in recognition of their concern that automation of their operations might not be cost effective.

IV. Other Matters

A. Regulatory Review

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is directed to owners of multifamily housing projects and State housing and finance agencies that serve as contract administrators for HUD, and will not impinge upon the general relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule changes the way in which the data is transmitted to HUD, and all costs associated with implementation of the electronic transmission will be considered project operating costs, the rule is not expected to have a significant economic impact.

F. Regulatory Agenda

This rule was listed as item number 1601 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20451) under Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.103, 14.149, 14.157, 14.181, and 14.182.

List of Subjects in 24 CFR Part 208

Computer technology—automatic data processing, Data processing, Electronic data processing, Subsidies—grant programs, Rent subsidies.

Accordingly, chapter II of title 24 of the Code of Federal Regulations is amended as follows:

PART 208—ELECTRONIC TRANSMISSION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATION AND SUBSIDY BILLING PROCEDURES FOR MULTIFAMILY SUBSIDIZED PROJECTS

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

Authority: 12 U.S.C. 1701s, 1715l, 1715z-1; 42 U.S.C. 1437f and 3535(d).

2. Section 208.108 is amended by:

a. Adding section headings at the beginning of paragraphs (a), (b), and (e);

b. Adding two sentences to the end of paragraphs (a) and (b)(3); and

c. Revising paragraphs (c) and (d), to read as follows:

§ 208.108 Requirements.

(a) *Projects specified in § 208.104(a) that are automated.* * * * Data collected for the 12 months preceding March 21, 1994, is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification, or annual recertification). When the most recent certification for a tenant is a partial certification (gross rent change, unit transfer, or correction), both the

complete and partial certifications must be transmitted.

(b) *Projects specified in § 208.104(a) that are not automated.*

(3) * * *

Data collected for the 12 months preceding May 20, 1994, is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification, or annual recertification). When the most recent certification for a tenant is a partial certification (gross rent change, unit transfer, or correction), both the complete and partial certifications must be transmitted.

(c) *Projects specified in § 208.104(b).* (1) *Project owners.* Project owners of applicable projects under § 208.104(b) must electronically transmit data for certification, recertification and subsidy billing procedures in a HUD specified format to the contract administrator. These project owners are required to transmit data collected for the 12 months preceding September 23, 1994, as well as data collected on or after that date. Data collected for the 12 months preceding September 23, 1994 is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification, or annual recertification). When the most recent certification for a tenant is a partial certification (gross rent change, unit transfer, or correction), both the complete and partial certifications must be transmitted.

(2) *Contract administrators.* State housing finance and development agencies and Public Housing Agencies that serve as the subsidy contract administrator must accept the electronic transmission of the HUD forms listed below in § 208.108(e) from the projects they administer, and electronically transmit that data to HUD in a HUD specified format after appropriate review and correction of the data.

(d) *Projects specified in § 208.104(c).* Project owners of applicable projects under § 208.104(c) must electronically transmit data for certification, recertification and subsidy billing procedures to HUD in a HUD specified format. In the case of partially assisted section 202 projects, owners are required to electronically transmit data only for subsidized units. These project owners are required to transmit data collected for the 12 months preceding the effective date of the rule, as well as data collected on or after the effective date of the rule. Data collected for the 12 months preceding September 23, 1994 is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification, or annual recertification). When the most recent certification for a tenant is a partial certification (gross rent change, unit transfer, or correction), both the complete and partial certifications must be transmitted.

(e) *Data to be transmitted.* * * *

3. In § 208.112, paragraph (e) is revised to read as follows:

§ 208.112 Cost.

* * * * *

(e) Owners of smaller projects or partially assisted projects with few subsidized units and CAs that administer no more than one project that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management agents, local management associations and management agents with centralized facilities. Owners of multiple projects may centralize the electronic transmission function. However, owners that contract out or centralize the electronic transmission function are required to retain the ability to monitor the day-to-day operations of the project at the project site and be able to demonstrate that ability to the relevant HUD field office.

Dated: August 15, 1994.

Nicolas Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–20656 Filed 8–23–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 378

[DoD Directive 5148.11]

Organizational Charter; Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO))

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This revision updates the responsibilities, functions, relationships and authorities as prescribed therein. The ATSD(IO) report directly to the Secretary and Deputy Secretary of Defense, and is responsible for the independent oversight of all intelligence activities in the Department of Defense. In this capacity, the ATSD(IO) ensures that all activities performed by intelligence units and all intelligence activities performed by non-intelligence units, are conducted in compliance with Federal law and other laws as appropriate, Executive orders and Presidential Directives, and DoD Directives System issuance.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Organizational and Management Planning, 703–697–1142.

List of Subjects in 32 CFR Part 378

Organization and functions (government agencies).

Accordingly, 32 CFR part 378 is revised to read as follows:

PART 378—ASSISTANT TO THE SECRETARY OF DEFENSE FOR INTELLIGENCE OVERSIGHT ATSD(IO))

Sec.

378.1 Purpose.
378.2 Applicability.
378.3 Definition.
378.4 Responsibilities and Functions
378.5 Relationships.
378.6 Authorities.

Authority: 10 U.S.C. 113.

§ 378.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities of the ATSD(IO), as prescribed herein.

§ 378.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 378.3 Definition.

Propriety. Refers to the standards for intelligence activities promulgated in Executive orders, Presidential Directives, and DoD Directives. Other terms used herein are defined in E.O. 12333, 3 CFR, 1981 Comp., p. 200; DoD Directive 5240.1 [1], and DoD 5240.1–R [2]

§ 378.4 Responsibilities and functions.

The Assistant to the Secretary of Defense for Intelligence Oversight shall be responsible for the independent oversight of all intelligence activities in the Department of Defense. In this capacity, the ATSD(IO) shall ensure that all activities performed by intelligence units and all intelligence activities

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 378.3.

performed by non-intelligence units, are conducted in compliance with Federal law and other laws as appropriate, Executive orders and Presidential Directives, and DoD Directives System issuances. In the exercise of this responsibility, the ATSD(IO) shall:

(a) Develop intelligence oversight policy and, in coordination with the General Counsel of the Department of Defense (GC, DoD), issue intelligence oversight guidance to the DoD intelligence components, including regulatory guidance implementing intelligence oversight aspects of E.O. 12333.

(b) Review, in consultation with the GC, DoD, all allegations that raise questions of the legality or propriety of intelligence activities in the Department of Defense.

(c) Investigate intelligence activities that raise questions of legality or propriety.

(d) Conduct vigorous and independent inspections of the DoD Components that engage in intelligence activities for the purpose of verifying that personnel are familiar and in compliance with E.O. 12333 and its DoD implementing documents. At the request of senior leadership of the Department, and as practicable, the ATSD(IO) will assess and evaluate the performance of DoD's intelligence activities during the course of scheduled inspections and site visits. Reports in these areas of special interest will be provided to the requesting official and the Secretary of Defense for information.

(e) Monitor investigations and inspections conducted by the DoD Components related to intelligence activities, evaluate the findings and, if appropriate, submit recommendations for corrective action to the Secretary and Deputy Secretary of Defense.

(f) Report the following to the Secretary and Deputy Secretary of Defense, and the Intelligence Oversight Board of the President's Foreign Intelligence Advisory Board, established under E.O. 12863, 3 CFR, 1993 Comp., p. 632, at least quarterly, in consultation with the GC, DoD:

(1) Any significant oversight activities undertaken; and

(2) Any DoD intelligence activities of questionable legality or propriety, the investigative action on them, an evaluation of completed investigations, and the action taken on completed investigations.

(g) Participate as a member of the Defense Counterintelligence Board (DoD Directive 5240.2 [3]).

(h) Pursuant to DoD Directive 5240.12 [4], review and conduct an annual financial audit of all funds generated by DoD Intelligence Commercial Activities, and report the results to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(i) Review DoD clandestine intelligence activities to ensure compliance with special constraints and controls.

(j) Evaluate the effectiveness of the DoD intelligence components' efforts to protect HUMINT sources, in accordance with DoD Directive S–5205.1 [5].

(k) Participate in the Sensitive Reconnaissance Operations approval process.

(l) Conduct liaison with Federal intelligence and law enforcement agencies (e.g., Central Intelligence Agency, Federal Bureau of Investigation, and Drug Enforcement Administration) at the national level and field locations, as required, to ensure DoD intelligence activities and DoD intelligence support to law enforcement agencies are being conducted properly.

(m) Review the DoD sensitive support provided to the DoD Components and other Federal Agencies, pursuant to DoD Directive S–5210.36 [6], to ensure compliance with DoD policy.

(n) Coordinate, as appropriate, with the DoD Inspector General (DoD IG) on matters relating to the DoD IG's area of responsibility in accordance with DoD Directive 5106.1 [7].

(o) Perform such other functions as the Secretary of Defense may prescribe.

§ 378.5 Relationships.

(a) In the performance of assigned responsibilities and functions, the ATSD(IO) shall serve under the authority, direction, and control of the Secretary of Defense, and shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the ATSD(IO) on all matters related to the responsibilities and functions cited in § 378.4.

§ 378.6 Authorities.

The ATSD(IO) is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [8], as necessary, in carrying out assigned functions.

(b) Communicate directly with the heads of the DoD Components and, with notification to the Chairman of the Joint Chiefs of Staff, to the Commanders of the Unified Combatant Commands, as necessary, in carrying out assigned functions.

(c) Request such temporary assistance from the DoD Components as may be required for the conduct of inspections or investigations, to include personnel, facilities, and other services. Requests for needed support shall be made in accordance with established procedures.

(d) Communicate directly with the Intelligence Oversight Board of the President's Foreign Intelligence Advisory Board, the Director of Central Intelligence, other Federal officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

(e) Have complete and unrestricted access to all available intelligence-related information, regardless of classification or compartmentation, from all DoD Components and personnel, as required, in carrying out assigned functions. This includes specifically the authority to:

(1) Require an Inspector General or other cognizant investigative official of a DoD Component to report allegations of improprieties or illegalities of intelligence activities by, or within, a DoD Component; and

(2) Obtain information on the status, proceedings, and findings or to obtain copies of reports of investigations of such allegations.

(f) Deal directly with the head of the element inspected or investigated, conduct interviews, take depositions, and examine records incident to an inspection or investigation of any DoD Component, as required, in carrying out assigned functions.

Dated: August 18, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20703 Filed 8–23–94; 8:45 am]

BILLING CODE 5000–04–M

[3] See footnote 1 to § 378.3

[4] See footnote 1 to § 378.3

[5] Classified document, not releaseable to the public.

[6] See footnote 5 to § 378.4(j).

[7] See footnote 1 to § 378.3.

[8] See footnote 1 to § 378.3

32 CFR Part 388

[DoD Directive 5134.9]

Organizational Charter; Ballistic Missile Defense Organization (BMDO)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: In accordance with the authority granted to the Secretary of Defense under title 10, United States Code, this DoD organization change has been issued to establish the Ballistic Missile Defense Organization and reflect its responsibilities, functions, and organization. The BMDO replaces the Strategic Defense Initiative Organization (SDIO).

EFFECTIVE DATE: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, Organizational and Management Planning, 703–697–1142.

List of Subjects in 32 CFR Part 388

Organization and functions (government agencies).

Accordingly, 32 CFR part 388 is revised to read as follows:

PART 388—BALLISTIC MISSILE DEFENSE ORGANIZATION (BMDO)

Sec.

388.1 Purpose.
388.2 Applicability.
388.3 Mission.
388.4 Organization and management.
388.5 Functions and responsibilities.
388.6 Relationships.
388.7 Authorities.
388.8 Administration.

Appendix A to part 388—Delegations of Authority.

Authority: 10 U.S.C. 113.

§ 388.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part establishes the BMDO as an agency of the Department of Defense with the responsibilities, functions, relationships, and authorities as prescribed herein.

§ 388.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 388.3 Mission.

(a) BMDO shall manage, direct, and execute the Ballistic Missile Defense Program (BMDP) to achieve the following objectives:

(1) Enable deployment of an effective and rapidly relocatable advanced theater missile defense capability to protect forward-deployed and expeditionary elements of the Armed Forces of the United States as well as friends and allies of the United States;

(2) Develop options for, and deploy when directed, an antiballistic missile (ABM) system that is capable of providing effective defense of the U.S. homeland against limited attacks of ballistic missiles, including accidental, unauthorized launches or deliberate attacks;

(3) Demonstrate advanced technologies—as options for enhancing initial BMD systems—such as space-based defenses and their associated sensors that could provide an overlay to ground-based interceptors; and

(4) Continue programs of basic and applied research to develop follow-on technologies for both near-term and future technology insertion options and new system options to sustain a highly effective missile defense capability.

(b) The BMDP shall provide the basis for informed decisions regarding development, production, and deployment milestones, and shall be carried out in full consultation and, where appropriate, with participation of our allies. The program shall be conducted in compliance with all existing international agreements and treaty obligations and shall utilize nonnuclear weapon technologies to achieve the deployments in paragraphs (a)(1) and (a)(2) of this section. The BMDP shall focus on the development, acquisition, and integration of theater missile defenses and strategic defenses against ballistic missile threats to the United States.

§ 388.4 Organization and management.

(a) BMDO shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense. The Director, BMDO, shall serve also as the BMD Acquisition Executive (BMDAE) for BMDO-funded programs and/or projects.

(b) The Under Secretary of Defense for Acquisition and Technology (USD(A&T)), as the Defense Acquisition Executive (DAE), shall provide DoD oversight and guidance for the BMD acquisition program, and shall conduct formal reviews, including Defense Acquisition Board milestone reviews, for BMDPs. All such reviews shall emphasize streamlined acquisition strategies. The USD(A&T) shall provide oversight for the BMD technology base activities contained in the BMDP.

(c) A BMD Acquisition Review Council (BMDARC) may be established by the BMDAE to assist the BMDAE to:

(1) Review BMDP progress in preparation for acquisition milestone decisions;

(2) Resolve critical programmatic and technical issues; and

(3) Determine specific program directions.

(4) The Service Acquisition Executives (SAEs) and Vice Chiefs of Staff of the Services shall provide representatives to the BMDARC. Membership shall also include representatives of the Vice Chairman of the Joint Chiefs of Staff and Commanders of the Unified Combatant Commands, as necessary.

§ 388.5 Functions and responsibilities.

The Director, BMDO, is responsible for BMD programmatic policy, requirements, priorities, systems, resources, and programs, and is responsible and accountable for the research, development, and transition of BMD systems to the Military Departments and operations by the Combatant Commands. The Director shall:

(a) Organize, direct, and manage BMDO and all assigned resources and activities; provide for the procurement and fielding of assigned systems; and administer and supervise all programs, services, and items under the BMDP to include but not be limited to:

(1) Theater missile defense systems;

(2) The U.S. ballistic missile defense systems; and

(3) Other antiballistic missile systems or upgrades as may be assigned by the USD(A&T).

(b) Develop programmatic policies and issue program guidance and direction to the DoD Components consistent with U.S. national security policy.

(c) Establish the BMD management network including BMDO, the Services, and other Agencies to execute all program activities; and delegate appropriate authority to key individuals to ensure successful program execution and integration.

(d) Establish the systems and procedures necessary to coordinate integration into the overall BMDP of the major BMD acquisition programs and other acquisition programs that directly relate to the BMDP's objectives for development and deployment.

(e) Develop systems' standards and procedures for the administration and management of approved BMD plans and programs; establish program goals

and objectives; set priorities; and evaluate BMDP activities of DoD Components and, as appropriate, those of other Federal Agencies.

(f) Prepare the BMDP objectives memoranda and budget submissions in coordination with appropriate DoD Components; make determinations regarding priorities and resources; provide recommendations on program budget decisions to the USD(A&T), Comptroller of the Department of Defense, and Director, Program Analysis and Evaluation, for incorporation into the planning, programming, and budgeting system process; and initiate and implement congressional reprogramming actions.

(g) Make such determinations regarding priorities and resources in coordination with appropriate DoD Components to include the Joint Requirements Oversight Council, as may be required to achieve approved program objectives and to enable the incremental development and deployment of BMD systems for U.S. Forces, the United States, and allies.

(h) In coordination with the USD(A&T) and appropriate DoD officials, identify Military Department, Defense Agency, and BMDO responsibilities for program execution, and in such cases where source-selection is not delegated to the Military Departments and Defense Agencies, retain that authority within BMDO.

(i) Develop mechanisms for coordinating BMDPs with other DoD research, development, test, and evaluation efforts.

(j) Oversee, in coordination with appropriate DoD Components, the participation of U.S. allies and friends in the BMD technical cooperation programs.

(k) Provide periodic program reviews and milestone decision information to the DAE, as well as to the BMDARC.

(l) Serve as principal DoD official responsible for presenting the BMDP budget to the Congress.

(m) Ensure that jointly funded programs have been reviewed by appropriate SAEs prior to initiating programmatic discussions with the USD(A&T).

(n) Serve as principal public spokesperson for the BMDP.

(o) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies, and the civilian community with respect to BMD matters.

(p) Serve on boards, committees, and other groups pertaining to BMD activities, functions, and responsibilities.

(q) Establish internal procedures for compliance with the ABM Treaty and other Arms Control Agreements, pursuant to DoD Directive 2060.1.

(r) Perform such other duties as the USD(A&T) may prescribe.

§ 388.6 Relationships.

(a) In the performance of assigned functions, the Director, BMDO, shall:

(1) Serve under the authority, direction, and control of them USD(A&T).

(2) Serve as a member of the Defense Planning and Resources Board, when BMD matters are under consideration, and Chairman of the BMDARC.

(3) Consult with the Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, and Under Secretary of Defense for Policy when addressing issues under their respective purview, to include the strategy and policy implications of defensive capabilities.

(4) Operate within the DoD Acquisition System, as defined in DoD Directive 5000.1 [1] and DoD Instruction 500.2,[2] taking direction from the USD(A&T); and work directly with appropriate OSD committees and offices.

(5) Establish, in consultation with the USD(A&T), mechanisms for coordination of BMDPs with other DoD technical efforts; and coordinate and exchange information with other DoD officials having collateral or related functions.

(6) Establish procedures for streamlined communication with each Military Department and Defense Agency involved in the BMDP.

(7) Maintain active liaison for the exchange of information and advice in the field of assigned responsibility with all the DoD Components, other U.S. Government activities, and non-DoD research institutions (including private business entities and educational institutions).

(8) Through the USD(A&T), keep the Secretary of Defense, the Deputy Secretary of Defense, the DoD Components, and non-DoD U.S. Government Agencies informed, as appropriate, on schedules, status, and significant new developments, breakthroughs, and technological advances within assigned projects.

(9) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) The Heads of the DoD Components shall:

(1) Provide support within their respective fields of responsibilities, to the Director, BMDO, as required, to carry out the responsibilities and functions assigned to BMDO.

(2) Provide information, as necessary, to the Director, BMDO, on all programs and activities that include, or are related to, BMD research, technology, and the BMDP.

(c) The Secretaries of the Military Departments and Directors of Defense Agencies shall:

(1) Execute BMD element programs and BMD technology development efforts as recommended by the Director, BMDO, and approved by the Secretary of Defense.

(2) Provide the personnel (to include a BMD Program Executive Officer and Element Program Managers) and the infrastructure necessary to support all Service BMD activities.

(3) Provide program recommendations and advice to the Director, BMDO on budgeting, resources, and program execution.

(4) Provide advice on BMD activities, including readiness for advancing through the acquisition process, technical and programmatic issues, and general program guidance.

(5) Submit program documentation and reports required by the Director, BMDO, in support of DAE reviews and milestone decisions.

§ 388.7 Authorities.

The Director, BMDO, is hereby delegated authority to:

(a) Communicate directly and enter into agreements with heads of DoD Components, as necessary, in carrying out assigned responsibilities. Communications with the Commanders of the Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Recommend to the USD(A&T) revisions or exceptions to Military Department and/or Defense Agency regulations, directives, procedures, or instructions for, or related to, system acquisition for individual or a class of BMD requirements as determined necessary to accomplish the BMD objectives.

(c) Enter into and administer contracts, directly or through a Military Department, as appropriate, for supplies, equipment, and services required to accomplish the mission of the BMDO.

(d) Serve as the head of an Agency and Contracting Activity, and act as the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 388.6(a)(4).

Senior Procurement Executive, within the meaning of and subject to the limitations of 48 CFR 202.101 and 48 CFR 2.1, for the BMDO.

(e) Authorize the allocation and/or sub-allocation of funds made available to BMDO for assigned research, development, test, and acquisition projects.

(f) Acquire or construct, through a Military Department or other Government Agency, such research, development, and test facilities and equipment required to carry out assignments that may be approved by the Secretary of Defense or Deputy Secretary of Defense as recommended by the USD(A&T), in accordance with applicable statutes.

(g) Negotiate agreements, as necessary, with other U.S. Agencies and organizations to ensure proper coordination and execution of the BMDP.

(h) Negotiate agreements, as necessary, with foreign governments to execute allied participation in the BMDP. These agreements shall be subject to approval by duly appointed DoD authorities, in accordance with DoD Directive 5530.3.[3]

(i) Establish, in coordination with appropriate DoD Components, special security procedures for sensitive BMDPs.

(j) Exercise original classification authority over BMDO funded technology development and acquisition programs. In general, where another DoD Component has been designated for program execution, original classification authority will be delegated to that Component as part of a program management agreement with BMDO. All original classification decisions must be made in coordination with the BMDO, Military Departments, and other appropriate DoD organizations.

(k) Exercise foreign disclosure authority over BMDO funded technology development and acquisition programs. In general, where another DoD Component has been designated for program execution, foreign disclosure authority will be delegated to that Component as part of a program management agreement with BMDO. All foreign disclosure decisions must be made in accordance with National Disclosure Policy and applicable DoD procedures, and be coordinated with the BMDO, Military Departments, and other appropriate DoD organizations.

(l) Carry out the functions and exercise the responsibilities of the Theater Missile Defense Initiative Office, as established by Section 231 of the National Defense Authorization Act for Fiscal Year 1993.

(m) Exercise the administrative authorities contained in Appendix A to this part.

[3] See footnote 1 to § 388.6(a)(4).

§ 388.8 Administration.

(a) The Director, BMDO, shall be appointed by the Secretary of Defense, upon recommendation from the USD(A&T).

(b) The Military Departments shall assign personnel to BMDO, in accordance with approved authorizations and procedures for joint duty assignment and the Defense Acquisition Workforce Improvement Act.

(c) Administrative support required for BMDO shall be provided by the other DoD Components, as appropriate.

(d) The Director, BMDO, shall consult on all key military and civilian personnel assignments within the BMD management network.

Appendix A to Part 388—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, BMDO, or, in the absence of the Director, the person acting for the Director, is hereby delegated authority, in the administration and operation of the BMDO, to:

1. Perform the following functions in accordance with the provisions of 5 U.S.C. 7532; Executive Order 10450, 3 CFR, 1949–1953 Comp., p. 936 and 32 CFR part 154.

a. Designate and position in the BMDO as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the BMDO, for a limited period of time, for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not the termination, of the services of a BMDO employee in the interest of national security.

2. Authorize and approve:

a. Travel for BMDO civilian employees, in accordance with Joint Travel Regulations,[1] Volume II.

b. Temporary duty travel only for military personnel assigned or detailed to BMDO, in accordance with Joint Travel Regulations, Volume I.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other specialized technical services are required in a capacity directly related to, or in connection with, BMDO activities.

3. Approve the expenditure of funds available for travel by military personnel assigned or detailed to BMDO for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense or designee is required by law (37 U.S.C. 412).

4. Develop, establish, and maintain an active and continuing Records Management Program under DoD Directive 5015.2;[2] DoD Directive 5400.7;[3] and DoD Directive 5400.11.[4]

5. Establish and use imprest funds for making small purchases of material and services, other than personal, for the BMDO when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10[5] and Volume 5, DoD 7000.14–R,[6] and the Joint Regulation of the General Services Administration-Treasury.[7]

6. Authorize and approve overtime work for civilian personnel in BMDO, in accordance with provisions of the Federal Personnel Manual Supplement[8] 990–1, section 550.11.

7. Establish and maintain appropriate property accounts for BMDO and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for BMDO property contained in the authorized property accounts that have been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

8. Establish and maintain for the functions assigned an appropriate publications system for the promulgation of regulations, Instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M.[9]

9. Issue the necessary security regulations for protection of property and places under the jurisdiction of the BMDO, under DoD Directive 5200.8.[10]

10. Exercise original TOP SECRET classification authority.

11. Establish security classification guidance and review policy.

12. Enter into inter-service support agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of responsibilities and functions assigned to the BMDO.

13. Establish advisory committees pursuant to the provisions of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and DoD Directive 5105.18.[11]

14. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective

[1] Copies may be obtained, at cost, from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to section 4. of this Appendix.

[4] See footnote 2 to section 4. of this Appendix.

[5] See footnote 2 to section 4. of this Appendix.

[6] See footnote 2 to section 4. of this Appendix.

[7] See footnote 1 to section 2.a. of this Appendix.

[8] See footnote 1 to section 2.a. of this Appendix

[9] See footnote 2 to section 4. of this Appendix.

[10] See footnote 2 to section 4. of this Appendix.

[11] See footnote 2 to section 4. of this Appendix.

administration and operation of BMDO (44 U.S.C. 3702).

15. Request specific Military Departments and Defense Agencies to serve as contracting activities for the BMDO, as necessary.

Dated: August 18, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20706 Filed 8–23–94; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–9–1–6268; FRL–5023–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Missouri State Implementation Plan (SIP) which add new sampling methods to rule 10 CSR 10–6.030, and which revise the numbering scheme for many of the existing sampling methods in the same rule. These revisions will improve the enforceability of Missouri's air rules. EPA is not taking action today on the replacement of Missouri's area-specific incinerator regulations with comprehensive statewide incinerator regulations which impose additional emission limits and operating practice requirements.

EFFECTIVE DATE: This final rule will become effective on September 23, 1994.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at: Environmental Protection Agency Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460; and the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at the Environmental Protection Agency Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7020.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 1992, EPA proposed approval of four revisions to the Missouri SIP. The first of these revisions, which was submitted on July 1, 1991, imposes new statewide requirements on medical and solid waste incinerators (10 CSR 10–6.160), and sewage sludge and industrial waste incinerators (10 CSR 10–6.190).

The second revision which was submitted on February 18, 1992, rescinds existing incinerator rules 10 CSR 10–2.090, 10 CSR 10–3.040, 10 CSR 10–4.080, and 10 CSR 10–5.080.

The third revision which was submitted by Missouri on March 19, 1992, adds new sampling methods to rule 10 CSR 10–6.030. These new sampling methods address particulate emissions (section (5)(C) and section (5)(D)), hydrogen chloride emissions (section (15)), dioxin and furan emissions (section (16)), and mercury emissions (section (17)).

The fourth revision which was submitted on September 20, 1991, administratively renumbers many of the previously approved sampling methods in rule 10 CSR 10–6.030. The following amendments were submitted:

Section (14), (Lead Sampling Methods) will become Section (12); Section (12) (Fluoride Sampling Methods) will become Section (13); and Section (13) (Volatile Organic Compound Sampling Methods) will become Section (14); Section (20) (General Reference Methods) will become Section (18); and Section (21) (Alternative Sampling Methods) will become Section (19). These administrative changes represent significant changes in the rule organization but not the rule content.

State rules with citations referring to the renumbered sampling methods in rule 10 CSR 10–6.030 were administratively amended to reference the appropriate sampling method in 10 CSR 10–6.030. These administrative amendments were also submitted on September 20, 1991. No substantive changes were made to these rules. The following rules are amended:

The renumbering of 10 CSR 10–6.030 Section (13) (volatile organic compound (VOC) sampling methods) to 10 CSR 10–6.030 Section (14) affects the following rules which cite VOC sampling methods: 10 CSR 10–2.210, 10 CSR 10–2.230, 10 CSR 10–2.260, 10 CSR 10–2.290, 10 CSR 10–2.300, 10 CSR 10–2.310, 10 CSR 10–2.320, 10 CSR 10–5.220, 10 CSR 10–5.300, 10 CSR 10–5.320, 10 CSR 10–5.330, 10 CSR 10–5.360, 10 CSR 10–5.370, 10 CSR 10–5.390, and 10 CSR 10–5.410. These rules have been submitted with the appropriate amended citation.

The renumbering of 10 CSR 10–6.030 Section (12) (fluoride emissions sampling methods) to 10 CSR 10–6.030 Section (13) affects the following rules which cite fluoride sampling methods: 10 CSR 10–3.160 and 10 CSR 10–6.090. These rules have been submitted with the appropriate amended citation.

The renumbering of 10 CSR 10–6.030 Section (14) (lead emissions sampling methods) to 10 CSR 10–6.030 Section (12) affects rule 10 CSR 10–6.120 which cites lead emission sampling methods. This rule has been submitted with the appropriate amended citation.

For the following rules, citations to 10 CSR 10–6.030 Section (20) have been replaced by a citation to a specific sampling method in 10 CSR 10–6.030 Section (14): 10 CSR 10–2.280 and 10 CSR 10–5.350. These rules have been submitted with the appropriate amended citation.

II. Response to Comments

EPA received significant comments opposing its proposal to approve 10 CSR 10–6.160 and 10 CSR 10–6.190. EPA is currently considering these comments. No significant comments were submitted, however, on those revisions to 10 CSR 10–6.030 which EPA proposed to approve in its July 21, 1992, **Federal Register** document.

III. EPA Action

EPA is taking action today to approve the revisions to 10 CSR 10–6.030 "Sampling Methods," and the renumbering of certain existing sampling methods which are discussed in the Background Section above.

EPA is also approving the corresponding administrative amendments that update sampling method references in other Missouri rules to the corresponding renumbered sampling methods in 10 CSR 10–6.030. EPA's approval of these other affected rules is limited to the update of the reference method citation only. These affected rules were addressed in their entirety in previous **Federal Register** documents.

EPA is not taking action today on Missouri's recision of its existing area specific incinerator rules 10 CSR 10–2.090, 10 C.S.R 10–3.040, 10 CSR 10–4.080, and 10 CSR 10–5.080. Therefore, these rules, as previously approved by EPA, remain in the SIP and are enforceable by EPA.

EPA is also not taking action today on new incinerator rules 10 CSR 10–6.160 and 10 CSR 10–6.190. On March 11, 1993, the Missouri Cole County Circuit Court declared the aforementioned incinerator rules void. EPA will act on this portion of Missouri's submittal at a later date.

IV. 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 from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary 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.

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.

With regard to the renumbering of rule 10 CSR 10–6.030 and the rules with citations to those renumbered sections, EPA has not reviewed the substance of these regulations at this time. These rules were approved into the state implementation plan in previous rulemakings. EPA is now merely approving the renumbering system submitted by the state. EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive requirements of the rules under current EPA requirements and guidance.

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 (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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 29, 1994.

Dennis Grams, P.E.,

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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(79) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(79) The Missouri Department of Natural Resources submitted an amendment on March 19, 1992, to add sampling methods to rule 10 CSR 10–6.030 "Sampling Methods for Air Pollution Sources." On September 20, 1991, Missouri submitted administrative amendments to rule 10 CSR 10–6.030 which renumber and reorganize sections within that rule. Rules which reference the renumbered sections of 10 CSR 10–6.030 were also administratively amended and submitted.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.030 "Sampling Methods for Air Pollution Sources" effective September 30, 1991.

(B) Administrative amendments to the sampling citations in the following rules which are affected by the administrative amendments to 10 CSR 10–6.030: 10 CSR 10–2.210, effective December 12, 1987; 10 CSR 10–2.230, effective November 24, 1988; 10 CSR 10–2.260, effective May 24, 1990; 10 CSR 10–2.280, effective May 13, 1982; 10 CSR 10–2.290, effective December 24, 1987; 10 CSR 10–2.300, effective December 12, 1987; 10 CSR 10–2.310, effective November 23, 1987; 10 CSR 10–2.320, effective November 23, 1987; 10 CSR 10–3.160, effective December 11, 1987; 10 CSR 10–5.220, effective May 24, 1990; 10 CSR 10–5.300, effective March 11, 1989; 10 CSR 10–5.320, effective March 11, 1989; 10 CSR 10–5.330, effective November 26, 1989; 10 CSR 10–5.350, effective March 11, 1989; 10 CSR 10–5.360, effective March 11, 1989; 10 CSR 10–5.370, effective March 11, 1989; 10 CSR 10–5.390, effective March 11, 1989; 10 CSR 10–5.410, effective March 11, 1989; 10 CSR 10–6.090, effective August 13, 1981; and 10 CSR 10–6.120, effective March 14, 1991.

[FR Doc. 94–20737 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[WI25–01–5711a; FRL–5005–5]

Approval and Promulgation of State Implementation Plan; Wisconsin; Superior (Douglas County) Attainment Demonstration for Sulfur Dioxide Emissions

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA approves a revision to the Wisconsin State Implementation Plan (SIP) for control of sulfur dioxide (SO_2) emissions in Superior (Douglas County) Wisconsin. This approval makes federally enforceable the State's control of SO_2 emissions from CLM Corporation, a lime manufacturing facility located in Douglas County. The USEPA review of the revision shows that the controls are sufficient to meet the National Ambient

Air Quality Standards (NAAQS) for SO_2 as set forth in the Clean Air Act (the Act).

DATES: This final rule will be effective October 24, 1994 unless adverse comments are submitted by September 23, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision, incorporation by reference, and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Megan Beardsley at (312) 886–0669 before visiting the Region 5 Office.)

A copy of this SIP revision and incorporation by reference is also available at the Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–0669.

SUPPLEMENTARY INFORMATION:

I. Background

Douglas County, Wisconsin, is classified as an attainment area for the SO_2 NAAQS. In 1988, a monitor in the town of Superior, Douglas County, Wisconsin measured five separate violations of the 24-hour SO_2 NAAQS. The Wisconsin Department of Natural Resources (WDNR) determined that a significant quantity of the SO_2 emissions contributing to the violations were generated by the three lime kilns at CLM Corporation, a lime manufacturing facility in Superior. In particular, WDNR found the emission limit set forth in CLM's 1982 permit (permit number MAN–10-SJK–81–16–160) was being exceeded in CLM kiln # 3 and that fugitive emissions were leaking from the CLM kiln # 2 baghouse. The WDNR also found that the existing SO_2 emission limits for CLM's three kilns needed to be reevaluated and updated in response to newer, more accurate kiln emissions data.

In response to these findings, Wisconsin issued a number of orders and permits to limit CLM's SO_2 emissions and bring the area into compliance. The area has remained classified under the Act as attainment for SO_2 on the condition that the State make the CLM control measures federally enforceable by submitting them as a revision to the SIP.

The following orders and permits now limit CLM's SO_2 emissions:

1. Administrative Order AM–91–816A issued by WDNR to CLM Corporation on June 13, 1991. This order established new emission limits for Kilns # 1 and # 2 based on the air quality modeling results for the three lime kilns at the 125 foot stack height. In particular, Kiln # 1 shall meet an emission limit of 136.2 pounds of SO_2 per hour and Kiln # 2 shall meet a limit of 183.5 pounds of SO_2 per hour. Each kiln shall only emit through its respective stack. The emission limits in this order supersede the limits established in Wisconsin Order 89–816036430-J01.

2. Consent Order NWD–89–08 issued by the WDNR to CLM Corporation on December 20, 1989, which requires CLM has install Continuous Emission Monitors (CEMs) on the three kilns to monitor compliance with the kiln emission limits on a continuous, ongoing basis.

3. New source permit 90-RV–091, issued by WDNR to CLM Corporation on June 2, 1993 for a synthetic minor construction permit. This permit, already incorporated into the SIP under the New Source Review program, set a new, lower emission limit for lime kiln # 3 of 310.7 lbs of SO_2 per hour averaged over a three-hour period, a required control efficiency of 44.9 percent averaged over six months for kiln # 3, and a monthly emission cap of 103.14 tons per month averaged over three months for the entire facility. The permit also imposes requirements for monitoring and record keeping for the three kilns. The permit supersedes permit number MAN–10-SJK–81–160–161.

The State submitted the first of these measures to USEPA as a proposed revision to the SIP in November 24, 1992 and supplemented this submittal with additional materials on October 5, 1993 and December 9, 1993. The State also provided technical support documentation including modeling, monitoring, and emissions data.

II. Evaluation of State Submission

A. Procedural Background

Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) similarly provides that each revision to an implementation plan submitted by a State under the Act must have been adopted by such State after reasonable notice and public hearing.

On May 20, 1991, the State held a public hearing on Consent Order AM–91–816. When the source did not sign this order, the State issued the order unilaterally as Order AM–91–816A. The State provided public notice of the new source permit 90-RV–091 and opportunity for the public to request a hearing on this permit. No hearing was requested. These actions meet the Act's public notice requirements.

The USEPA reviewed the proposed SIP revision to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The USEPA found the submittal complete, and sent a letter confirming this finding to the governor's delegate on January 19, 1994.

B. SIP Requirements

Under section 110 of the Act, a SIP must provide for implementation, maintenance and enforcement of the NAAQS. The SIP must document specific legally enforceable emission limits and/or equipment operating conditions and provide a modeling demonstration that shows these controls result in achievement of the NAAQS. In addition, there must be a demonstration that the affected sources are in full compliance with the SIP, or are on an enforceable schedule to achieve compliance within a very short time.

As required, the permits and orders submitted by the State for this SIP revision include enforceable emissions limitations; they set hourly SO_2 emission limits for all three kilns. The State will enforce the SIP under its existing air enforcement program and has provided documentation to USEPA of its authority to impose the control measures included in the SIP. Currently, CLM is in full compliance with the SIP.

The USEPA technical analysis of the control measures and modeling is described in detail in USEPA's "Revised Technical Review of Superior (Douglas County) State Implementation Plan for Control of Sulfur Dioxide Emissions," February 15, 1994, S. Breen to Files. Based on this analysis, USEPA finds the control measures in the proposed SIP revision are sufficient to maintain and enforce the SO_2 NAAQS. The State's modeling meets USEPA guidance and predicts that the control measures contained in the SIP are sufficient to ensure maintenance of the NAAQS.

Furthermore, as required in paragraph 110(a)(2)(D), the SIP protects the NAAQS in other States; Wisconsin's models show that the SO_2 emissions are most concentrated in the immediate area of the source, and since the models show that allowable SO_2 emissions would not interfere with local attainment of the NAAQS, it is clear that the emissions also would not interfere with any other State's attainment of the NAAQS.

Based on its analysis of the State submittal, USEPA finds the proposed revision an appropriate and useful addition to the SIP.

C. Action

The USEPA approves Wisconsin's Douglas County SO_2 submittal of November 24, 1992 with supplements on October 5, 1993 and December 9, 1993. With this action, USEPA incorporates State orders AM–91–816A and NWD–89–08 into the SIP, making these orders federally enforceable. State permit 90-RV–09, created under a federally approved New Source Review program (40 CFR 52.2570 (42)), is already federally enforceable.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on October 24, 1994. However, if we receive adverse comments by September 23, 1994, USEPA will publish a document that withdraws today's action and will address all public comments in a subsequent final rule based on the proposal published in the proposal section of this **Federal Register**. The public comment period will not be extended or reopened.

III. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael 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 3 SIP revisions (as published at 54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The USEPA 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 the USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: May 23, 1994.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c) (74) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(74) On November 24, 1992, the State of Wisconsin requested a revision to the Wisconsin State Implementation Plan (SIP) to maintain the National Ambient Air Quality Standards for SO_2 in Douglas County Wisconsin. Included were State orders and permits limiting emissions from CLM Corporation lime kilns and requiring Continuous Emission Monitoring Systems on these kilns.

(i) Incorporation by reference.

(A) Wisconsin Order AM–91–816A issued by WDNR to CLM Corporation on June 13, 1991. Wisconsin Administrative Order NWD–89–08 issued by the WDNR to CLM Corporation on December 20, 1989.

[FR Doc. 94–20740 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[OR–16–1–5536a; OR–43–1–6523a; FRL–5025–8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approves the state implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable moderate nonattainment area PM–10 SIP for the Eugene-Springfield, Oregon,

PM–10 nonattainment area. In addition, EPA approves title 16 of the Lane Regional Air Pollution Authority for inclusion into the Oregon SIP. Title 16 establishes permanent rules prohibiting the use of woodstoves and other solid-fuel space heating devices under certain circumstances in Lane County and the cities of Eugene and Springfield, Oregon.

DATES: This final rule will be effective on October 24, 1994 unless adverse or critical comments are received by September 23, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, Docket #OR–16–1–5536, 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, EPA, 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 the Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, EPA, 1200 Sixth Avenue, AT–082, Seattle, Washington, 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The area within the Eugene-Springfield, Oregon, Urban Growth Boundary (UGB), was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.339. The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act.[2]

EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale. In this rulemaking action for the State of Oregon's moderate PM–10 SIP for the Eugene-Springfield nonattainment area, EPA is approving its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely comments received by the date indicated above.

Those states containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address that submittal containing the new source review permit program in a separate document.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is approving the plan revision submitted to EPA on November 15, 1991. EPA has determined that the submittal meets all of the applicable requirements of the Act.

Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Oregon and Lane Regional Air Pollution Authority (LRAPA) held a concurrent public hearing on the original Eugene-Springfield PM–10 plan on January 30, 1990. On January 31, 1991, the Oregon Environmental Quality Commission

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in this document and supporting information.

[3] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

(OEQC), adopted the plan as part of the Oregon SIP. The State and LRAPA subsequently held a concurrent public hearing on an addendum to the plan on October 1, 1991, in Springfield, Oregon. This addendum, including appendix L, was adopted by the Oregon Department of Environmental Quality (ODEQ) on November 8, 1991. The original plan and the addendum were submitted to EPA on November 15, 1991, as a revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V. A letter dated May 7, 1992, was forwarded to the Director of ODEQ indicating the completeness of the submittal and the next steps to be taken in the review process. In this action EPA is approving the State of Oregon's PM–10 SIP submittal for the Eugene-Springfield PM–10 nonattainment area and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. See, e.g., section 110(a)(2)(K) of the Act. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The 1985 base year emission inventory developed for the Eugene-Springfield UGB identified the major sources of PM–10 concentrations during 24-hour worst case winter periods as residential wood combustion (68%), industrial emissions (26%), fugitive dust (4%), and other sources, including but not limited to, transportation, open and prescribed burning (2%). Annual emissions for the same timeframe were residential wood combustion (34%), industrial emissions (54%), fugitive dust (6%), and other sources (5%).

EPA is approving the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[4]

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA 's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

LRAPA performed a technical and cost analysis to evaluate available control measures. This analysis is presented in appendix E and F to the SIP. Using EPA modeling guidelines and protocols, the analysis showed that with some exceptions, local industrial sources currently meet or exceed RACT. Further, RACM (including RACT) does not require the implementation of all available control measures where an area demonstrates timely attainment and the implementation of additional controls would not expedite attainment. 57 FR 13540–13544. Based on the available control measures adopted (described below), the SIP demonstrates that attainment of the PM–10 NAAQS will be achieved by December 31, 1992 (two years prior to the CAA attainment date of December 31, 1994). The SIP also demonstrates continued maintenance of the NAAQS between December 1992 and the year 2000. PM–10 emissions from industrial point sources (26%), primarily wood products industry, had substantially less of an impact on the 24-hour standard than residential wood combustion (68%). A cost benefit comparison of alternate strategies showed that implementation of a woodsmoke curtailment program would achieve expeditious air quality improvements at a much lower cost than would additional point source control. Accordingly, EPA is approving the existing industrial controls as meeting the RACM (including RACT) requirement.

A. Mandatory Woodburning Curtailment Program

A mandatory woodburning curtailment program became fully implemented on November 1, 1991. Each of the three jurisdictions in the nonattainment area enacted ordinances prohibiting the use of solid-fuel space heating devices under certain conditions. Enforcement of the ordinances have been delegated by Lane County, the City of Eugene, and the City of Springfield to LRAPA. Prior to the mandatory program, a voluntary program had been in place for five years. The following is a brief discussion of the program's key elements. For a detailed analysis and discussion, the reader is referred to the Technical Support Document (TSD) that corresponds with this action.

During the 1992/1993 woodheating season, LRAPA used a combination advertising campaign using radio and billboard advertising, press releases and taped television public service announcements. In addition, during the last 2½ years, there have been approximately 20 visits with local schools and several presentations to various local groups, e.g. real estate, church. The purpose of these visits was to discuss pertinent elements of the curtailment program, proper woodstove operation and maintenance, and air pollution in general.

Woodburning advisories are made daily by 1 p.m. between the first of November and the end of February via local television and radio stations. An empirical formula (based on the previous 24-hour nephelometer readings and the predicted afternoon ventilation index) is used to predict the present day's PM–10 level. The predicted PM–10 level determines whether a green, yellow, stage I red, or stage II red advisory is issued.

Woodburning curtailment advisories are issued at four levels; 1) a green advisory is made when the ambient PM–10 concentration is expected to be 74 μg/m3 or less, 2) a yellow advisory is issued when the ambient PM–10 concentration is expected to be greater than 75 μg/m3 but less than 88 μg/m3, 3) a Stage I Red advisory is issued when the ambient concentration is expected to be greater than 88 μg/m3 but less than 125 μg/m3, 4) a State II Red advisory is issued when the ambient concentration is expected to be greater than 125 μg/m3.

During a Stage I Red Advisory, any solid fuel space heating device (e.g. certified woodstove, uncertified woodstove, or pellet stove) may be operated provided it does not emit visible emissions. Exemptions to complying with this advisory include sole source and low income.

During a State II Red Advisory, sole source and low income exemptions are granted. Also, pellet stoves may be operated provided they do not emit visible emissions. All other solid fuel

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act. See section 193 of the Act.

space heating devices are prohibited from operation.

As stated above, LRAPA can grant an exemption from complying with a Stage I and Stage II Red Advisory provided that the solid fuel space heating device is the sole source of heat for a specific residence. Individual exemptions expire on July 1 of each year and must be renewed annually. This exemption shall not be issued by LRAPA after June 30, 1996.

An exemption based on economic need can also be granted. Persons in charge of property who satisfy criteria established under the Low Income Energy Assistance Program as administered by the Lane County Housing Authority and as established by the United States Department of Energy are exempt from Stage I and Stage II Red Advisories. Individual exemptions shall expire on July 1 of each year and must be renewed annually.

The woodburning curtailment program has a surveillance and enforcement element. A standard operating procedure and evaluation measure has been developed for use during red advisories. During surveillance and effectiveness evaluations, infra-red detectors are used at night to detect 'hot' chimneys. During a red advisory, visible emissions will be documented and a Notice of Violation, including those with civil penalties, will be issued. Persons who receive the notice may either pay the fine or appeal the civil penalty. Fines range from $50.00 to $400.00.

LRAPA requests a 70% reduction credit for the curtailment program. This requested credit is greater than the 50% generally suggested by EPA for a mandatory curtailment program. However, the recommended 50% credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs." Final judgement of the amount of credit to be granted, is determined by EPA regional offices, based on the program elements outlined in EPA's *Guidance Document for Residential Wood Combustion Emission Control Measures, EPA–4450/2–89–015, September 1989.*

Since implementation of the mandatory program in November 1991, ambient PM–10 concentrations have not deteriorated to the point where the issuance of a red advisory has been needed to protect the NAAQS. Therefore, LRAPA has not conducted a compliance survey during a red advisory. However; during the 1991/1992 and the 1992/1993 woodheating seasons, LRAPA did conduct several surveys during green and yellow advisories. These surveys indicate that between 52% and 78% of the dwellings equipped with woodstoves were not using wood as a source of home heat.

Even though results from the above surveys are somewhat inconclusive since the surveys were conducted during green and yellow advisories, the results do indicate that LRAPA's public education/awareness program is quite effective. Additionally, preliminary results from a 1992 wood user's survey indicates that between the 1985 base year and 1992, annual PM–10 emissions from home heating have declined by approximately 60%. This corresponds to a 40% reduction in cord wood consumption.

Considering the above program elements, survey results, and the phasing out of the sole source exemptions, EPA believes that the 70% credit is achievable and is being achieved and therefore proposes to accept the credit claimed. EPA has also considered that fact that the area has not violated the 24-hour standard since January, 1987 (first year of a voluntary curtailment program), and has never violated the annual standard. Accordingly, EPA has determined that the mandatory curtailment program is sufficient to meet RACM.

Additionally, even though the area is not in violation of the annual standard, the expected emission reductions to be achieved by this strategy will help insure continued compliance with the annual standard.

B. Other Sources

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable to require the sources to implement potentially available control measures and, therefore, the RACM requirement does not dictate the implementation of such controls. (57 FR 13540).

LRAPA determined through its analysis of the nonattainment area that emissions from fugitive dust sources and emissions from prescribed and open burning activities were not significant sources of PM–10 emissions. On an annual basis, fugitive dust accounts for 6% of the PM–10 emission inventory. Emissions from prescribed and open burning added together account for less than 1% of the nonattainment area's PM–10 emissions on an annual basis. Further, as indicated above, the control measures contained in the SIP provide for expeditious attainment of the PM–10 NAAQS. Therefore, the attainment plan does not include additional control measures for these sources.

EPA has reviewed ODEQ's submittals and associated documentation and concluded that they adequately justify the control measures to be implemented. Implementation of the Eugene-Springfield PM–10 nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable and no later than December 31, 1994. By this document, EPA is approving ODEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the State must show attainment by December 31, 1994, or that attainment is impracticable. The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m3), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m3 is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 μg/m3, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m3 (id.).

LRAPA conducted an attainment demonstration based on dispersion modeling; which, according to EPA's PM–10 SIP Development Guideline (June 1987), is an acceptable method. In order to select the appropriate model, LRAPA followed EPA's "Protocol for Determining the Best Performing Model" (September 1987) in LRAPA's evaluation of the Oregon GRID, WYNDvalley, and ISCST dispersion models. Based on its analysis, Oregon GRID performed within EPA's approved limits of accuracy and was determined to be the best performing model.

The time period selected for the 24-hour modeling analysis was from December 11, 1985 through December 28, 1985. This was a period of extensive poor ventilation with no precipitation, cold temperatures (average daily temperatures near zero degrees centigrade) and light winds (average daily wind speed of 1 to 2 meters per second). In addition, 12 of the 15 exceedances of the 24-hour standard occurred during December 1985. Since the area is in attainment with the annual standard, LRAPA only modeled for

attainment purposes the 24-hour standard.

The uncontrolled 1992 modeled design value was determined to be 333 μg/m3. Based on the modeling analysis, in order to attain the 24-hour standard throughout the airshed, a 65% reduction in PM–10 emissions at an unmonitored site (referred to in the study as the Scenic site) is needed. The modeling exercise also determined that approximately 97% of the local impact at this site (Scenic site) is from home wood heating. After applying the 70% reduction in wood smoke emissions due to the curtailment program, the modeling exercise demonstrates that attainment of the 24-hour standard can be achieved at this site and throughout the airshed. The demonstration predicted that the 24-hour design concentration in the attainment year of 1992 will be below 150 μg/m3, thus demonstrating attainment of the 24-hour PM–10 NAAQS. The SIP also demonstrates maintenance of the NAAQS through the year 2000. Ambient data show that the area has never approached an exceedance of the annual standard. Since no violations of the annual NAAQS have been noted and the attainment demonstration shows attainment of the 24-hour NAAQS, no violations of the annual NAAQS are likely. Therefore, EPA has determined that ODEQ has adequately demonstrated that the annual standard has been attained in the Eugene-Springfield nonattainment area. More detailed description of the attainment demonstration is contained in the TSD.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

As previously discussed, LRAPA's technical analysis of candidate control measures indicated that emissions from industrial point sources had substantially less of an impact on the 24-hour standard than residential wood combustion. Previous violations of the 24-hour standard occurred during periods of extensive poor ventilation (stagnation conditions) and cold temperatures. This further supports the dispersion modeling exercise which indicated that approximately 97% of the local impact at the highest modeled site in the UGB was from woodsmoke emissions and that implementation of the woodsmoke curtailment program would expeditiously demonstrate attainment with the PM–10 NAAQS. Therefore, EPA believes that sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the NAAQS and hereby grants the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

Note that while EPA is making a general finding for this area about precursor contribution to PM–10 NAAQS exceedances, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrates RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the CAA).

While section 189(c) plainly provides that quantitative milestones are to be achieved until an area is redesignated attainment, it is silent in indicating the starting point for counting the first 3-year period or how many milestones must be initially addressed. In the General Preamble, EPA addressed the statutory gap in the starting point for counting the 3-year milestone, indicating that it would begin from the due date for the applicable implementation plan revision containing the control measures for the area (i.e., November 15, 1991 for initial moderate PM–10 nonattainment areas) (see 57 FR 13539).

As to the number of milestones, EPA believes that at least two milestones must be initially addressed. Thus, submittal to address the SIP revisions due on November 15, 1991, for the initial moderate PM–10 nonattainment areas must demonstrate that two milestones will be achieved (First milestone: November 15, 1991, through November 15, 1994; Second milestone: November 15, 1994, through November 15, 1997).

For the initial PM–10 nonattainment areas that demonstrate attainment, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone (see 57 FR 13539). For areas that demonstrate timely attainment of the PM–10 NAAQS, the milestones beyond the attainment achievement date should, at a minimum, provide for continued maintenance of the standards.[5]

This SIP demonstrates attainment of the PM–10 NAAQS by December 31, 1992, and maintenance of the NAAQS through the year 2000, satisfying three milestones. Therefore, EPA is approving the submittal as meeting the quantitative milestone requirement currently due. Finally, once a milestone has passed, the State will have to demonstrate that the milestone was, in fact, achieved for the Eugene-Springfield area as provided in section 189(c)(2) of the Act.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by LRAPA, ODEQ and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The woodsmoke curtailment program contained in the SIP was addressed above under the section headed "RACM (including RACT)." The SIP provides that this control strategy applies throughout the entire nonattainment area.

Lane County, and the cities of Eugene and Springfield have enacted ordinances prohibiting the use of solid-fuel space heating devices under certain conditions (air stagnation episodes).

Lane County enacted Ordinance Number 9–90 (Lane Code ("LC") 9.120–9.160). Eugene enacted Ordinance Number 19731 (Eugene Code ("EC")

[5] Section 189(c) of the Act provides that quantitative milestones are to be achieved "until the area is redesignated attainment." However, this endpoint for quantitative milestones is speculative because redesignation of an area as attainment is contingent upon several factors and future events. Therefore, EPA believes it is reasonable for States to initially address at least the first two milestones. Addressing two milestones will ensure that the State continues to maintain the NAAQS beyond the attainment date for at least some period during which an area could be redesignated attainment. However, in all instances, additional milestones must be addressed if an area is not redesignated attainment.

6.250–6.270) and Springfield enacted Ordinance Number 5546 (Springfield Code ("SC") 4–8–4). Each municipality also either delegated enforcement of the ordinances to LRAPA (L.C. § 9.145; Springfield Code § 4–8–4(4)), or authorized the City Manager to delegate enforcement to LRAPA (Eugene Code § 6.265). By Administrative Order No. 44–92–10, the Eugene City Manager has delegated authority to LRAPA to administer the ordinance. Thus, each jurisdiction has authorized LRAPA to enforce the solid-fuel space heating device ordinances. In addition, each jurisdiction has authorized LRAPA to use its own regulations and procedures to enforce the ordinances and to impose penalties.

The LRAPA Board of Directors adopted title 16, Home Wood Heating Curtailment Program Enforcement, on July 13, 1993. This rule is the mechanism LRAPA will employ in implementing the above ordinances. It contains, among other things, a civil penalty schedule, a notice of violation procedure, and the procedure to appeal a civil penalty. EPA is approving the above ordinances and title 16 as part of the SIP.

The Eugene-Springfield SIP does not contain additional point source controls to attain the standard, however, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the PM–10 NAAQS. EPA determined that because the five-day advance notice provision required by ORS.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in Section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude Federal approval of a PM–10 nonattainment area SIP revision.

EPA notified Oregon of the deficiency. To correct the problem, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from Federal approval or delegation. ODEQ responded to EPA's understanding of the application of 468.126(2)(e) and agreed that if Federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

ODEQ's submittal and TSD contain further information on enforceability requirements. In addition, the TSD contains a discussion of the personnel and funding intended to support effective implementation of the control strategy.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. The Eugene-Springfield nonattainment area SIP contains the following contingency measures:

a. Uncertified woodstove removal: the 1991 Oregon Legislature authorized by statute the removal and destruction of uncertified woodstoves upon sale of a home within any area that fails to meet the PM–10 SIP attainment date of December 31, 1994. EPA approved these rules (OAR 340–34–200 through 215) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

b. Fugitive Dust: to reduce track out onto public roads, construction sites for commercial, industrial or residential subdivisions within the Eugene-Springfield nonattainment area are required to provide paved track out strips or mud cleaning stations on site. This rule is found in title 39, section 39–055 of LRAPA's contingency measure regulations.

In this action, EPA is approving in its entirety title 39 entitled Contingency for PM–10 Sources in Eugene-Springfield Non-Attainment Area. (Sections 39–001, 39–005, 39–010, 39–015, 39–020, 39–025, 39–030, 39–035, 39–040, 39–050, 39–055, and 39–060 (November 1991)).

c. Open Burning: all open burning would be banned within the nonattainment area. This rule is found in section 39–060 of title 39.

d. Industrial Controls: a contingency plan was developed to reduce industrial emissions should the area fail to attain by the CAA deadline. The regulations requiring controls more stringent than those currently required on significant industrial sources of PM–10 are contained in title 39. Industrial sources addressed in the plan include wood-waste boilers, veneer plants and dryers, particleboard plants and dryers, air conveying systems and kraft pulp mills.

The industrial contingency limits for the most part reflect ODEQ's industrial source rules for the Medford-Ashland non-attainment area (OAR 340–30–005 through 230). The one exception is the contingency standard for pulp mills. Should the area fail to attain the NAAQS, kraft pulp mills would be required to meet EPA's New Source Performance Standards (NSPS). These control measures would become effective upon a determination by EPA that the area has failed to make reasonable further progress (RFP) or to attain the PM–10 NAAQS and, they would be implemented over a period of two years.

LRAPA estimates that implementation of the contingency measures would reduce wood heating emissions by an additional .5 ton per day and industrial emissions would be reduced by 6.2 tons per day resulting in additional reductions of 45% on a daily basis. On an annual basis, wood heating emissions would be reduced by 53 tons per year and industrial emissions by 1,800 tons per year resulting in additional reductions of over 2000%.

The SIP provides that each of these measures can take affect without further action by the State or EPA, should EPA determine that the Eugene-Springfield nonattainment area has failed to achieve RFP or to attain the PM–10 standard by the statutory attainment date of December 31, 1994.

EPA is approving the Eugene-Springfield nonattainment area contingency measures.

III. Implications of This Action

EPA is approving the plan revision and addendum submitted to EPA for the Eugene-Springfield nonattainment area on November 15, 1991. Among other things, LRAPA has demonstrated that the Eugene-Springfield moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1992. Note that EPA's action includes approval of the contingency measures for the Eugene-Springfield nonattainment area. In addition, EPA approves title 16 of the Lane Regional Air Pollution Authority. Title 16 establishes permanent rules prohibiting the use of woodstoves and other solid-fuel space heating devices under certain circumstances in Lane County and the cities of Eugene and Springfield, Oregon.

IV. Administrative Review

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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should no adverse or critical comments be filed. This final rule will be effective October 24, 1994 unless, by September 23, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this final rule will be effective October 24, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

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 October 24, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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: July 11, 1994.

Chuck Clarke,

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) (108) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(108) On November 15, 1991 the Director of ODEQ submitted amendments to Oregon's SIP to include a PM–10 control strategy for Eugene-Springfield and LRAPA title 39.

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon SIP.

(B) The PM–10 control strategy for Eugene-Springfield, adopted by the OEQC on January 31, 1991, and LRAPA title 39 (Contingency for PM–10 sources in the Eugene-Springfield nonattainment area), adopted by the OEQC on November 8, 1991.

(C) April 13, 1994 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon SIP.

(D) Amendments to Lane Regional Air Pollution Authority Rules as a revision to the Oregon SIP (title 16), adopted by the OEQC on March 11, 1994.

[FR Doc. 94–20738 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 3E4255/R2070; FRL–4899–5]

RIN 2070–AB78

Pseudomonas Fluorescens Strain NCIB 12089; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of *Pseudomonas fluorescens* in or on the raw agricultural commodity mushrooms. This exemption from the requirement of a tolerance was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 3E4255/R2070], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field

Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 1994 (59 FR 30750), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Brunswick, NJ 08903, had submitted pesticide petition (PP) 3E4255 to EPA on behalf of the State Agricultural Experiment Stations and the United States Department of Agriculture. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish an exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms. *Pseudomonas fluorescens* is a naturally occurring bacterium, is the dominant microflora found in mushroom caps, and is found in tap and fresh water, marine environments, and plants. The use of the biological pesticide is to control bacterial blotch of cultivated mushrooms.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance is not needed to protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1129, to read as follows:

§ 180.1129 Pseudomonas fluorescens strain NCIB 12089; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089 in or on mushrooms.

[FR Doc. 94–20333 Filed 8–23–94; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 2F4107/R2075; FRL094906092]

RIN 207009AB78

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing tolerances for residues of the fungicide difenoconazole in or on certain raw agricultural commodities. Ciba-Geigy Corp. requested this regulation to estalish the maximum permissible levels of residues of the fungicide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4107/R2075], may be submitted to: Hearing

Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20450. In person, bring copy of objections and hearing request to: Rm. 1132, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM 1B2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of June 10, 1992 (57 FR 24644), which announced that Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419-8300, had submitted a pesticide tolerance petition (PP 2F4107) to EPA requesting that the Administrator, pursuant to sections 408(d) of Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), establish a tolerance for the fungicide, difenoconazole, 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, in or on in or on wheat forage at 0.1 part per million (ppm), wheat straw at 0.1 ppm, barley forage at 0.1 ppm, and barley straw at 0.1 ppm. In the **Federal Register** of March 30, 1994 (59 FR 14854), EPA issued in the **Federal Register** a corrected filing of the notice published in the **Federal Register** of January 7, 1994 (59 FR 1017), which announced that Ciba-Geigy Corp. had submitted an amendment to the petition, proposing to establish additional tolerances as follows: cattle, fat, meat, and meat-by-products (mbyp) at 0.05 ppm; eggs at 0.05 ppm; milk at 0.01 ppm; goats, fat, meat, and mbyp at 0.05 ppm; hogs, fat, meat, and mbyp at 0.05 ppm; horses, fat, meat, and mbyp at 0.05 ppm; poultry, fat, meat, and mbyp at 0.05 ppm; sheep, fat, meat, and mbyp at 0.05 ppm; barley grain at 0.1 ppm; and wheat grain at 0.1 ppm. Ciba-Geigy subsequently amended the petition to withdraw without prejudice for future filings the tolerances for barley forage, barley straw and barley grain.

The chemical name for difenoconazole is editorially corrected to read: [(2S,4R)/(2R,4S)]/[2R,4R/2S,4S)] 1-(2-[4-(4chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)1H-1,2,4-triazole.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 1,453 milligrams (mg)/kilogram (kg).

2. A 13-week rat feeding study with a no-observed-effect-level (NOEL) of 20 ppm (1 mg/kg/day).

3. A 13-week mouse feeding study with a NOEL of 20 ppm.

4. A 26-week dog feeding study with a NOEL of 1,000 ppm.

5. A 21-day rabbit dermal study with a NOEL of 10 mg/kg and reduction in body weight gain and food consumption from exposure to doses equal or greater than 100 mg/kg.

6. A carcinogenicity study in mice with a NOEL of 30 ppm and a Lowest Effect Level (LEL) of 300 ppm due to reductions in cumulative body weights. There was limited evidence of carcinogenicity based on the occurrence of increased benign and/or malignant liver tumors in males and females. The carcinogenic effects observed are discussed below.

7. A rat chronic feeding/carcinogenicity study with a NOEL of 20 ppm (1 mg/kg/day) for systemic effects and a LEL of 500 ppm (25 mg/kg/day) due to reductions in cumulative body weight gains and hepatotoxicity in males. There was no evidence of carcinogenicity under conditions of the study.

8. A 1-year dog chronic feeding study with a NOEL of 100 ppm and the LEL was 500 ppm due to reduction in food consumption and increase in alkaline phosphatase in males at high dose.

9. A two-generation reproduction study in rats with a parental and reproductive NOEL of 25 ppm (1.25 mg/kg/day) and an LEL of 250 ppm (12.5 mg/kg/day) due to reduction of female body weight gain, and significant reductions in male pup weight at day 21.

10. A developmental toxicity study in rabbits with a Maternal NOEL of 25 mg/kg and a LEL of 75 mg/kg/day due to decreased body weight, death of one doe and abortion, and a developmental NOEL of 25 mg/kg and a LEL of 75 mg/kg due to increased postimplantation loss and resorptions and significantly decreased fetal weight.

11. A developmental toxicity study in rats with a maternal NOEL of 16 mg/kg and a LEL = 85 mg/kg due to excess salivation, and decreased body weight gain and food consumption, and a developmental NOEL of 85 mg/kg/day and an LEL of 171 mg/kg due to increase bifid or unilateral ossification of thoracic vertebrate, increased average number of ossified hyoid and decrease in average number of sternal centers of ossification.

12. A Microbial Gene Mutation study and an Unscheduled DNA synthesis in rat hepatocyte study were both negative. An In vivo micronucleus assay / chromosomal analysis study showed no increase in micronucleated polychromatic erythrocytes at any dose tested.

13. A rat metabolism study showed that difenoconazole was adequately absorbed and mainly eliminated via the bile. No evidence of bioaccumulation in any tissue was noted.

The Health Effects Division Carcinogenicity Peer Review Committee has concluded that the available data provide limited evidence of the carcinogenicity of difenoconazole in mice and has classified Difenoconazole as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992, Sept. 24, 1986) and recommended that for the determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical, statistically significant increases in hepatocellular adenomas, carcinomas and combined adenomas/carcinomas in both sexes of CD-1 mice, occurred only at doses considered to be excessively high for carcinogenicity testing.

2. There were no apparent tumor increases in either sex in Sprague-Dawley rats at dietary levels up to 2,500 ppm.

3. Difenoconazole was not mutagenic in three well conducted genotoxic assays.

Based on this evidence, EPA concludes that difenoconazole poses at most a negligible cancer risks to humans and that for purposes of risk characterization the Margin of Expsoure (MOE) approach should be use for quantification of human risk. In a spring wheat processing study, no residues were detected in grain or any processed

fraction. Therefore, food/feed additive tolerances are not needed in conjunction with this use on wheat.

Using a 100-fold safety factor and the NOEL of 1 mg/kg/day determined by the most sensitive species from the rat chronic feeding study, the Reference Dose (RfD) is 0.01 mg/kg/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.00041 mg/kg/day and utilizes 4 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroups in the population, children (1 to 6) and Nonnursing infants (less than 1), the TMRC is 0.000946 mg/kg/day and utilizes 9 percent of the RfD.

The dietary acute exposure MOE for developmental toxicity effects was calculated to be 25,000 for high exposure in the females 13+ subgroup. For substances whose acute NOEL is based on animal studies, the Agency is not generally concerned unless the MOE is below 100.

The metabolism of difenoconazole in plants is adequately understood. The tolerances established for milk, eggs, meat, fat, and meat by products will cover any dietary exposure from secondary residues in these RACs. Due to the following chemistry data gaps—Stability of the Technical Grade Active Ingredient (TGAI) to Metal Ions Study [GLN 63-13], Storage Stability of Difenoconazole in other Raw Agricultural Commodities [GLN 1714(e)], and Additional Wheat Field Residue Trials [GLN 171-4(k)]—EPA believes it is inappropriate to establish permanent tolerance for the use of difenoconazole at this time. However, based on the (1) apparent storage stability, (2) 11 acceptable field studies (15 to 20 field trials are required), and (3) apparent negligible residues of difenoconazole in wheat RACs, EPA believes that the existing data support a time-limited tolerance to December 31, 1998.

An adequate analytical method, gas chromatography with nitrogen phosphorous detection, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM 1B2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the time-limited tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 78.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (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: August 18, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. By adding new §1180.475, to read as follows:

§1180.475 Difenoconazole; tolerances for residues.

(a) Time-limited tolerances, to expire on December 31, 1998, are established for difenoconazole, [(2S,4R)/(2R,4S)]/[2R,4R/2S,4S)] 1-(2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2yl-methyl)-1H-1,2,4-triazole, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goats, fat	0.05
Goats, meat	0.05
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, mbyp	0.05
Milk	0.01
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, mbyp	0.05
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, straw	0.1

(b) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the fungicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 94-20813 Filed 8-23-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP–300342A; FRL–4905–2]

RIN 2070–AB78

Dimethyl Ether; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of dimethyl ether (CAS Reg. No. 115-10-6) when used as an inert ingredient (aerosol propellant) in pesticide formulations applied to animals. DuPont Chemicals requested this regulation.

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300342A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1994 (59 FR 32170), EPA issued a proposed rule that gave notice that Du Pont Chemicals, Chestnut Run Plaza, P.O. Box 80711, Wilmington, DE 19880-0711, had submitted pesticide petition (PP) 1E3990 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by estblishing an exemption from the requirement of a tolerance for dimethyl ether (DME) when used as an aerosol propellant in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 8, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Dimethyl ether (CAS Registry No. 115-10-6)		Propellant.
* * * * * * *		

[FR Doc. 94–20330 Filed 8–23–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300345A; FRL–4905–1]

RIN 2070–AB78

Ethyl Oleate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of ethyl oleate (ethyl esters of fatty acids derived from edible fats and oils) when used as an inert ingredient (solvent, cosolvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. Victorian Chemicals requested this regulation.

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300345A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1994 (59 FR 32169), EPA issued a proposed rule that gave notice that Victorian Chemical Co. Pty Ltd., 37-49 Appleton St., P.O. Box 71, Richmond, Victoria, 3121 Australia, had submitted pesticide petition (PP) 4E4303 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by estblishing an exemption from the requirement of a tolerance for ethyl oleate (ethyl esters of fatty acids derived from edible fats and oils) when used as a solvent or cosolvent in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100

million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 8, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Ethyl esters of fatty acids derived from edible fats and oils		Solvent, cosolvent.
* * * * * * *		

* * * * *

[FR Doc. 94-20332 Filed 8-23-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300351A; FRL-4905-6]

RIN 2070-AB78

Poly(Oxyethylene/Oxypropylene)Monoalkyl(C_6-C_{10})Ether-Sodium Fumarate Adduct; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of poly(oxyethylene/oxypropylene) monoalkyl(C_6-C_{10}) ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c). Olin Corp. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective August 24, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300351A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 28, 1994 (59 FR 33241), EPA issued a proposed rule that gave notice that the Olin Corp., 350 Knotter Drive, P.O. Box 586, Cheshire, CT 06410-0586, had submitted pesticide petition (PP) 4E4325 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of poly(oxyethylene/oxypropylene) monoalkyl(C_6-C_{10})ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7) when used as an inert ingredient (surfactant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest under 40 CFR 180.1001(c).

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the

ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 9, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Poly(oxyethylene/oxypropylene) monoalkyl(C_6-C_{10})ether-sodium fumarate adduct (CAS Reg. No. 102900-02-7), minimum number-average molecular weight 1,900..		Surfactant.
* * * * * * *		

* * * * *

[FR Doc. 94-20331 Filed 8-23-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 266 and 268

[SW-FRL-5057-8]

Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule and response to comments.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today amending § 266.20, which contains provisions for conditionally exempting hazardous waste-derived products used in a manner constituting disposal (*i.e.*, applied to or placed on land) from the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations. The proposed amendment to § 266.20 was published on February 23, 1994 (59 *FR* 8583). As specified in the proposal, EPA is amending § 266.20 so that certain

uses of slag residues produced from the high temperature metal recovery (HTMR) treatment of electric arc furnace dust (EPA Hazardous Waste No. K061), steel finishing pickle liquor (K062), and electroplating sludges (F006) are not exempt from RCRA Subtitle C regulations. EPA's proposal also contained a definition for "non-encapsulated" uses of HTMR slags. Following a review of the public comments, EPA is clarifying the definition of non-encapsulated uses of HTMR slags by specifying these uses to be the anti-skid/deicing uses.

This action partially implements a settlement agreement entered into by EPA on August 13, 1993 with the Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC). This action will effectively prohibit anti-skid/deicing uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, since such uses will be allowed only if there is compliance with all Subtitle C standards applicable to land disposal. This rule does not prohibit other uses of these slags that meet § 266.20(b) requirements. The rule also does not prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2). EPA plans to propose a regulatory determination on the remaining uses of HTMR slags by December, 1994.

EFFECTIVE DATE: This final rule is effective on February 24, 1995.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–94–SSHF–FFFFF, and is located in the EPA RCRA Docket, room 2616 (Mail Code 5305), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. A maximum of 100 pages may be copied at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION, CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For specific questions concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4787.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations under 40 CFR 266.20(b), promulgated in 1985, conditionally exempt hazardous waste-derived products used in a manner constituting disposal (*i.e.*, applied to or placed on land) from the RCRA Subtitle C regulations. To be eligible for this exemption, the waste-derived products must meet treatment standards based on Best Demonstrated Available Technology (BDAT) developed under the Land Disposal Restrictions (LDR) program for the original hazardous wastes (see § 266.20(b)). Residuals ("slags") generated from the high temperature metals recovery (HTMR) treatment of hazardous waste K061 (electric arc furnace dust) and, to a limited extent, hazardous wastes K062 (steel finishing pickle liquor) and F006 (electroplating sludges), are eligible for this conditional exemption (assuming that legitimate recycling is occurring). Section 266.20(b) is applicable because the slags are processed into products which are used in highway construction (*e.g.*, as road-base) or applied directly to road surfaces (*i.e.*, as anti-skid/deicing agents).

In August 1991, EPA finalized a generic exclusion for K061 HTMR slags (extended to K062 and F006 HTMR slags in August 1992). Under this exclusion, these slags are excluded from hazardous waste regulations provided they meet designated concentration levels for 13 metals, are disposed of in a Subtitle D unit, and exhibit no characteristics of hazardous waste (§ 261.3(c)(2)).

The Natural Resources Defense Council (NRDC) and Hazardous Waste Treatment Council (HWTC) filed a petition for review challenging EPA's decision not to apply "generic exclusion levels"— levels at which K061 slags are deemed nonhazardous— to K061 slags used as waste-derived "products" and applied to or placed on land. The generic exclusion levels established for some metals in the K061 HTMR slags are lower than the BDAT standards that apply to K061. Therefore, while the generic exclusion requires nonhazardous K061 slags meeting exclusion levels to be disposed of in a Subtitle D unit, K061 slags that may exhibit metal levels above the exclusion levels (but below BDAT) may be used as products in a manner constituting disposal under the exemption in § 266.20(b). The petitioners pointed out the anomaly of the slag used in an uncontrolled manner being effectively subject to lesser standards than slag disposed in a controlled landfill.

On August 13, 1993, EPA entered into a settlement agreement with the petitioners which would address their concerns through two separate notice-and-comment rulemakings. EPA agreed to propose the first rule within 6 months of the settlement date (and issue a final rule within 12 months) to either establish generic exclusion levels for "non-encapsulated" uses of K061 slags, or effectively prohibit such uses of K061 slags on the land. EPA also agreed to propose a second rule within 16 months of the settlement date (and issue a final rule within 28 months) to establish generic exclusion levels for "encapsulated" uses of K061 slags on the land. The agreement specified that the generic exclusion levels will be based on an evaluation of the potential risks to human health and the environment from the use of K061 slags as waste-derived products, taking into account all relevant pathways of exposure.

II. Summary of Proposed Rule

On February 23, 1994, EPA published in the **Federal Register** a proposed rule to prohibit (by amending § 266.20) non-encapsulated uses of slag residues derived from HTMR treatment of hazardous wastes K061, K062, and F006, as waste-derived products placed on land, unless there is compliance with all RCRA Subtitle C standards applicable to land disposal. EPA defined non-encapsulated uses to be uses in which the HTMR slag is not "contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment (*e.g.*, uses as anti-skid or deicing materials)."

EPA solicited comments on whether the necessary data are available to establish risk-based generic exclusion levels for HTMR slags used in non-encapsulated manners. EPA also solicited all available information on product uses of HTMR slags.

EPA did not seek to prohibit encapsulated uses of HTMR slags derived from K061, K062, and F006 that meet § 266.20 requirements. EPA also did not seek to prevent the disposal of HTMR slags in a Subtitle D unit if the residuals can meet the risk-based exclusion levels specified in § 261.3(c)(2).

III. Public Comments on the Proposed Rule

EPA received comments on the proposed rule from thirteen interested parties. Three commenters supported the Agency's proposal to effectively prohibit non-encapsulated uses of

HTMR slags derived from K061, K062, and F006. One commenter, a citizen of a town where HTMR slag material is used as an anti-skid agent, strongly urged EPA to finalize the proposed prohibition on non-encapsulated uses of HTMR slags because of its lead content. Another commenter, the Department of Environmental Resources of a State with several HTMR facilities, stated that it agreed with the prohibition on non-encapsulated uses of HTMR slags because of the many potential pathways of exposure to this material and its unknown health risks. A third commenter, representing the Palmerton Citizens for Clean Environment, provided results of recent lead analysis for HTMR material supplied to a town as anti-skid material. The results, which were not accompanied by any quality assurance/quality control information, showed total concentrations of lead in the anti-skid material to be in the range of 1,800 ppm to 2,200 ppm (which agrees with waste characterization data obtained by EPA).

Because the above commenters are in agreement with the content of the proposed rule, EPA does not believe any response is necessary. The remaining commenters disagreed and/or were concerned about the proposed rule. These commenters also wanted EPA to provide certain clarifications if it planned to finalize the proposed rule.

In this preamble, EPA is presenting a summary of comments received on the proposed definition of non-encapsulated uses because it was the most significant issue for many of the commenters. EPA's response to these comments, as discussed below, resulted in a modification of the proposed rule (*i.e.*, clarification regarding non-encapsulated uses which are prohibited). A summary of all major comments received that criticized the proposal, and EPA's responses to these comments, are provided in a "Response to Comments Document," which is in the public docket for this rule.

Five commenters strongly urged the Agency to limit the definition of non-encapsulated uses of HTMR slags to its uses as anti-skid/deicing materials (the uses specifically enumerated in the proposed rule). The commenters believed that EPA's proposed definition for "non-encapsulated" uses of HTMR slags ("those uses in which the HTMR slag is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment") was vague and required a significant degree of interpretation.

EPA agrees with the commenters that the proposed definition for non-encapsulated uses lacked clarity and should be modified. EPA indicated in the proposal that the non-encapsulated uses of HTMR slags that it is most concerned about are its uses as anti-skid/deicing materials (59 FR 8583; February 23, 1994). This is because anti-skid/deicing uses involve frequent spreading of the HTMR slag materials on road surfaces (an apparently uncontrolled use), which may lead to many potential pathways of exposure to these materials. EPA believes that, if necessary, the second rulemaking required under the settlement agreement (which is to focus on "encapsulated" uses and is due to be proposed in December 1994) will be the appropriate place to address any other uses of concern. As a result, EPA has decided in this final rule to limit the prohibition on non-encapsulated uses of HTMR slags to its uses as anti-skid/deicing materials.

EPA solicited comments in the proposed rule on possible generic exclusion levels for HTMR slags used in non-encapsulated manners, and on the basis for setting these exclusion levels. No comments were received on ways to establish generic exclusion levels that adequately account for multiple potential exposure pathways. EPA, however, notes that it is developing a risk assessment for all major HTMR slag uses to support the second rulemaking required in the settlement agreement. EPA will consider results from this risk assessment (and any other relevant data which become available) to propose possible generic exclusion levels for encapsulated uses of HTMR slags. In addition, if the results of this assessment warrant, EPA may reconsider the prohibition for certain uses of HTMR slags finalized in this rulemaking.

IV. Final Agency Decision

This rule prohibits anti-skid/deicing uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, unless there is compliance with all Subtitle C standards applicable to land disposal.

In the proposal (59 *FR* 8583, February 23, 1994), EPA stated that it would prohibit non-encapsulated uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on the land, unless there is compliance with all Subtitle C standards applicable to land disposal. EPA proposed to define the term "non-encapsulated" uses rather broadly to be "those uses in which the HTMR slag is not contained, controlled, covered, or capped in a manner that eliminates or significantly reduces its mobility and potential for release into the environment (*e.g.*, uses as anti-skid or deicing materials)". As discussed above, EPA agreed with commenters that this proposed definition was too vague, and instead has effectively prohibited uses of HTMR slags as anti-skid/deicing materials (which are believed to be the uses of greatest potential environmental concern).

Accordingly, EPA is amending the existing regulations under § 266.20 that conditionally exempt hazardous waste-derived products used in a manner constituting disposal from RCRA Subtitle C regulations to reflect this change. EPA is also including a cross-reference in § 268.41 (the Land Disposal Restriction treatment standards) which notes the restrictions placed on use of slags in § 266.20. The language of § 266.20 is revised to prohibit uses of HTMR slags as anti-skid/deicing materials, unless they comply with all of the applicable Subtitle C standards (*i.e.*, permitting, minimum technology standards for land disposal units, financial responsibility, etc.). Since these requirements cannot realistically be met by entities that would use the HTMR slag in this fashion (*i.e.*, entities are unlikely to seek land disposal permits for the placement of anti-skid/deicing materials on the roads), EPA is effectively prohibiting uses of HTMR slags as anti-skid/deicing materials. As noted earlier, EPA plans to propose a regulatory determination on the remaining uses of HTMR slags in the near future, and may also examine possible risk-based standards for these non-encapsulated uses.

V. Effective Date

This final rule is effective February 24, 1995. (See RCRA section 3010(a)). The Agency believes that this will provide sufficient time for affected parties to come into compliance.

VI. State Authority83A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorization

EPA views this final rule as a HSWA regulation. The rule can be viewed as part of the process of establishing land disposal prohibitions and treatment standards for K061, K062, and F006 hazardous wastes. (See 56 *FR* 41175; August 19, 1991.) The ultimate goal of the land disposal prohibition provisions is to establish standards, "if any", which minimize short-term and long-term threats to human health and the environment posed by hazardous waste land disposal. (See RCRA section 3004(m)(l).) In this case, the Agency is uncertain what level of treatment would assure that these threats are minimized when HTMR slag is used for anti-skid/deicing purposes, and consequently is effectively prohibiting this use. (See 57 *FR* at 37237, August 18, 1992, interpreting "if any" clause in section 3004(m)(l)). Thus, as noted above, EPA will implement this rule in authorized States until their programs are modified to adopt the new prohibition and the modification is approved by EPA.

This final rule will result in more stringent Federal standards. Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

States with authorized RCRA programs may already have requirements similar to those in this final rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

VII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (see 58 *FR* 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an Agency is required to issue a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

As noted in the proposal, this amendment will not have any significant impact on any small entities, since the regulated community will continue to have other readily available options for using and managing HTMR slags and small users will have readily available substitutes. This conclusion is supported by the economic analysis performed by the Agency in response to comments. The Agency estimated that the increase in annual cost for a small user as a result of this amendment would range between $8,325 to $15,300. (See the Response to Comments Document contained in the public docket for this rule for details of Agency's economic analysis.) Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a formal regulatory flexibility analysis.

C. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Parts 266 and 268

Environmental protection, Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: August 9, 1994.

Carol M. Browner,

Administrator.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

2. Section 266.20 is amended by adding a new paragraph (c) to read as follows:

§ 266.20 Applicability.

* * * * *

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation.

PART 268—LAND DISPOSAL RESTRICTIONS

3. The authority citation for Part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

4. Table CCWE in § 268.41(a) is amended by redesignating footnote 2 as footnote 3 at the end of the table and in the text at waste code FO2O–FO23, and by adding a new footnote 2 at the end of the table and in the last column in the table, "Nonwastewaters/Notes", for waste codes F006, K061, and K062 to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

[2] See also restrictions on use of slags for anti-skid/deicing purposes in § 266.20(c).

[FR Doc. 94–20808 Filed 8–23–94; 8:45 am]
BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–8

[FTR Amendment 38]

RIN 3090–AF54

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses in Special or Unusual Circumstances

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule removes the October 1, 1994 expiration date applicable to authority of the Administrator of General Services to establish, at the request of the head of an agency, a higher maximum daily rate for subsistence expenses not to exceed 300 percent of the maximum per diem rate prescribed in the Federal Travel Regulation (FTR) (41 CFR chapters 301–304) for official travel to an area within the continental United States (CONUS) where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. This action will permit the Administrator of General Services to continue to consider agency requests for a higher actual subsistence expense reimbursement rate for a CONUS location where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.

EFFECTIVE DATE: This final rule is effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Larry A. Tucker, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) issued FTR Amendment 7 (55 FR 2379, Jan. 24, 1990) to accommodate requests from the Federal Emergency Management Agency for establishment of a higher maximum daily rate for reimbursement of actual subsistence expenses in a Presidentially declared disaster area. This change was prompted by the devastation Hurricane Hugo inflicted upon a broad area surrounding Charleston, SC in September 1989, resulting in a severe shortage of affordable lodging for Federal emergency personnel performing temporary duty there. GSA expanded the authority in FTR Amendment 19 (56 FR 37478, Aug. 7, 1991) to accommodate requests from an agency head for establishment of a higher actual subsistence expense reimbursement rate for a location within the continental United States where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 301–8

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–8 is amended to read as follows:

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

1. The authority citation for part 301–8 continues to read as follows:

Authority: U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 301–8.3 is amended by revising paragraph (c) to read as follows:

§ 301–8.3 Maximum daily rates and reimbursement limitations.

* * * * *

(c) *Travel to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period*—(1) *Authority to establish a higher actual subsistence expense reimbursement rate.* The Administrator of General Services may establish an appropriate maximum daily rate for reimbursement of actual subsistence expenses not to exceed 300 percent of the maximum per diem rate prescribed in § 301–7.3(a) of this chapter when the following conditions are met:

(i) Travel is to an area within CONUS where special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period;

(ii) The head of an agency submits a request, as specified in paragraph (c)(3) of this section, for establishment of a maximum daily rate above the maximum rate prescribed in paragraph (a) of this section; and

(iii) The justification supporting the request warrants establishment of a higher rate.

(2) *Application and limitations.* Such higher established rate shall apply for all official travel to the area, and will be effective for a period not to exceed 30 days. When the Administrator establishes a higher actual subsistence expense rate, the limitation in paragraph (b)(1) of this section shall not apply.

(3) *Rate requests.* A request for a higher actual subsistence expense reimbursement rate, with the exception of a request for travel to a Presidentially declared disaster area, shall be submitted at least 30 days in advance of the beginning of the recommended effective period unless otherwise adequately justified. The request shall be submitted in writing to the Administrator of General Services, Washington, DC 20405, and must contain the following information:

(i) A specification of the geographic area encompassed;

(ii) If the area is a Presidentially declared disaster area, a copy of the Presidential disaster declaration;

(iii) A recommended maximum daily rate not to exceed 300 percent of the maximum per diem rate prescribed for the area under § 301–7.3;

(iv) A description of the specific circumstances which justify the establishment of the recommended rate;

(v) An estimate of the cost impact of establishing a maximum daily rate for subsistence expenses above the maximum rate prescribed in paragraph (a) of this section; and

(vi) A recommended time period for effectiveness of the maximum daily rate requested to be established under this paragraph.

(4) *Extensions.* The Administrator may extend the period of effectiveness in increments of up to 30 days upon the request of the head of the agency originally requesting establishment of the higher rate.

* * * * *

Dated: August 15, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–20731 Filed 8–23–94; 8:45am]

BILLING CODE 6820–24–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–3; RM–8384]

Radio Broadcasting Services; Silverton, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes vacant and unapplied for Channel 257A at Silverton, Colorado, in response to a petition for rule making filed by Caren Lacy, permittee of Station KWXA (FM), Channel 259C2, Durango, Colorado, to accommodate her application at an electronics site designated by the Forest Service for communications installations. See 59 FR 7237, February 15, 1994. The Notice optionally proposed to allot Channel 224A as a substitute for Channel 257A at Silverton. However, no expressions of interest in retaining a Class A channel were received, and therefore, no substitution is made at that community.

With this action, the proceeding is terminated.

EFFECTIVE DATE: October 3, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–3, adopted Aug. 12, 1994, and released Aug. 19, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 257A at Silverton.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–20702 Filed 8–23–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 940825–4225; I.D. 072094B]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, CA, for the 1994–95 fishing season. These quotas may only be adjusted if inaccurate data were used or if errors were made in the calculations. Comments on these two points are invited. The intended effect of this action is to establish allowable harvest levels of Pacific anchovy.

DATES: Effective on August 1, 1994. Comments will be accepted until September 19, 1994.

ADDRESSES: Submit comments on the final quotas to Rodney McInnis, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Administrative Report LJ–94–17 is available from this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Acting Director of the Southwest Region, NMFS, (Regional Director) has estimated that the 1994–95 spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 126,000 mt, less than 45 percent of the 1993–94 biomass estimate of 282,000 mt. The biomass estimate is derived from a stock assessment model using spawning biomass estimated by five indices of abundance. Documentation of the spawning biomass is contained in Administrative Report LJ-94-17, published by the Southwest Fisheries Science Center, NMFS (see **ADDRESSES**). This report and the determination of harvest quotas were provided to the Pacific Fishery Management Council (Council).

The Regional Director has made the following determinations for the 1994–95 fishing season by applying the formulas in the Northern Anchovy Fishery Management Plan (FMP) and in 50 CFR 662.20.

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The total U.S. harvest quota is equivalent to 70 percent of the overall optimum yield (OY) (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum annual level of reduction plus non-

reduction processing during any one of the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is 474 mt. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), minus the amount of the expected harvest in the Mexican fishery zone that is in excess of the amount recognized as Mexico's share under the FMP formula. The expected 1994–95 harvest in the Mexican fishery zone is 2,324 mt, which would be the largest Mexican harvest in the past 3 years. The amount recognized as Mexico's share under the FMP formula is 30 percent of the OY, which is 2,100 mt in 1994–95. Therefore, 224 mt must be subtracted from the difference between the U.S. OY and the estimated DAH.

TALFF = 4,900 - 4,202 - (2,324 - 2,100) = 474 mt.

The U.S. vessel operators are interested in having a small reduction fishery even in years when the biomass is below 300,000 mt. The FMP makes separate allocations to U.S. reduction and nonreduction fisheries and does not provide for a transfer between categories. The Council has been advised that if it intends for a small reduction quota to be allocated in years when the biomass is below 300,000 mt, the FMP must be amended. Without such an amendment, under this year's OY setting a TALFF is required by the FMP. In fact, NMFS expects no applications from foreign nations for this TALFF. Furthermore, Section 201 of the Magnuson Act would prevent the allocation of this TALFF if a foreign nation did apply.

These are the final northern anchovy quotas for the 1994–95 fishing season and will remain as such unless the Regional Director determines that a change in harvest quota is justified because inaccurate data were used or calculation errors were made. If changes are necessary, NMFS will publish a notice in the **Federal Register** notifying the public of the change and the reasons therefor.

Classification

This action is authorized by 50 CFR part 662 and is exempt from OMB review under E.O. 12866.

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

Dated: August 18, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–20816 Filed 8–19–94; 2:07 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 081994A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition.

SUMMARY: NMFS is prohibiting fishing with trawl gear in the salmon savings area in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1994 limit of non-chinook salmon caught by vessels using trawl gear in the catcher vessel operational area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 20, 1994, until 12 noon, A.l.t., November 12, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.22(h), that vessels using trawl gear in the catcher vessel operational area (which is defined at § 675.22(g)) have caught 42,000 non-chinook salmon. Therefore, NMFS is prohibiting fishing with trawl gear in the area defined by straight lines connecting the following coordinates in the order listed:

56°00′N., 167°00′W.;
56°00′N., 165°00′W.;
55°30′N., 165°00′W.;
55°30′N., 164°00′W.;
55°00′N., 164°00′W.;
55°00′N., 167°00′W.;
56°00′N., 167°00′W.

from 12 noon, A.l.t., August 20, 1994, until 12 noon, A.l.t., November 12, 1994.

Classification

This action is taken under § 675.22 and is exempt from OMB review under E.O. 12866.

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

Dated: August 19, 1994

David S. Crestin,

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

[FR Doc. 94–20819 Filed 8–19–94; 2:52 pm]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 940546–4219; I.D. 060994B]

RIN 0648–AD19

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 30 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 34 to the FMP for Groundfish of the Gulf of Alaska (GOA), and to implement regulatory amendments affecting the Pacific halibut and sablefish fisheries in and off of the State of Alaska (Alaska or State). This action is necessary to raise the sablefish community development quota (CDQ) allocation limit for qualified applicants from 12 percent to 33 percent in order to allow total allocation of the sablefish CDQ reserve, and to expand the types of evidence that may be used to verify vessel leases for the Pacific halibut and sablefish individual fishing quota (IFQ) program.

EFFECTIVE DATE: September 23, 1994.

ADDRESSES: Copies of Amendments 30 and 34 to the FMPs and the Regulatory Impact Review may be obtained from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The Pacific halibut and sablefish CDQ program was designed to promote the revitalization of rural communities in Western Alaska by providing those communities access to nearby fishery resources. The program was developed

under the authority of, and is consistent with, the management objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act. This action implements Amendment 30 to the FMP for the BSAI, raising the sablefish CDQ allocation limit for a qualified applicant from 12 percent to 33 percent. Amendment 34 to the FMP for the GOA corrects the inadvertent inclusion of the CDQ program in that FMP by removing and reserving section 4.4.1.1.8.

This action will not change the amount of sablefish available for harvest by persons participating in the Pacific halibut and sablefish IFQ program. The sablefish CDQ reserve, 20 percent of the annual fixed-gear total allowable catch of sablefish for each management area in the BSAI, will be the same amount under this action as it was under the previous management program.

Inclusion of IPHC Area 4A as a Compensating Non-CDQ Area

Title 50 CFR 676.24(i)(1) has been amended to include regulatory area 4A, because no halibut quota from area 4A is being made available to the halibut CDQ program.

Vessel Lease Verification

Title 50 CFR 676.20(a)(1)(iii) has been amended to expand the types of evidence that can be submitted to verify a vessel lease. This implements the Council's intent to open the appeals process to persons who claim they had a lease, but who are unable to produce the specific evidence required under the previous regulatory language.

Further information on any of the aforementioned topics can be obtained from the preamble to the proposed rule published on May 31, 1994 (59 FR 28048).

Response to Comments

Six comments were received on Amendments 30 and 34. Five were from Federal agencies, and merely stated that the action was reviewed and no comments were forthcoming. The sixth comment was in support of raising the sablefish CDQ allocation from 12 to 33 percent because it would allow the entire amount of the CDQ sablefish reserve to be allocated.

The FMP amendatory language and implementing regulatory language of this action are identical to that in the proposed rule published on May 31, 1994 (59 FR 28048).

Classification

The Deputy General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant impact on a substantial number of small entities.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: August 18, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.20(a)(1)(iii) is revised to read as follows:

§ 676.20 Individual allocations.

* * * * *

(a) * * *

(1) * * *

(iii) Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

* * * * *

3. Section 676.24 is amended by revising paragraphs (b), (e)(1) and (i)(1) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(b) *Sablefish CDQ Program.* In the proposed and final harvest limit specifications required under § 675.20(a) of this chapter, NMFS will specify 20 percent of the fixed gear allocations of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. NMFS will allocate no more than 33 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

* * * * *

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the CDQ applicant eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary will then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary will notify the Governor and the Council in writing, including the Secretary's reasons for approval. The decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP and the availability of the findings, will be published in the **Federal Register**. NMFS will allocate no more than 33 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A CDQ applicant may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per CDQ applicant will be accepted.

* * * * *

(i) *Compensation for CDQ allocations.* (1) The Regional Director will compensate persons who receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation of halibut QS from areas 2C, 3A, 3B, and 4A will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

* * * * *

[FR Doc. 94-20820 Filed 8-23-94; 8:45 am]

BILLING CODE 3510-22-W

Proposed Rules

Federal Register
Vol. 59, No. 163
Wednesday, August 24, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 792

Commodity Credit Corporation

7 CFR Part 1403

RIN 0560–AD78

Debt Settlement Policies and Procedures

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Commodity Credit Corporation's (CCC's) debt settlement policies and procedures to remove references to Internal Revenue Service Notices of Levy, except to exempt them from coverage, and to revise the rate of interest to be charged on delinquent debts. This proposed rule would also amend the Agricultural Stabilization and Conservation Service's (ASCS') and CCC's debt settlement policies and procedures to provide for offset of a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly. This regulation is necessary to protect the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

DATES: Comments must be received by September 23, 1994 in order to be assured of consideration.

ADDRESSES: Comments concerning this proposed rule should be addressed to Director, Financial Management Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415. All comments submitted in response to this proposed rule will be available for public inspection in room 1206, Park Office Center, 3101 Park Center Drive, Alexandria, VA, between 8:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Debt Management and Contract Procedures Branch, Financial Management Division, ASCS, at 703–305–1424.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed in conformance with Executive Order 12866 and has been determined to be a significant regulatory action.

Paperwork Reduction Act

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities.

Regulatory Flexibility Act

Neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. It is not retroactive and preempts State and local laws. Before any judicial action may be brought regarding the provisions of this rule, administrative appeal remedies set forth at 7 CFR parts 24 and 780 must be exhausted.

Executive Order 12372

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Background

The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, et seq.), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have the authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act of 1966 or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each Federal agency to take aggressive action to collect debts owed it.

Discussion of Proposed Rule

1. Impact of Interest Rate Change on ASCS and CCC and Affected Private Interests

This rule would amend 7 CFR part 1403 to change the rate of interest which CCC charges on its delinquent debts from a rate equal to that assessed under the Prompt Payment Act, to a rate equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act. CCC currently charges interest on delinquent debts at a rate equal to that charged under the Prompt Payment Act. That rate was chosen because it was generally a higher rate than the current value of funds rate required under the Debt Collection Act, and would ensure that CCC, at a minimum, would always recoup the cost of CCC borrowing. It was also believed to be equitable since it is the same rate which CCC is required to pay when its payments are late. This proposed rule would amend the rate which CCC charges on delinquent debts to the higher of the Treasury Department's current value of funds rate or the rate assessed under the Prompt Payment Act. Concerning the difference in interest rates, over the past 10 years the current value of funds rate was higher than the Prompt Payment Act rate for only one 6-month period. The economic effect of this proposed rate change is likely to be minimal. This change, however, would allow the late

payment interest rate assessed by CCC to conform to the late payment interest rate assessed by ASCS, as well as, conforming to the rate required by the Federal Claims Collection Act of 1966, as amended. As both CCC and ASCS programs are administered by the same offices, administrative costs should be reduced by having the same interest rates apply to both programs.

2. References to IRS Notices of Levy

This rule would also amend 7 CFR part 1403 regarding references to Internal Revenue Service (IRS) Notices of Levy. It was the past policy of CCC to treat IRS Notices of Levy the same as requests for administrative offset from other Federal agencies. This was agreed to in 1970 by CCC and IRS, and was documented in former regulations dealing with offset at 7 CFR part 13. However, due to a change in policy by IRS, changes in our previous regulations, certain court decisions, and advice from the Office of the General Counsel, it has been determined that IRS Notices of Levy can no longer be treated as offset requests, but should be honored only as required by statute, including taking priority over assignments of ASCS and CCC payments. Therefore, this proposed rule would amend the CCC debt settlement regulations to remove all references to IRS Notices of Levy, except to specifically exempt them from coverage in 7 CFR 1403.7. This change should create little cost or benefit to CCC.

3. Expanded Offset

Finally, this rule would amend 7 CFR parts 792 and 1403 to provide for an expanded ability to offset payments from debtors to collect delinquent debt. During 1993, ASCS and CCC collected approximately $76 million, of which $32 million or 42 percent of the total was through administrative offset. As such, it is the most effective debt collection tool. However, in the past debtors have avoided offset of their program payments by reorganizing their farming operations, changing the name of their operations, transferring ownership of their operations, receiving payments under more than one entity, or by changing the payee in some other manner. In order to increase ASCS' and CCC's ability to collect delinquent debts, without adversely affecting other non-debtors, the regulations would be amended to provide for offset of a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly.

This rule would also provide for offset when ASCS or CCC determines that a debtor has established an entity, or transferred ownership of, reorganized, or changed in some other manner, his or her operations in order to avoid a debt. By allowing for this expanded ability to offset, ASCS and CCC should substantially increase their ability to collect delinquent debt in an efficient and effective manner. This would also help ensure that those owing delinquent debts are not continuing to receive government payments, without first satisfying their debts. While it is not feasible to estimate the exact amount by which ASCS and CCC collections would be increased, it is likely that these circumstances arise most often with debtors who have debts of $50,000 or more. Therefore, increased collections could be sizeable in relation to past collections. There should be no cost to the government created by this proposed change.

This regulation is necessary to protect the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

List of Subjects

7 CFR Part 792

Claims, Income taxes.

7 CFR Part 1403

Claims, Income taxes, Loan programs-agriculture.

Accordingly, 7 CFR parts 792 and 1403 are amended as follows:

PART 792—DEBT SETTLEMENT POLICIES AND PROCEDURES

1. The authority citation for 7 CFR part 792 continues to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR Parts 101–105; 7 CFR 3.21(b).

2. Section 792.7(l) is revised to read as follows:

§ 792.7 Collection by administrative offset.

* * * * *

(l) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by ASCS.

(2) When ASCS determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

* * * * *

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

3. The authority citation for 7 CFR part 1403 continues to read as follows:

Authority: 7 U.S.C. 1445b–2(b); 15 U.S.C. 714b and 714c.

4. Section 1403.7 is amended by:

A. Removing the word "and" at the end of paragraph (a)(3),

B. Removing the period at the end of paragraph (a)(4) and inserting a semicolon in its place and adding the word "and",

C. Adding paragraph (a)(5),

D. Removing paragraph (m)(4),

E. Redesignating paragraphs (m)(5) and (m)(6) as paragraphs (m)(4) and (m)(5), respectively, and

F. Revising paragraph (q) to read as follows:

§ 1403.7 Collection by administrative offset.

(a) * * *

(5) IRS Notices of Levy which shall be honored in accordance with IRS statutes and regulations.

* * * * *

(q) Any action authorized by the provisions of this section may be taken:

(1) Against a debtor's pro rata share of payments due any entity which the debtor participates in, either directly or indirectly, as determined by CCC.

(2) When CCC determines that the debtor has established an entity, or reorganized, transferred ownership of, or changed in some other manner, their operation, for the purpose of avoiding the payment of the claim or debt.

* * * * *

5. Section 1403.9(c) is revised to read as follows:

§ 1403.9 Late payment interest and administrative charges.

* * * * *

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section. The rate of interest assessed under the Prompt Payment Act was chosen as an alternative rate to ensure that the Government would recoup interest at a rate which was at least as high as that which it pays for late payments.

* * * * *

Signed at Washington, DC, on August 11, 1994.

Bruce R. Weber,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–20780 Filed 8–23–94; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–006–2]

Importation of Certain Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal and reproposal.

SUMMARY: We are proposing to amend the animal importation regulations to require that certain spayed heifers imported into the United States from Mexico be marked with a permanent, legible "M_X" on the right hip. We are also proposing to require that certain steers imported into the United States from Mexico be marked with a permanent, legible "M" on the right hip, rather than on the jaw, as is currently required. These proposals replace a previously published proposed rule, which we are withdrawing as part of this document, that would have required certain spayed heifers and intact cattle to be branded with an "M" on the jaw with a hot iron. The proposed marking requirements are necessary to ensure that all steers and spayed heifers imported into the United States from Mexico, except those imported directly to slaughter or in-bond for feeding and return to Mexico, are clearly identifiable as being of Mexican origin. The proposed marking requirements would facilitate the disease surveillance and traceback activities conducted in the United States under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Consideration will be given only to comments received on or before October 24, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–006–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 92 (§§ 92.400 through 92.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

One of the diseases addressed by the regulations is bovine tuberculosis (referred to below as tuberculosis). Tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis in animals causes weight loss, general debilitation, and sometimes death.

Each year, approximately 1 million cattle are imported into the United States from Mexico. The vast majority of those cattle—about 99 percent—are young steers; the remaining 1 percent consists of spayed heifers and intact cattle (i.e., calves, bulls, and unspayed females). The steers and spayed heifers are, with few exceptions, consigned to pastures or feedlots for finish feeding prior to slaughter. Most intact cattle are integrated into herds in the United States for breeding purposes.

The period between 1982 and 1992 saw a significant increase in the number of Mexican-origin cattle found at slaughter in the United States to be infected with tuberculosis. In 1982, 78 samples submitted from slaughtered Mexican-origin cattle showed evidence of tuberculosis; that number rose to 613 in 1992. In 1982, 33 percent of the tuberculosis investigations at slaughter involved Mexican origin cattle; in 1992, that number rose to 81 percent.

That increase in the incidence of tuberculosis in Mexican-origin cattle led the Animal and Plant Health Inspection Service (APHIS) to publish in the **Federal Register** on November 12, 1993 (58 FR 59963–59965, Docket No. 93–006–1), a proposed rule to amend the regulations to require that spayed heifers and intact cattle (i.e., calves, bulls, and unspayed female cattle) imported into the United States from Mexico be branded with an "M" on the jaw using a hot iron, which is the same requirement that currently applies to most steers imported from Mexico. The proposal was based on APHIS' belief that M-branding on the jaw, which provides a distinct and permanent means of identifying an animal as having originated in Mexico, should be required for spayed heifers and intact cattle in order to facilitate the disease surveillance and traceback activities conducted in the United States under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

We solicited comments concerning our proposal for a 60-day comment period ending January 11, 1994. We received 29 comments by that date. They were from a cattle industry association, private citizens, a Federal veterinarian, humane groups, a farm bureau federation, State departments of agriculture, and a veterinary medical association. Eight of the commenters supported the proposed rule as a means of identifying Mexican-origin spayed heifers and intact cattle. The remaining 21 commenters opposed the proposal on the grounds that face branding was unnecessary and that alternative means of identifying cattle from Mexico were available.

APHIS seriously considered all of the comments received. Based on the comments of those who opposed the proposal, and due to increasing public concern that branding on the jaw causes unnecessary distress to cattle, we are withdrawing the November 12, 1993, proposed rule referenced above and are replacing it with an alternative proposal. The alternative proposal is explained below.

New Proposal

As stated above, the period between 1982 and 1992 saw a significant increase in the number of Mexican-origin cattle found at slaughter in the United States to be infected with tuberculosis. Although recent collaborative efforts between U.S. and Mexican animal health authorities and trade associations have brought about a reduction in the number of tuberculosis infected Mexican-origin cattle found at slaughter in the United States, APHIS continues to believe that the monitoring of Mexican-origin cattle imported into

the United States is essential to the success of the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

The regulations in § 92.427(c)(2) currently require that all steers imported into the United States from Mexico, except steers imported for immediate slaughter under § 92.429 or in-bond for feeding and return to Mexico under § 92.427(e), be hot-iron branded on the right jaw with an "M" prior to arriving at the U.S. port of entry. We are proposing to amend those regulations in three ways.

First, we are proposing to move the location of the "M" from the right jaw to the right hip, high on the tailhead (over the fourth to seventh coccygeal vertebrae). The tailhead is currently approved for the placement of "S" brands under the brucellosis regulations in 9 CFR part 78. In that location, the "M" would still be predictably located and readily visible to animal health personnel.

Second, we are proposing to remove the requirement that the "M" be applied with a hot iron. The size of the mark would remain the same as in the current regulations (that is, not less than 2 inches nor more than 3 inches high), but instead of requiring that the mark be applied with a hot iron, we would simply require that the mark be distinct, permanent, and legible. This means that freeze branding could be used as an alternative to a hot-iron brand. Additionally, if another method should be developed that meets the proposed criteria for distinctness, permanence, and legibility, APHIS would allow the use of that method. At present, however, freeze-branding and hot-iron branding are the only methods of which APHIS is aware that are capable of fulfilling those criteria.

We are proposing to allow the use of freeze branding, which is not currently an option for Mexican-origin cattle, because other factors would mitigate the primary limitations associated with freeze branding.

One limitation of freeze branding is that the brand takes a minimum of 18 to 21 days to become visible. However, cattle offered for entry into the United States from Mexico are most often M-branded at the time they are tested for tuberculosis, which is no more than 60 days prior to their arrival at the port of entry. An exporter, therefore, would be able to freeze-brand the cattle far enough in advance of offering them for entry into the United States for the freeze brand to become visible.

Another limitation of freeze branding is that the brand does not show up well on white hair. Because many cattle have white hair on their jaws, APHIS believes that freeze branding would produce an unacceptably high number of unreadable brands if used to brand cattle on the jaw. However, we believe that freeze branding would be a viable alternative for marking cattle on the right hip—the location proposed in this document—because significantly fewer cattle have white hair at that location.

The third proposed change would be to require that spayed heifers also be marked as being of Mexican origin. The regulations do not currently require that spayed heifers imported into the United States from Mexico be branded, but spayed heifers are increasingly being imported into the United States from Mexico with steers as feeder cattle and are taken to feedlots or pastures for finish feeding prior to slaughter. Such spayed heifers are commingled with steers, and are moved and handled in the same manner as the steers. Because no differentiation is made between steers and spayed heifers in such situations, we believe that it is necessary for the spayed heifers, like the steers, to be marked as being of Mexican origin.

Our proposed marking requirements for spayed heifers are essentially the same as those proposed for steers, differing only in that the mark would be an "M_X" rather than an "M." With the "tail," the mark would serve not only to identify the animal as being of Mexican origin, but would also indicate that the animal had been spayed. Additionally, the different mark would provide a means of distinguishing between spayed heifers and steers when the two are mixed together in close quarters, such as in a chute.

One aspect of the withdrawn November 12, 1993, proposed rule discussed above was a proposal to require the branding of intact cattle (calves, bulls, and unspayed female cattle). In the withdrawn proposal, we stated that we believed that intact cattle imported from Mexico should be permanently identified as being of Mexican origin because the amount of time such cattle spend in the United States—more than 2 years, on average—increased the chances that other means of identification such as eartags could be lost or removed.

In preparing this document, however, we revisited that aspect of the previous proposal and decided not to include any proposed marking requirements for intact cattle from Mexico in this reproposal. Several considerations led us to that decision.

Substantially fewer intact cattle are imported into the United States from Mexico in an average year than steers and spayed heifers (fewer than 1,000 intact cattle as opposed to nearly 1 million steers and spayed heifers). The intact cattle are imported in smaller lots than the usual 100-animal lots in which steers and spayed heifers are imported, and the lots of intact cattle are kept segregated from the lots of steers and spayed heifers during movement and holding. Also, while Mexican-origin steers and spayed heifers may travel to several feedlots or pastures during the time they are in the United States, intact cattle typically are promptly sold and moved to the new owner's ranch or farm. Further, the interstate movement of intact cattle is regulated under the brucellosis regulations in 9 CFR part 78, while steers and spayed heifers are exempt from those regulations. The brucellosis regulations require, with certain limited exceptions, that a permit or certificate be issued by APHIS prior to the movement of cattle covered by the regulations, and the individual eartag or other identification number of each animal moved must be included on the certificate or permit. All these factors make it significantly easier for APHIS to trace the movement of Mexican-origin intact cattle following their entry into the United States and make it more likely that the owners of Mexican-origin intact cattle will take steps to ensure that each animal's eartag or other identification device is not lost or removed. Therefore, we do not believe it is necessary to include any proposed marking requirements for intact cattle from Mexico in this reproposal.

We believe that the provisions of this proposed rule would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program while substantively addressing the concerns of those who commented on our prior proposal.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $350, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were

imported into the United States from Mexico.

We are proposing to amend the animal importation regulations to require that certain spayed heifers imported into the United States from Mexico be marked with a permanent, legible "M_X" on the right hip. We are also proposing to require that certain steers imported into the United States from Mexico be marked with a permanent, legible "M" on the right hip, rather than on the jaw, as is currently required.

Three primary considerations lead APHIS to expect that the proposed marking requirements would not have an economic impact on any U.S. entities, large or small. First, all steers imported into the United States from Mexico, except those steers imported for immediate slaughter or in-bond for feeding and return to Mexico, are already required to be identified with an M-brand. For these steers, which represent 99 percent of the cattle imported into the United States from Mexico, only the location of the "M" will change.

The second consideration follows from the first: That is, although there are currently no provisions in the regulations that require spayed heifers to be permanently identified as being of Mexican origin, spayed heifers represent less than 1 percent of the cattle imported into the United States from Mexico. Thus, requiring certain spayed heifers to be marked with an "M_X" prior to arriving at the U.S. port of entry would have an insignificant effect on exporters or importers of spayed heifers from Mexico.

The third consideration is that the cost of marking the cattle, which is negligible, would be borne by the Mexican exporter of the cattle.

Therefore, we expect this proposed rule to have no significant economic impact on any large or small entities because its provisions would not significantly increase or decrease their cost of doing business.

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

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

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

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

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

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

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

2. In § 92.427, paragraph (c)(2) would be revised as set forth below.

§ 92.427 Cattle from Mexico.

* * * * *

(c) * * *

(2) Each steer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M" mark prior to arrival at a port of entry, unless the steer is imported for slaughter in accordance with § 92.429 or in bond for temporary entry in accordance with § 92.427(e). Each spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M_X" mark prior to arrival at a port of entry, unless the spayed heifer is imported for slaughter in accordance with § 92.429 or in bond for temporary entry in accordance with § 92.427(e). The "M" or "M_X" mark shall be not less than 2 inches nor more than 3 inches high, and shall be applied to each animal's right hip, high on the tailhead (over the fourth to the seventh coccygeal vertebrae).

* * * * *

Done in Washington, DC, this 17th day of August 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–20639 Filed 8–23–94; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0845]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its risk-based capital guidelines for state member banks and bank holding companies. The proposal would revise and expand the set of conversion factors used to calculate the potential future exposure of derivative contracts and recognize effects of netting arrangements in the calculation of potential future exposure for derivative contracts subject to qualifying bilateral netting arrangements.

The Board is proposing these amendments on the basis of proposed revisions to the Basle Accord announced on July 15, 1994. The effect of the proposed amendments would be twofold. First, long-dated interest rate and exchange rate contracts would be subject to new higher conversion factors and new conversion factors would be set forth that specifically apply to derivative contracts related to equities, precious metals, and other commodities. Second, institutions would be permitted to recognize a reduction in potential future exposure for transactions subject to qualifying bilateral netting arrangements.

DATES: Comments must be received on or before October 21, 1994.

ADDRESSES: Comments should refer to docket No. R-0845 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Roger Cole, Deputy Associate Director (202/452-2618), Norah Barger, Manager (202/452-2402), Robert Motyka, Supervisory Financial Analyst (202/452-3621), Barbara Bouchard, Senior Financial Analyst (202/452-3072),

Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452-3198), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Background

The international risk-based capital standards (the Basle Accord) [1] set forth a framework for measuring capital adequacy under which risk-weighted assets are calculated by assigning assets and off-balance-sheet items to broad categories based primarily on their credit risk, that is, the risk that a loss will be incurred due to an obligor or counterparty default on a transaction.[2] Off-balance-sheet transactions are incorporated into risk-weighted assets by converting each item into a credit equivalent amount which is then assigned to the appropriate credit risk category according to the identity of the obligor or counterparty, or if relevant, the guarantor or the nature of the collateral.

The credit equivalent amount of an interest rate or exchange rate contract (rate contract) is determined by adding together the current replacement cost (current exposure) and an estimate of the possible increases in future replacement cost, in view of the volatility of the current exposure over the remaining life of the contract (potential future exposure, also referred to as the add-on). Each credit equivalent amount is then assigned to the appropriate risk category generally based on the identity of the counterparty. The maximum risk weight applied to interest rate or exchange rate contracts is 50 percent.[3]

A. Current Exposure

A banking organization that has a rate contract with a positive mark-to-market value has a current exposure to a possible loss equal to the mark-to-market value.[4] For risk-based capital purposes, if the mark-to-market value is zero or negative, then there is no replacement cost associated with the contract and the current exposure is zero. The sum of current exposures for a defined set of contracts is sometimes referred to as the gross current exposure for that set of contracts.

The Basle Accord, as endorsed in 1988, provided that current exposure would be determined individually for every rate contract entered into by a banking organization. Generally, institutions were not permitted to offset, that is, net, positive and negative mark-to-market values of multiple rate contracts with a single counterparty to determine one current exposure relative to that counterparty.[5] In April 1993 the Basle Supervisors' Committee (BSC) proposed a revision to the Basle Accord, endorsed by the G-10 Governors in July 1994, that permits institutions to net positive and negative mark-to-market values of rate contracts subject to a qualifying, legally enforceable, bilateral netting arrangement. Under the revision to the Accord, institutions with qualifying netting arrangements could replace the gross current exposure of a set of contracts included in such an arrangement with a single net current exposure for purposes of calculating the credit equivalent amount for the included contracts. If the net market value is positive, then that market value equals the current exposure for the netting contract. If the net market value is zero or negative, then the current exposure is zero.

On May 20, 1994, the Board and the Office of the Comptroller of the Currency (OCC) issued a joint proposal to amend their respective risk-based capital guidelines in accordance with the BSC April 1993 proposal.[6] Generally, under the proposal, a bilateral netting arrangement would be recognized for risk-based capital purposes only if the netting arrangement is legally enforceable. The institution would have to have a legal opinion(s) to this effect. The joint Federal Reserve/OCC proposal is consistent with the final July 1994 change to the Basle Accord. (A detailed discussion of the BSC proposal and the Board/OCC proposed amendment to their risk-based capital guidelines can be found at 59 FR 26456, May 20, 1994.)

B. Potential Future Exposure

The second part of the credit equivalent amount, potential future exposure, is an estimate of the additional exposure that may arise over the remaining life of the contract as a result of fluctuations in prices or rates. Such changes may increase the market value of the contract in the future and, therefore, increase the cost of replacing it if the counterparty subsequently defaults.

The add-on for potential future exposure is estimated by multiplying the notional principal amount [7] of the underlying contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of contract. The existing set of conversion factors used to calculate potential future exposure, referred to as the add-on matrix, is as follows:

Remaining maturity	Interest rate contracts (in percent)	Exchange rate contracts (in percent)
One year or less	0	1.0
Over one year	0.5	5.0

The conversion factors were determined through simulation studies that estimated the potential volatility of interest and exchange rates and analyzed the implications of movements in those rates for the replacement costs of various types of interest rate and exchange rate contracts. The simulation studies were conducted only on interest rate and foreign exchange rate contracts, because at the time the Accord was being developed activity in the derivatives market was for the most part limited to these types of transactions. The analysis produced probability distributions of potential replacement costs over the remaining life of matched pairs of rate contracts.[8] Potential future

[1] The Basle Accord was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee, BSC) and endorsed by the central bank governors of the Group of Ten (G-10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg. In January 1989 the Federal Reserve Board adopted a similar framework to be used by state member banks and bank holding companies.

[2] Other types of risks, such as market risks, generally are not addressed by the risk-based framework.

[3] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based capital ratio calculations.

[4] The loss to a banking organization from a counterparty's default on a rate contract is the cost of replacing the cash flows specified by the contract. The mark-to-market value is the present value of the net cash flows specified by the contract, calculated on the basis of current market interest and exchange rates.

[5] Netting by novation, however, was recognized. Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract, for the single net amount, is legally substituted for the amalgamated gross obligations.

[6] The Office of Thrift Supervision issued a similar netting proposal on June 14, 1994 and the Federal Deposit Insurance Corporation issued its netting proposal on July 25, 1994.

[7] The notional principal amount, or value, is a reference amount of money used to calculate payment streams between the counterparties. Principal amounts generally are not exchanged in single-currency interest rate swaps, but generally are exchanged in foreign exchange contacts (including cross-currency interest rate swaps).

[8] A matched pair is a pair of contracts with identical terms, with the banking organization the

Continued

exposure was then defined in terms of confidence limits for these distributions. The conversion factors were intended to be a compromise between precision, on the one hand, and complexity and burden, on the other.[9]

The add-on for potential future exposure is calculated for all contracts, regardless of whether the market value is zero, positive, or negative, or whether the current exposure is calculated on a gross or net basis. The add-on will always be either a positive number or zero. The recent revision to the Basle Accord to recognize netting for the calculation of current exposure does not affect the calculation of potential future exposure, which generally continues to be calculated on a gross basis. This means that an add-on for potential future exposure is calculated separately for each individual contract subject to the netting arrangement and then these individual future exposures are added together to arrive at a gross add-on for potential future exposure. For contracts subject to a qualifying bilateral netting arrangement in accordance with the newly adopted Accord changes, the gross add-on for potential future exposure would be added to the net current exposure to arrive at one credit equivalent amount for the contracts subject to the netting arrangement.

The original Basle Accord noted that the credit conversion factors in the add-on matrix were provisional and would be subject to revision if volatility levels or market conditions changed.

II. Basle Proposals for the Treatment of Potential Future Exposure

Since the original Accord was adopted, the derivatives market has grown and broadened. The use of certain types of derivative instruments not specifically addressed in the Accord—notably commodity, precious metals, and equity-linked transactions [10]—has become much more widespread. As a result of continued review of the method for calculating the add-on for potential future exposure, in July 1994 the BSC issued two proposals for public consultation.[11] The first proposal would expand the matrix of add-on factors used to calculate potential future exposure to take into account innovations in the derivatives market. The second proposal would recognize reductions in the potential future exposure of derivative contracts that result from entering into bilateral netting arrangements. The second proposal is an extension of the recent revision to the Accord recognizing bilateral netting arrangements for purposes of calculating current exposure and would formally extend the recognition of netting arrangements to equity, precious metals and other commodity derivative contracts. The consultation period for these BSC proposals is scheduled to end on October 10, 1994.

A. Expansion of Add-on Matrix

A recently concluded BSC review of the add-on for potential future exposure indicated that the current add-on factors used to calculate the add-on amount may produce insufficient capital for certain types of derivative instruments, in particular, long-dated interest rate contracts, commodity contracts, and equity-index contracts. The BSC review indicated that the current add-on factors do not adequately address the full range of contract structures and the timing of cash flows. The review also showed that the conversion factors many institutions are using to calculate potential future exposure for commodity, precious metals, and equity contracts could result in insufficient capital coverage in view of the volatility of the indices or prices on the underlying assets from which these contracts derive their value.[12]

The BSC concluded that it was not appropriate to address these problems with a significant departure from the existing methodology used in the Accord. The BSC decided that it would be appropriate to preserve the conversion factors existing in the Accord and add new conversion factors. Consequently, the revision proposed by the BSC retains the existing conversion factors for interest and exchange rate contracts but applies new higher conversion factors to such contracts with remaining maturities of five years and over.[13] The proposal also introduces conversion factors specifically applicable to commodity, precious metals, and equity contracts. The new conversion factors were determined on the basis of simulation studies that used the same general approach that generated the original add-on conversion factors.[14]

The proposed matrix is set forth below:

CONVERSION FACTOR MATRIX*

[Amounts in percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity**	Precious metals, except gold	Other commodities
Less than one year	0.0%	1.0%	6.0%	7.0%	12.0%
One to five years	0.5%	5.0%	8.0%	7.0%	12.0%
Five years or more	1.5%	7.5%	10.0%	8.0%	15.0%

*For contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract.
**For contracts that automatically reset to zero value following a payment, the remaining maturity is set equal to the time remaining until the next payment.

buyer of one of the contracts and the seller of the other.

[9] The methodology upon which the statistical analyses were based is described in detail in a technical working paper entitled "Potential Credit Exposure on Interest Rate and Foreign Exchange Rate Related Instruments." This paper is available upon request from the Board's Freedom of Information Office.

[10] In general terms, these are off-balance-sheet transactions that have a return, or a portion of their return, linked to the price of a particular commodity, precious metal, or equity or to an index of commodity, precious metal, or equity prices.

[11] The proposals are contained in a paper from the BSC entitled "The Capital Adequacy Treatment of the Credit Risk Associated with Certain Off-Balance Sheet Items" that is available upon request from the Board's Freedom of Information Office.

[12] While commodity, precious metals, and equity contracts were not explicitly covered by the original Accord, as the use of such contracts became more prevalent, many G-10 banking supervisors, including U.S. banking supervisors, have informally permitted institutions to apply the conversion factors for exchange rate contracts to these types of transactions pending development of a more appropriate treatment.

[13] The conversion factors for rate contracts with remaining maturities of one to five years are currently applied to contracts with a remaining maturity of over one year.

[14] The methodology and results of the statistical analyses are summarized in a paper entitled "The Calculation of Add-Ons for Derivative Contracts: the "Expanded Matrix" Approach" that is available upon request from the Board's Freedom of Information Office.

Gold is included within the foreign exchange column because the price volatility of gold has been found to be comparable to the exchange rate volatility of major currencies. In addition, the BSC determined that gold's role as a financial asset distinguishes it from other precious metals. The proposed matrix is designed to accommodate the different structures of contracts, as well as the observed disparities in the volatilities of the associated indices or prices of the underlying assets.

Two footnotes are attached to the matrix to address two particular contract structures. The first relates to contracts with multiple exchanges of principal. Since the level of potential future exposure rises generally in proportion to the number of remaining exchanges, the conversion factors are to be multiplied by the number of remaining payments (that is, exchanges of principal) in the contract. This treatment is intended to ensure that the full level of potential future exposure is adequately covered. The second footnote applies to equity contracts that automatically reset to zero each time a payment is made. The credit risk associated with these contracts is similar to that of a series of shorter contracts beginning and ending at each reset date. For this type of equity contract the remaining maturity is set equal to the time remaining until the next payment.

While the capital charges resulting from the application of the new proposed conversion factors may not provide complete coverage for risks associated with any single contract, the BSC believes the factors will provide a reasonable level of prudential coverage for derivative contracts on a portfolio basis. Like the original matrix, the proposed expanded matrix is designed to provide a reasonable balance between precision, and complexity and burden.

B. Recognition of the Effects of Netting

The simulation studies used to generate the conversion factors for potential future exposure analyzed the implications of underlying rate and price movements on the current exposure of contracts without taking into account reductions in exposure that could result from legally enforceable netting arrangements. Thus, the conversion factors are most appropriately applied to non-netted contracts, and when applied to legally enforceable netted contracts, they could in some cases, overstate the potential future exposure.

Comments provided during the consultative process of revising the Basle Accord to recognize qualifying bilateral netting arrangements and further research conducted by the BSC, have suggested that netting arrangements can reduce not only a banking organization's current exposure for the transactions subject to the netting arrangement, but also its potential future exposure for those transactions.[15]

As a result, in July 1994 the BSC issued a proposal to incorporate into the calculation of the add-on for potential future exposure a method for recognizing the risk-reducing effects of qualifying netting arrangements. Under the proposal, institutions could recognize these effects only for transactions subject to legally enforceable bilateral netting arrangements that meet the requirements of netting for current exposure as set forth in the recent revision to the Accord.

Depending on market conditions and the characteristics of a banking organization's derivative portfolio, netting arrangements can have substantial effects on the organization's potential future exposure to multiple derivative contracts it has entered into with a single counterparty. Should the counterparty default at some future date, the institution's exposure would be limited to the net amount the counterparty owes on the date of default rather than the gross current exposure of the included contracts. By entering into a netting arrangement a bank may reduce not only its current exposure, but possibly its future exposure as well. Nevertheless, while in many circumstances a netting arrangement can reduce the potential future exposure of a counterparty portfolio, this is not always the case.[16]

The most important factors influencing whether a netting arrangement will have an effect on potential future exposure are the volatilities of the current exposure to the counterparty on both a gross and net basis.[17] The volatilities of net current exposure and gross current exposure of the portfolio may not necessarily be the same. Volatility of gross current exposure is influenced primarily by the fluctuations of the market values of positively valued contracts. Volatility of net current exposure on the other hand, is influenced by the fluctuations of the market values of all contracts within the portfolio. In those cases where net current exposure has a tendency to fluctuate more over time than gross current exposure, a netting arrangement will not reduce the potential future exposure. However, in those situations where net current exposure has a tendency to fluctuate less over time than gross current exposure, a netting arrangement can reduce the potential future exposure.

Net current exposure is likely to be less volatile relative to the volatility of gross current exposure when the portfolio of contracts as a whole is more diverse than the subset of positively valued contracts. When a netting arrangement is applied to a diversified portfolio and the positively valued contracts within the portfolio as a group are less diversified than the overall portfolio, then the effect of the netting arrangement will likely be to reduce the potential future exposure of the portfolio.

The BSC has studied and analyzed several alternatives for taking into account the effects of netting when calculating the capital charge for potential future exposure. In particular, the BSC reviewed one general method proposed by commenters to the April 1993 netting proposal. This method would reduce the amount of the add-on for potential future exposure by multiplying the calculated gross add-on by the ratio of the portfolio's net current exposure to gross current exposure (the net-to-gross ratio or NGR). The NGR is used as a proxy for the risk-reducing effects of the netting arrangement on the potential future exposure. The more diversified the portfolio, the lower the net current exposure tends to be relative to gross current exposure.

The BSC incorporated this method into its proposal. However, given that there are portfolio-specific situations in which the NGR does not provide a good indication of these effects, the BSC proposal gives only partial weight to the effects of the NGR on the add-on for potential future exposure. The proposed method would average the amount of

[15] While current exposure is intended to cover an organization's credit exposure at one point in time, potential future exposure provides an estimate of possible increases in future replacement cost, in view of the volatility of current exposure over the remaining life of the contract. The greater the tendency of the current exposure to fluctuate over time, the greater the add-on for potential future exposure should be to cover possible fluctuations.

[16] For purposes of this discussion, a portfolio refers to a set of contracts with a single counterparty. A banking organization's global portfolio refers to all of the contracts in the institution's total derivatives portfolio that are subject to qualifying netting arrangements.

[17] Volatility in this discussion is the tendency of the market value of a contract to vary or fluctuate over time. A highly volatile portfolio would have a tendency to fluctuate significantly over short periods of time. One of the most important factors influencing a portfolio's volatility is the correlation of the contracts within the portfolio, that is, the degree to which the contracts in the portfolio respond similarly to changing market conditions.

the add-on as currently calculated (A_{gross}) and the same amount multiplied by the NGR to arrive at a reduced add-on (A_{net}) for contracts subject to qualifying netting arrangements in accordance with the requirements set forth in the recently revised Accord. This formula is expressed as:

$A_{net}=.5(A_{gross}+(NGR\times A_{gross}))$.

For example, a bank with a gross current exposure of 500,000, a net current exposure of 300,000, and a gross add-on for potential future exposure of 1,200,000, would have an NGR of .6 (300,000/500,000) and would calculate A_{net} as follows:

$.5(1,200,000+(.6\times 1,200,000))$

$A_{net}=960,000$

For banking organizations with an NGR of 50 percent, the effect of this treatment would be to permit a reduction in the amount of the add-on by 25 percent. The BSC believes that most dealer banks are likely to have an NGR in the vicinity of 50 percent.

The BSC proposal does not specify whether the NGR should be calculated on a counterparty-by-counterparty basis or on an aggregate basis for all transactions subject to qualifying, legally enforceable netting arrangements. The proposal requests comment on whether the choice of method could bias the results and whether there is a significant difference in calculation burden between the two methods.

The BSC proposal also acknowledges that simulations using institutions' internal models for measuring credit risk exposure would most likely produce the most accurate determination of the effect of netting arrangements on potential future exposures. The proposal states that the use of such models would be considered at some future date.

III. The Board Proposal

In light of the BSC proposal, the Board believes that it is appropriate to seek comment on proposed revisions to the calculation of the add-on for potential future exposure for derivative contracts. Therefore, the Board is proposing to amend its risk-based capital guidelines for state member banks and bank holding companies to expand the matrix of conversion factors, and to permit institutions that make use of qualifying netting arrangements to recognize the effects of those netting arrangements in the calculation of the add-on for potential future exposure. The second part of the proposed amendment is contingent on the adoption of a final amendment to the Board's risk-based capital guidelines to recognize bilateral close-out netting arrangements and would formally extend this recognition to commodity, precious metals, and equity derivative contracts.

With regard to the portion of the proposal to expand the conversion factor matrix, the Board is proposing the same conversion factors set forth in the BSC proposal. The Board agrees with the BSC that the existing conversion factors applicable to long-dated transactions do not provide sufficient capital for the risks associated with those types of contracts. The Board also agrees with the BSC that the conversion factors for foreign exchange transactions are significantly too low for commodity, precious metals, and equity derivative contracts due to the volatility of the associated indices and the prices on the underlying assets.[18]

The Board is proposing the same formula as the BSC proposal to calculate a reduction in the add-on for potential future exposure for contracts subject to qualifying netting contracts. The Board recognizes several advantages with this formula. First, the formula uses bank-specific information to calculate the NGR. The NGR is simple to calculate and uses readily available information. The Board believes the use of the averaging factor of 0.5 is an important aspect of the proposed formula because it means the add-on for potential future exposure can never be reduced to zero and banking organizations will always hold some capital against derivative contracts, even in those instances where the net current exposure is zero.

The Board is seeking comment on all aspects of this proposal. As mentioned earlier, the BSC proposal seeks comment on whether the NGR should be calculated on a counterparty-by-counterparty basis, or on a global basis for all contracts subject to qualifying bilateral netting arrangements. The Board's proposed regulatory language would require the calculation of a separate NGR for each counterparty with which it has a qualifying netting contract. However, the Board is also seeking comment as to which method of calculating the NGR would be most efficient and appropriate for institutions with numerous qualifying bilateral netting arrangements. With either calculation method the NGR would be applied separately to adjust the add-on for potential future exposure for each netting arrangement. The Board notes that some preliminary findings indicate that a global NGR may be less burdensome to apply since the same NGR would be used for each counterparty with a netting arrangement, but counterparty specific NGRs may provide a more accurate indication of the credit risk associated with each counterparty.

[18] Similar to the BSC proposal, the Board's proposed amendment specifies that for equity contracts that automatically reset to zero value following a payment, the remaining maturity is set equal to the time remaining until the next payment. Also, for contracts with multiple exchanges of principal, the conversion factors are to be multiplied by the number of remaining payments in the contract.

Regulatory Flexibility Act Analysis

The Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). In this regard, while some small institutions with limited derivative portfolios may experience an increase in capital charges, for most of these institutions the proposal will have no effect. For institutions with more developed derivative portfolios the overall affect of the proposal will likely be to reduce regulatory burden and the capital charge for certain transactions. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

Paperwork Reduction Act

The Federal Reserve has determined that its proposed amendments, if adopted, would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Capital adequacy, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR parts 208 and 225 as follows.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

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

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1 and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising the last paragraph in section III.C.3. and footnote 40 in the introductory text of section III.D. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * * [40] * * *

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3. Appendix A to part 208 is amended by revising the section III.E. heading and section III.E.1. to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity (including precious metals), and Equity Contracts)

1. *Scope.* (a) Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

I. Interest Rate Contracts

A. Single currency interest rate swaps.
B. Basis swaps.
C. Forward rate agreements.
D. Interest rate options purchased (including caps, collars, and floors purchased).
E. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

II. Exchange Rate Contracts

A. Cross-currency interest rate swaps.
B. Forward foreign exchange contracts.
C. Currency options purchased.
D. Any other instrument that gives rise to similar credit risks.

III. Commodity (including precious metal) or Equity Derivative Contracts

A. Commodity or equity linked swaps.
B. Commodity or equity linked options purchased.
C. Forward commodity or equity linked contracts.
D. Any other instrument that gives rise to similar credit risks.

(b) Exchange rate contracts with an original maturity of fourteen calendar days or less and derivative contracts traded on exchanges that require daily payment of variation margin may be excluded from the risk-based ratio calculation. Over-the-counter options purchased, however, are included and treated in the same way as other derivative contracts.

* * * * *

4. In appendix A to part 208, section III.E.2. and section III.E.3., as those sections were proposed to be revised at 59 FR 26461, May 20, 1994, are revised to read as follows:

* * * * *

III. * * *

E. * * *

2. *Calculation of credit equivalent amounts.* (a) The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract and (ii) an estimate of the potential future credit exposure over the remaining life of the contract.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both underlying rates, prices, and indices, and counterparty credit quality.

(c) The potential future credit exposure of a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate:

CONVERSION FACTOR MATRIX*

[Amounts in percent]

Residual maturity	Interest rate	Exchange rate and gold	Equity**	Precious metals except gold	Other commodities
Less than one year	0.0	1.0	6.0	7.0	12.0
One to five years	0.5	5.0	8.0	7.0	12.0
Five years or more	1.5	7.5	10.0	8.0	15.0

* For contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract.
** For contracts that reset to zero value following a payment, the remaining maturity is set equal to the time until the next payment.

(d) No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices (so called floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

(e) The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

3. *Netting.* (a) For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of derivative contracts is recognized for purposes of calculating the credit equivalent amount provided that:

(1) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the bank would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or similar circumstances.

(2) The bank obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge, including one resulting from default, insolvency,

[40] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B of this appendix A.

liquidation or similar circumstances, the relevant court and administrative authorities would find the bank's exposure to be such a net amount under:

(i) the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(ii) the law that governs the individual contracts covered by the netting contract; and

(iii) the law that governs the netting contract.

(3) The bank establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

(4) The bank maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(b) A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[49]

(c) By netting individual contracts for the purpose of calculating its credit equivalent amount, a bank represents that it has met the requirements of this appendix A and all the appropriate documents are in the bank's files and available for inspection by the Federal Reserve. Upon determination by the Federal Reserve that a bank's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in section III.E.3.(a)(2) (i) through (iii) of this appendix A, underlying individual contracts may be treated as though they were not subject to the netting contract.

(d) The credit equivalent amount of derivative contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the net current exposure for the netting contract and (ii) the sum of the estimates of potential future exposure for all individual contracts subject to the netting contract, adjusted to take into account the effects of the netting contract.

(e) The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts subject to the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero.

(f) The sum of the estimates of potential future exposure for all individual contracts subject to the netting contract (A_{gross}), adjusted to reflect the effects of the netting contract (A_{net}), is determined through application of a formula. The formula, which employs the ratio of the net current exposure to the gross current exposure (NGR), is expressed as:

$$A_{net}=.5(A_{gross}+(NGR\times A_{gross}))$$

(g) Gross potential future exposure, or A_{gross}, is calculated by summing the estimates of potential future exposure (determined in accordance with section III.E.2. of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.[50] The NGR is the ratio of the net current exposure of the netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.E.2. of this appendix A. The effect of this treatment is that A_{net} is the average of A_{gross} and A_{gross} adjusted by the NGR.

* * * * *

5. Appendix A to part 208 is amended by revising section III.E.4. to read as follows:

* * * * *

III. * * *

E. * * *

4. *Risk weights.* (a) Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying netting contract, has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[51] However, the maximum weight that will be applied to the credit equivalent amount of such contracts is 50 percent.

* * * * *

6. In appendix A to part 208, section III.E.5., as that section was proposed to be revised at 59 FR 26461, May 20, 1994, is revised to read as follows:

* * * * *

III. * * *

E. * * *

5. *Avoidance of double counting.* (a) In certain cases, credit exposures arising from the derivative contracts covered by these guidelines may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banks' risk-based capital ratios.

(b) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Attachment V of this appendix A.

* * * * *

7. In appendix A to part 208, Attachment V, as that attachment was proposed to be revised at 59 FR 26462, May 20, 1994, is revised to read as follows:

* * * * *

ATTACHMENT V—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of contract (remaining maturity)	Potential exposure + Current exposure = Credit equivalent amount					
	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to-market value	Current exposure (dollars)	
(1) 120-day forward foreign exchange	5,000,000	01	50,000	100,000	100,000	150,000
(2) 6-year forward foreign exchange	6,000,000	.075	450,000	−120,000	0	450,000
(3) 3-year interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 1-year oil swap	10,000,000	.12	1,200,000	−250,000	0	1,200,000
(5) 7-year interest rate swap	20,000,000	.05	1,000,000	−1,300,000	0	1,000,000
Total			2,750,000		300,000	3,050,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

[49] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[50] For purposes of calculating gross potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[51] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

	Potential future exposure (from above)		Net Current exposure [1]		Credit equivalent amount
(1)	50,000				
(2)	450,000				
(3)	50,000				
(4)	1,200,000				
(5)	1,000,000				
Total	2,750,000	+	0	=	2,750,000

[1] The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

To recognize the effects of netting on potential future exposure the following formula applies: Anet=.5(Agross+(NGR×Agross.)

In the above example: NGR=0 (0/300,000) Anet=.5(2,750,000+(0×2,750,000)) Anet=1,375,000.

Credit equivalent amount: 1,375,000+0=1,375,000.

If the net current exposure was a positive amount, for example $200,000, the credit equivalent amount would be calculated as follows: NGR=.67 (200,000/300,000) Anet=.5(2,750,000+(.67×2,750,000)) Anet=2,296,250.

Credit Equivalent amount: 2,296,250+200,000=2,496,250.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising the last paragraph in section III.C.3. and footnote 43 in the introductory text of section III.D. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. * * *

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

D. * * * [43] * * *

* * * * *

3. Appendix A to part 225 is amended by revising the section III.E. heading and section III.E.1. to read as follows:

* * * * *

III. * * *

E. Derivative Contracts (Interest Rate, Exchange Rate, Commodity (including precious metals) and Equity Derivative Contracts).

1. *Scope.* (a) Credit equivalent amounts are computed for each of the following off-balance-sheet derivative contracts:

I. Interest Rate Contracts

A. Single currency interest rate swaps.
B. Basis swaps.
C. Forward rate agreements.
D. Interest rate options purchased (including caps, collars, and floors purchased).
E. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

II. Exchange Rate Contracts

A. Cross-currency interest rate swaps.
B. Forward foreign exchange contracts.
C. Currency options purchased.
D. Any other instrument that gives rise to similar credit risks.

III. Commodity (including precious metal) or Equity Derivative Contracts

A. Commodity or equity linked swaps.
B. Commodity or equity linked options purchased.
C. Forward commodity or equity linked contracts.
D. Any other instrument that gives rise to similar credit risks.

(b) Exchange rate contracts with an original maturity of fourteen calendar days or less and derivative contracts traded on exchanges that require daily payment of variation margin may be excluded from the risk-based ratio calculation. Over-the-counter options purchased, however, are included and treated in the same way as other derivative contracts.

* * * * *

4. In appendix A to part 225, section III.E.2. and section III.E.3., as those sections were proposed to be revised at 59 FR 26463, May 20, 1994, are revised to read as follows:

* * * * *

III. * * *

E. * * *

2. *Calculation of credit equivalent amounts.* (a) The credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract in accordance with section III.E.3. of this appendix A is equal to the sum of (i) the current exposure (sometimes referred to as the replacement cost) of the contract and (ii) an estimate of the potential future credit exposure over the remaining life of the contract.

(b) The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is equal to that mark-to market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in dollars, regardless of the currency or currencies specified in the contract and should reflect changes in both underlying rates and indices, and counterparty credit quality.

(c) The potential future credit exposure of a contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate:

[43] The sufficiency of collateral and guarantees for off-balance-sheet items is determined by the market value of the collateral or the amount of the guarantee in relation to the face amount of the item, except for derivative contracts, for which this determination is generally made in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B of this Appendix A.

CONVERSION FACTOR MATRIX*

[Amounts in percent]

Residual maturity	Interest rate	Exchange rate and gold	Equity**	Precious metals except gold	Other commodities
Less than one year	0.0	1.0	6.0	7.0	12.0
One to five years	0.5	5.0	8.0	7.0	12.0
Five years or more	1.5	7.5	10.0	8.0	15.0

*For contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract.
**For contracts that reset to zero value following a payment, the remaining maturity is set equal to the time until the next payment.

(d) No potential future exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices (so called floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

(e) The Board notes that the conversion factors set forth above, which are based on observed volatilities of the particular types of instruments, are subject to review and modification in light of changing volatilities or market conditions.

3. *Netting.* (a) For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values when determining a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of derivative contracts is recognized for purposes of calculating the credit equivalent amount provided that:

(1) The netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the organization would have a claim or obligation to receive or pay, respectively, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or similar circumstances.

(2) The banking organization obtains a written and reasoned legal opinion(s) representing that in the event of a legal challenge, including one resulting from default, insolvency, liquidation or similar circumstances, the relevant court and administrative authorities would find the organization's exposure to be such a net amount under:

(i) the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(ii) the law that governs the individual contracts covered by the netting contract; and

(iii) the law that governs the netting contract.

(3) The banking organization establishes and maintains procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law.

(4) The banking organization maintains in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

(b) A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[53]

(c) By netting individual contracts for the purpose of calculating its credit equivalent amount, a banking organization represents that it has met the requirements of this appendix A and all the appropriate documents are in the organization's files and available for inspection by the Federal Reserve. Upon determination by the Federal Reserve that a banking organization's files are inadequate or that a netting contract may not be legally enforceable under any one of the bodies of law described in section III.E.3.(a)(2) (i) through (iii) of this appendix A, underlying individual contracts may be treated as though they were not subject to the netting contract.

(d) The credit equivalent amount of derivative contracts that are subject to a qualifying bilateral netting contract is calculated by adding (i) the net current exposure for the netting contract and (ii) the sum of the estimates of potential future exposure for all individual contracts subject to the netting contract, adjusted to take into account the effects of the netting contract.

(e) The net current exposure is the sum of all positive and negative mark-to-market values of the individual contracts subject to the netting contract. If the net sum of the mark-to-market values is positive, then the net current exposure is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the net current exposure is zero.

(f) The sum of the estimates of potential future exposure for all individual contracts subject to the netting contract (A_{gross}), adjusted to reflect the effects of the netting contract (A_{net}), is determined through application of a formula. The formula, which employs the ratio of the net current exposure to the gross current exposure (NGR), is expressed as:

$$A_{net}=.5(A_{gross}+(NGR\times A_{gross}))$$

(g) Gross potential future exposure, or A_{gross}, is calculated by summing the estimates of potential future exposure (determined in accordance with section III.E.2. of this appendix A) for each individual contract subject to the qualifying bilateral netting contract.[54] The NGR is the ratio of the net current exposure of the netting contract to the gross current exposure of the netting contract. The gross current exposure is the sum of the current exposures of all individual contracts subject to the netting contract calculated in accordance with section III.E.2. of this appendix A. The effect of this treatment is that A_{net} is the average of A_{gross} and A_{gross} adjusted by the NGR.

* * * * *

5. Appendix A to part 225 is amended by revising section III.E.4. to read as follows:

* * * * *

III. * * *

E. * * *

4. *Risk weights.* (a) Once the credit equivalent amount for a derivative contract, or a group of derivative contracts subject to a qualifying netting contract, has been determined, that amount is assigned to the risk weight category appropriate to the counterparty, or, if relevant, the guarantor or the nature of any collateral.[55] However, the maximum weight that will be applied to the credit equivalent amount of such contracts is 50 percent.

* * * * *

6. In appendix A to part 225, section III.E.5., as that section was proposed to be revised at 59 FR 26463, May 20, 1994, is revised to read as follows:

* * * * *

III. * * *

E. * * *

5. *Avoidance of double counting.* (a) In certain cases, credit exposures arising from the derivative contracts covered by these guidelines may already be reflected, in part,

[53] For purposes of this section, a walkaway clause means a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if a defaulter or the estate of a defaulter is a net creditor under the contract.

[54] For purposes of calculating gross potential future credit exposure for foreign exchange contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[55] For derivative contracts, sufficiency of collateral or guarantees is generally determined by the market value of the collateral or the amount of the guarantee in relation to the credit equivalent amount. Collateral and guarantees are subject to the same provisions noted under section III.B. of this appendix A.

on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy and, perhaps, assigning inappropriate risk weights, counterparty credit exposures arising from the types of instruments covered by these guidelines may need to be excluded from balance sheet assets in calculating banks' risk-based capital ratios.

(b) Examples of the calculation of credit equivalent amounts for these types of contracts are contained in Attachment V of this appendix A.

* * * * *

7. In appendix A to part 225, Attachment V, as that attachment was proposed to be revised at 59 FR 26464, May 20, 1994, is revised to read as follows:

* * * * *

ATTACHMENT V—CALCULATION OF CREDIT EQUIVALENT AMOUNTS FOR DERIVATIVE CONTRACTS

Type of contract (remaining maturity)	Potential Exposure + Current Exposure = Credit Equivalent Amount					
	Notional principal (dollars)	Conversion factor	Potential exposure (dollars)	Mark-to-market value	Current exposure (dollars)	
(1) 120-day forward foreign exchange	5,000,000	.01	50,000	100,000	100,000	150,000
(2) 6-year forward foreign exchange	6,000,000	.075	450,000	−120,000	0	450,000
(3) 3-year interest rate swap	10,000,000	.005	50,000	200,000	200,000	250,000
(4) 1-year oil swap	10,000,000	.12	1,200,000	−250,000	0	1,200,000
(5) 7-year interest rate swap	20,000,000	.05	1,000,000	−1,300,000	0	1,000,000
Total			2,750,000		300,000	3,050,000

If contracts (1) through (5) above are subject to a qualifying bilateral netting contract, then the following applies:

	Potential future exposure (from above)		Net current exposure [1]		Credit Equivalent Amount
(1)	50,000				
(2)	450,000				
(3)	50,000				
(4)	1,200,000				
(5)	1,000,000				
Total	2,750,000	+	0	=	2,750,000

[1] The total of the mark-to-market values from above is −1,370,000. Since this is a negative amount, the net current exposure is zero.

To recognize the effects of netting on potential future exposure the following formula applies: Anet=.5(Agross+(NGR×Agross).

In the above example: NGR=0 (0/300,000) Anet=.5(2,750,000+(0×2,750,000)) Anet=1,375,000.

Credit equivalent amount: 1,375,000+0=1,375,000.

If the net current exposure was a positive amount, for example, $200,000, the credit equivalent amount would be calculated as follows: NGR=.67 (200,000/300,000) Anet=.5(2,750,000+(.67×2,750,000)) Anet=2,296,250.

Credit equivalent amount: 2,296,250+200,000=2,496,250.

* * * * *

By the order of the Board of Governors of the Federal Reserve System, August 16, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc.94-20506 Filed 8-23-94 8:45am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–23]

Establishment of Class D Airspace; Akron-Canton, OH.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Akron-Canton Regional Airport, Akron, Ohio. Currently, the airspace at Akron-Canton Regional Airport is designated as Class C airspace. During certain periods of time, the Akron-Canton Air Traffic Control Tower (ATCT) radar approach control facility is not operational. However, the ATCT at Akron-Canton Regional Airport is full-time. The intended effect of this proposal is to provide Class D airspace to maintain the two-way radio communications requirement when the radar approach control facility is not in operation.

DATES: Comments must be received on or before October 6, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Akron-Canton Regional Airport, Akron, Ohio. Currently, the airspace at Akron-Canton Regional Airport is designated as Class C airspace. During certain periods of time, the Akron-Canton Air Traffic Control Tower (ATCT) radar approach control facility is not operational. However, the ATCT at Akron-Canton Regional Airport is full-time. The intended effect of this proposal is to provide Class D airspace to maintain the two-way radio communications requirements when the radar approach control facility is not in operation.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Aispace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 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 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 General

* * * * *

AGL OH D Akron-Canton, OH [New]

(lat. 40°54'59" N., long. 81°26'32" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.3-mile radius of the Akron-Canton Regional 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 published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 15, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–20794 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD01–94–108]

RIN 2115–AA97

Safety Zone; Rensselaer Fest '94 Fireworks, Hudson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the Rensselaer Fest '94 Fireworks program in the Hudson River. The event, sponsored by the City of Rensselaer, will take place on Saturday, September 24, 1994, from 8:30 p.m. until 10 p.m., unless terminated sooner by the Captain of the Port, New York, and will temporarily close all waters of the Hudson River, shore to shore, north of the 42°38'12"N line of latitude, and south of the Dunn Memorial Bridge. This safety zone will preclude vessel traffic from transiting a portion of the Hudson River and is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: Comments must be received on or before September 23, 1994.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 108, Governors Island, New York 10004–5096, or may be delivered to the Waterways Management Office, Bldg. 108, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person wishing to visit the office must contact the Waterways Management

Office at (212) 668–7933 to obtain advance clearance due to the fact that Governors Island is a military installation with limited access.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Trabocchi, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A 30 day comment period is deemed to be sufficiently reasonable, prior notice to all interested persons. Since this proposed rulemaking is neither complex nor technical, a longer comment period is unnecessary and contrary to the public interest. Any delay in publishing a final rule would effectively cancel this event.

Persons submitting comments should include their names and addresses, identify this notice (CGD01–94–108) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing, however, persons may request a public hearing by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

The City of Rensselaer submitted a request to sponsor a fireworks program in the Hudson River on September 24, 1994. This proposed regulation would establish a safety zone that would temporarily close a portion of the Hudson River to protect the boating public from the hazards associated with fireworks exploding in the area. No vessel would be allowed to enter or move within this area unless permitted to do so by the Coast Guard Captain of the Port, New York.

Discussion of Proposed Amendments

The Coast Guard proposes to establish a safety zone in the Hudson River, New York. This safety zone will be in effect from 8:30 p.m. until 10 p.m. on September 24, 1994, unless terminated sooner by the Captain of the Port, New York and will temporarily close all waters of the Hudson River, shore to shore, north of the 42°38′12″N lien of latitude, and south of the Dunn Memorial Bridge. This regulation, if adopted, will preclude vessels from transiting the Hudson River. Closure of this portion of the Hudson River is necessary to protect the boating public from the hazards associated with fireworks exploding in the area.

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 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone would temporarily close all waters of the Hudson River, shore to shore, north of the 42°38′12″N line of latitude, and south of the Dunn Memorial Bridge. Although this regulation will prevent traffic from transiting this area, the effect of this regulation will not be significant for several reasons. This has been an annual event and mariners are accustomed to the temporary closure of this portion of the Hudson River. Due to the fact that the event is limited in duration, that the event is at a late hour on a Saturday, and that extensive, advance advisories will be made to the maritime community to allow mariners to adjust their schedules to transit the area before or after the event, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 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; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–108, is added to read as follows:

§ 165.T01–108 Rensselaer Fest '94 Fireworks, Hudson River, NY

(a) *Location.* All waters of the Hudson River, shore to shore, north of the 42°38′12″ N line of latitude, and south of the Dunn Memorial Bridge.

(b) *Effective period.* This section will be effective from 8:30 p.m. until 10 p.m. on September 24, 1994. unless

terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR Section 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 11, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 94–20718 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI25–01–5711b; FRL–5005–6]

Approval and Promulgation of State Implementation Plan; Wisconsin; Superior (Douglas County) Attainment Demonstration for Sulfur Dioxide Emissions

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes approval of a revision to the Wisconsin State Implementation Plan (SIP) for control of sulfur dioxide (SO_2) emissions in Superior (Douglas County) Wisconsin. In the final rules section of this **Federal Register**, the USEPA is approving the redesignation as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If the USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be submitted by September 23, 1994.

ADDRESSES: Written comments should be sent to:Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision, and incorporation by reference, and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Megan Beardsley at (312) 886–0669 before visiting the Region 5 Office.)

A copy of this SIP revision, and incorporation by reference is also available at the Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Megan Beardsley, Environmental Scientist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–0669.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 23, 1994.

Valdas V. Adamkus,

Acting Regional Administrator.

[FR Doc. 94–20741 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[OR–16–1–5536b; OR–43–1–6523b; FRL–5025–9]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Oregon for the purpose of bringing about the attainment of the National ambient air quality (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for the Eugene-Springfield, Oregon, PM–10 nonattainment area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by September 23, 1994.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, OR 97204–1390.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Air Programs Branch(AT–082), EPA Region 10, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

See the information provided in the direct final actionwhich is located in the rules section of this **Federal Register.**

Dated: July 11, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94–20739 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[CA-21-2-6235; FRL-5056-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from surface cleaning and degreasing operations, oil sump operations, and the storage of materials containing VOCs. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before September 23, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Diego County APCD, 9150 Chesapeake Drive, San Diego, CA 92123.

San Joaquin Valley Unified APCD, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: San Diego County Air Pollution Control District (SDCAPCD) Rule 67.6, Solvent Cleaning Operations; SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds; San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 461.1, Organic Solvent Degreasing Operations; and SJVUAPCD Rule 465.2, Crude Oil Production Sumps. These rules were submitted by the California Air Resources Board (CARB) on April 5, 1991 (67.6), February 11, 1994 (67.17), and January 28, 1992 (461.1 and 465.2).

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the SDCAPCD and the following eight air pollution control districts (APCDs) which comprise the San Joaquin Valley Area: Fresno County APCD, Kern County APCD [1], Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD.[2] 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[3] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[4] EPA's SIP-Call used that guidance to indicate the necessary corrections for the specific nonattainment areas. The San Diego County area is classified as "severe", and the San Joaquin Valley area is classified as "serious".[5] Therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on April 5, 1991, January 28, 1992, and February 11, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for SDCAPCD Rule 67.6, Solvent Cleaning Operations; SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds; SJVUAPCD Rule 461.1, Organic Solvent Degreasing Operations; and SJVUAPCD Rule 465.2, Crude Oil Production Sumps. SDCAPCD adopted Rule 67.6 on October 16, 1990, and Rule 67.17 on September 21, 1993. SJVUAPCD adopted both Rule 461.1 and Rule 465.2 on September 19, 1991. These submitted rules were found to be complete on the following dates: SDCAPCD Rule 67.6, May 21, 1991; SDCAPCD Rule 67.17, April 11, 1993; and SJVUAPCD Rule 461.1 and Rule 465.2, April 3, 1992. These rules were found to be complete pursuant to EPA's

[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Northeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert portion of Kern County was designated as unclassified. (See 40 CFR 81.305, 1991)

[2] On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except the Southeast Desert Air Basin portion of Kern County.

[3] This extension was not requested for the following counties: Kern, Kings, Madera, Merced, and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[5] The San Diego County and San Joaquin Valley Unified Areas were redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

completeness criteria that are set forth in 40 CFR part 51, appendix V[6] and are being proposed for approval into the SIP.

SDCAPCD Rule 67.6 and SJVUAPCD Rule 461.1 control VOC emissions from solvent degreasing operations. SJVUAPCD Rule 465.2 controls VOC emissions from crude oil production sumps, and SDCAPCD Rule 67.17 controls emissions from the storage of materials containing VOCs. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SDCAPCD Rule 67.6, Solvent Cleaning Operations, and SJVUAPCD Rule 461.1, Organic Solvent Degreasing Operations, is EPA–450/2–77–022, "Control of Volatile Organic Emissions from Solvent Metal Cleaning." No CTG has been prepared covering the new SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds, or the new SJVUAPCD Rule 465.2, Crude Oil Production Sumps. Accordingly, the latter two rules were evaluated based on EPA policy and on rules covering similar source categories from other districts in California. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 4. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD Rule 67.6, Solvent Cleaning Operations, includes the following significant changes from the current SIP:

1. Expanded the applicability of the rule to include cold-solvent dip tanks, all vapor degreasers, and stripper and vapor solder reflow equipment.
2. Added a schedule for bringing equipment into compliance with the amended rule.
3. Expanded and revised equipment and operating requirements for a variety of degreasers.
4. Revised and expanded definitions to reflect changes and additions in the textual material.
5. Revised the provisions allowing for alternative add-on control devices that reduced emissions of VOCs by at least 85 percent.
6. Added recordkeeping requirements and test methods.

SJVUAPCD Rule 461.1, Organic Solvent Degreasing Operations, includes the following significant changes from the current SIP:

1. Added more restrictive controls for highly volatile degreasing solvents.
2. Added test methods for determining compliance.
3. Added recordkeeping requirements.
4. Expanded definitions from 7 to 17 items.
5. Deleted Executive Officer (EO) discretion for items such as selection and approval of emission control systems and test methods.
6. Expanded operating requirements for all types of degreasers.
7. Added a compliance schedule.

SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds, is a new rule that sets forth standards requiring closure of all containers containing VOC and handling of VOC-containing wastes, such as wipe cloths.

SJVUAPCD Rule 465.2, Crude Oil Production Sumps, is also a new rule that sets forth standards for controlling VOC emissions from the various types of crude oil production sumps.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDCAPCD Rule 67.6, Solvent Cleaning Operations, SDCAPCD Rule 67.17, Storage of Materials Containing Volatile Organic Compounds, SJVUAPCD Rule 461.1, Organic Solvent Degreasing Operations, and SJVUAPCD Rule 465.2, Crude Oil Production Sumps, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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.

Regulatory Process

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.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted

[6] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 12, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–20804 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 63 and 70

[AD-FRL–5057–7]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Washoe County District Health Department, Nevada

AGENCY: Environmental Protection Agency.

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Washoe County District Health Department (Washoe or District) for the purpose of complying with Federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 23, 1994.

ADDRESSES: Comments should be addressed to Celia Bloomfield, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

This document focuses on specific elements of Washoe's title V operating permits program submittal that must be corrected to meet the requirements of 40 CFR part 70. The full program submittal, the Technical Support Document containing a detailed analysis of the full program, and other relevant materials are available as part of the public docket.

A. Analysis of State Submission

1. Support Materials

Washoe submitted its title V operating permits program on November 18, 1993, and the program was found complete on January 13, 1994. Washoe is authorized by State law (Nevada Revised Statues (NRS) 445.546) to develop and administer this program for the District. Washoe's title V submittal includes a letter from the District Health Officer requesting program approval and a legal opinion from the District Attorney stating that Washoe has adequate authority to carry out all aspects of the program. Washoe's program also contains a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4(b), elements of the initial program submission. State statutes were submitted separately by the Nevada Division of Environmental Protection. Washoe's submittal also includes a proposed implementation agreement defining District and EPA responsibilities and commitments for administering the program. EPA and Washoe will work to finalize this agreement prior to final approval.

2. Regulations and Program Implementation

Washoe's District Board of Health Regulations Governing Air Quality Management were revised on October 20, 1993 to provide for the implementation of a title V operating permits program. These regulations substantially meet the requirements of 40 CFR part 70, § § 70.2 and 70.3 for applicability; § § 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for criteria that define insignificant activities; § 70.11 for requirements for enforcement authority; and § 70.5 for complete application forms. There are a few program deficiencies that are outlined below as interim approval issues and detailed further in the Technical Support Document.

Washoe has authority under State and local law to issue a variance from State and local requirements. These variance provisions are contained in Nevada Revised Statutes 445.506, 445.511, 445.516, 445.521 and 445.546, and by District regulations 020.0051, 020.020, 020.0251, 020.0253, and 020.0254. These provisions allow the Hearing Board discretion to grant relief from compliance with District rules and regulations. The EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on these provisions of local law. In addition, the EPA has no authority to approve provisions of local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a

variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based." EPA's policy on variances is supported by District rule 020.0254(I) that states that variances may not be issued from any requirement established or promulgated under the Act.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum," (§ 70.9(b)(2)(i)).

Washoe has opted to make a presumptive minimum fee demonstration. Washoe's fee schedule is based on average pounds of pollutants emitted per day. Title V sources in Washoe County are charged fees of $10 per average pound per day, an amount determined by the District to cover the direct and indirect costs of the program. Because the fee schedule (mathematically equivalent to $54.79 per ton per year) exceeds the presumptive minimum, Washoe was not required to submit a detailed fee demonstration. As required by § 70.9(b)(2)(iv), these fees will be increased each year by an amount equal to or greater than the Consumer Price Index (030.310). In addition, sources are subject to application review fees. Finally, Washoe has committed to provide future accounting demonstrations and to make revisions to its fee structure if necessary.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Title III—Washoe has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements; however, Washoe has also indicated that additional regulatory authority may be necessary to carry out specific section 112 activities. Washoe has therefore supplemented its broad legal authority with a commitment to "adopt any future standards and regulations related to section 112 in a timely manner as they are promulgated by EPA," (Letter from David Rice, Governor's designee, November 10, 1993). EPA has determined that this commitment, in conjunction with the broad statutory authority, adequately assures compliance with all section 112 requirements. The EPA regards this commitment as an acknowledgement by Washoe of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Washoe is able to carry out all section 112 activities. For further discussion, please refer to the Technical Support Document and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Title IV—Washoe has committed in a letter from David Rice (dated February 9, 1994) to obtain by January 1, 1995 the necessary regulatory authority to administer an acid rain program and to make regulatory revisions as necessary to accommodate Federal revisions and additions.

B. Options for Approval/Disapproval and Implications

1. Title V Operating Permits Program Under the Authority of Section 502 of the Act

The EPA is proposing to grant interim approval to the operating permits program submitted by the Nevada Division of Environmental Protection on behalf of the Washoe County District Health Department on November 18, 1993. Following interim approval, Washoe must make the following changes to receive full approval:

(1) Revise insignificant activity provisions so that they comply with § 70.5(c). Specifically, 030.905(B)(3) must state that any activity at a title V facility that is subject to an applicable requirement may not qualify as an insignificant activity. Because Washoe defines insignificant activities by size, both rule 030.020(C)(4) and the application form must require the applicant to list all insignificant activities in enough detail to determine applicability and fees, and to impose any applicable requirements.

(2) Revise 030.020 to state that each application must contain the following information: (a) Description of any processes and products associated with alternate scenarios (§ 70.5(c)(2)); (b) description of compliance monitoring devices or activities (§ 70.5(c)(3)(v)); (c) when emissions trading provisions are requested by a source, proposed replicable procedures and permit terms (§ 70.4(b)(12)(iii)); and (d) statement that the source will, in a timely manner, meet all applicable requirements that will become effective during the permit term (§ 70.5(c)(8)). EPA has also noted in the Technical Support Document recommended revisions to Washoe's permit application form so that the form will better reflect the information required by regulation. In addition, rule 030.020 must clearly require that any application form, report, or compliance certification submitted in the permit application include a certification based on information and belief formed after reasonable inquiry. (§ 70.5(d))

(3) Add a provision to the rule that imposes a general duty on the permit applicant to submit supplementary facts or corrected information upon becoming aware of any failure to submit relevant facts or submittal of incorrect information. (§ 70.5(b))

(4) Revise 030.930 to provide public notice "by other means if necessary to assure adequate notice to the affected public." (§ 70.7(h)(1))

(5) Revise 030.960(C)(8) to state that the certifications must be based on information and belief formed after reasonable inquiry. (§ § 70.6(c)(1) and 70.5(d))

(6) Revise 030.970(B) to state that schedules for compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. (§ § 70.5(c)(8)(iii)(C) and 70.6(c)(3))

(7) Revise 030.950(E) to ensure that all significant permit modifications, other than those requiring an Authority to Construct, may not be placed into operation until the permitting authority has revised the source's part 70 permit. Washoe's program currently provides this implementation time frame for modifications requiring an Authority to Construct and modifications that are prohibited by an existing permit; however, the time frame must be extended to the remaining universe of significant modifications. (§ 70.5(a)(1)(ii))

The above program deficiencies must be corrected before Washoe can receive full program approval. EPA may propose to grant interim approval at this

time because the program "substantially meets" the requirements of part 70 (§ 70.4(d)(1)). This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the District is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon EPA's final action granting interim approval, as does the 3-year time period for processing initial permit applications.

2. District Preconstruction Permit Program Implementing Section 112(g) of the Act

As a condition of approval of the operating permits program, Washoe is required to implement section 112(g) of the Act from the effective date of the title V program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Washoe's preconstruction permitting program found in District rules 030.000 and 030.002 under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Washoe has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of title V approval. Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Washoe does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in its final approval action approve the alternative instead.

This approval of Washoe's preconstruction permit program as a section 112(g) mechanism is for an interim period only, until the District is able to adopt regulations consistent with regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following EPA's final promulgation of section 112(g) regulations so that Washoe, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Washoe's procedures for adoption of regulations.

3. Program for Straight Delegation of Section 112 Standards Under the Authority of Section 112(l) of the Act

Requirements for title V program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that Washoe's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Washoe's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated.

Washoe has informed EPA that it intends to employ incorporation by reference as the mechanism for accepting straight delegation of section 112 standards. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Washoe and EPA, expected to be completed prior to approval of Washoe's section 112(l) program for straight delegations. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of Washoe's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. 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 interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by September 23, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysisassessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603, 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.

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Therefore, because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.The Act forbids EPA to base its actions concerning operating permits programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

If the interim approval is converted to a disapproval, it will not affect any existing District requirements applicable to small entities. Federal disapproval of the District's submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that conversion from interim approval to disapproval would not have a significant impact on a substantial number of small entities because it does not remove existing District requirements nor does it substitute any new Federal requirements.

Authority: 42 U.S.C.7401–7671q.

Dated: August 5, 1994.

Nora L McGee,

Acting Regional Administrator.

[FR Doc. 94–20812 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300330B; FRL–4873–8]

RIN 2070–AC18

Methyl Vinyl Ether-Maleic Acid Copolymer and Methyl Vinyl Ether Maleic Acid Copolymer Calcium Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document modifies the uses and categories of exemptions included in the recent regulation establishing an exemption from the requirement of a tolerance for residues of methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6) and methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2) in order to correctly list the exemptions and uses for these polymers. EPA is proposing to establish an exemption from the requirement of a tolerance for residues of these polymers when used as inert ingredient (dispersants, seed-coating adhesives) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest or animals.

DATES: Comments, identified by the document control number [OPP-300330B], must be received on or before September 23, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 26800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: International Specialty Products (ISP), 1361 Alps Rd., Wayne, NJ 07470, submitted petitions (PPs 3E4260 and 3E4261) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6) and methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2) when used as inert ingredients (dispersants, seed-coating adhesives) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. For simplicity, the exemption from tolerance under 40 CFR 180.1001(c) was requested for the seed-coating adhesive use, which is only applicable to growing crops, as well as the dispersant use, which could include post-harvest uses. The exemption from tolerance under 40 CFR 180.1001(e) would apply to the use of the inerts as dispersants in formulations applied to animals.

EPA initially proposed these exemptions in the **Federal Register** of March 30, 1994 (59 FR 14820); however, the proposal incorrectly listed the uses as "dispersant and seed-coating adhesive, respectively," implying that one polymer would be used as a dispersant and the other as a seed-coating adhesive. In addition, EPA listed methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6) as exempt under 40 CFR 180.1001(c) as a dispersant and methyl vinyl ether-maleic acid copolymer calcium salt (CAS Reg. No. 62386-95-2) as exempt under 40 CFR 180.1001(e) as a seed-coating adhesive, a use inconsistent with a clearance for use on animals. Despite these errors, no comments were received on the proposal and the error continued into the final rule, which was published in the **Federal Register** of May 25, 1994 (59 FR 26950). EPA is now proposing to exempt both polymers under 40 CFR 180.1001(c) and (e), as originally requested and as set forth below.

The basis of these exemptions remains that these chemicals are polymers which conform to a set of criteria which identify categories of polymers that present low risk. The specific criteria are described in the March 30, 1994, proposal.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (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 section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300330B]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

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 new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (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: August 10, 1994.

Lois Rossi,

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 read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraph (c) in the table therein by revising the entry for methyl vinyl ether-maleic acid copolymer and adding immediately thereafter the entry for methyl vinyl ether-maleic acid copolymer calcium sodium salt and in paragraph (e) in the table therein by adding and alphabetically inserting the entry for methyl vinyl ether-maleic acid copolymer and revising the entry for methyl vinyl ether-maleic acid copolymer calcium sodium salt, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Use
* * *	* *	* * *
Methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6), minimum number-average molecular weight 75,000..	.....	Dispersant, seed-coating adhesive
Methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2), minimum number-average molecular weight 900,000..	.....	Dispersant, seed-coating adhesive
* * *	* *	* * *

* * * * *

(e) * * *

Inert ingredients	Limits	Use
* * *	* *	* * *
Methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6), minimum number-average molecular weight 75,000..	.....	Dispersant
Methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2), minimum number-average molecular weight 900,000..	.....	Dispersant
* * *	* *	* * *

[FR Doc. 94–20558 Filed 8–23–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 48

[FAR Cases 89–88]

Federal Acquisition Regulation; Allowability of Value Engineering Costs; Withdrawal of Proposed Rule

AGENCY: Department of Defense (DOD), General Service Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have decided to withdraw a proposed rule, FAR case 89–88, Allowability of Value Engineering Costs. This rule was initially published in the **Federal Register** on January 4, 1990 (55 FR 416), and republished on December 14, 1992 (57 FR 59274). The case proposed a revision which specifies that under the incentive approach in value engineering, the contractor develops and submits value engineering change proposals (VECP's) and shares in the savings of any that are accepted. The contract provides for payment of implementation costs if a VECP is accepted. The development costs for accepted and unaccepted VECP's shall be accumulated by value engineering project and charged indirectly if otherwise allowable in accordance with Part 31. The republication resulted in the receipt of 30 responses. The substantive comments ranged from acceptance of the rule with modification to strong recommendations that the rule not be adopted. Primary concerns included—the source of funding for the payment of development costs of unaccepted VECP's, the documentation and justification required for such payments, and the administrative impact on the Government from a potential increase in VECP submissions. As a result of discussions with interested industry representatives and the nature of the comments received, a decision was made to withdraw the proposed rule.

FOR FURTHER INFORMATION CONTACT:

Ms. Beverly Fayson, FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755.

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: August 18, 1994.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

[FR Doc. 94–20726 Filed 8–23–94; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–07; Notice 10]

RIN 2127–AF23

Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: On July 13, 1994, NHTSA published in the **Federal Register** a notice of proposed rulemaking for an amendment of the control line pressure differential requirements in Standard No. 121, Air Brake Systems, for converter dollies and trailers designed to tow another vehicle equipped with air brakes. (59 FR 35672) It has come to the agency's attention that the section titled "PART 571—[AMENDED]" contains several errors. This notice serves to correct that section.

DATES: *Proposed Effective Date.* The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5229)

Correction of Publication

Page 35674, column 2, in the regulatory text for section 571.121, which reads "S5.3. Control signal pressure differential" is corrected to read "S5.3.5 Control signal pressure differential";

Column 2, section (a), line 8, which reads "values specified in S5.3.5(a) (1) and (2)" is corrected to read "values specified in S5.3.5(a) (1) through (3)";

Column 2, section (1), which reads "1 p.s.i. at all input pressures equal to or greater than 20 p.s.i." is corrected to read "1 p.s.i. at all input pressures equal to or greater than 5 p.s.i."

Issued on: August 17, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–20633 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 35)]

Rail General Exemption Authority—Exemption of Ferrous Recycles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is considering whether to exempt from regulation the rail transportation of ferrous recyclables, Standard Transportation Commodity Code (STCC) Nos. 40211 (iron and steel scrap), 33119 (blast furnace, open hearth, rolling mill or coke oven products, NEC), and 34912 (steel shipping containers). If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on September 23, 1994.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 35) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.].

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR), numerous member railroads in their individual capacities,[1] and the Institute of Scrap Recycling Industries, Inc. (ISRI) (collectively, petitioners) have petitioned the Commission to institute a proceeding to consider the exemption from regulation under 49 U.S.C. 10505 of the rail transportation of ferrous recycles, *i.e.*, STCC Nos. 40211 (iron and steel scrap), 33119 (blast furnace, open hearth, rolling mill, or coke over products, NEC), and 34912 (steel shipping containers).[2] The proposed exemption would be effected by adding these ferrous recyclables to the list of exempt commodities set forth at 49 CFR 1039.11(a) and adding conforming language at the beginning of the second full paragraph of paragraph (a), as set forth below. The proposed exemption would encompass all provisions of Subtitle IV of Title 49 of the United States Code, subject to the exceptions set forth in 49 CFR 1039.11, for all rail carriers nationwide. As discussed below, we are instituting this rulemaking.

Section 10505 requires us to grant an exemption when we find that: (1) regulation is not necessary to carry out the national rail transportation policy of 49 U.S.C. 10101a (NRTP); and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from an abuse market power. Petitioners assert that their proposal meets these criteria.

Petitioners propose the subject commodities for exemption for the following reasons:

(1) Continued regulation of these commodities is not necessary to carry out the NRTP at 49 U.S.C. 10101a. According to petitioners, although the transportation of this traffic is highly competitive, an exemption would further increase competition for this traffic and promote numerous NRTP goals, such as (a) increased competition for the traffic, (b) safe and efficient transportation, (c) reduced administrative burdens for both rail carriers and shippers, and (d) increased ratemaking flexibility and financial stability for rail carriers (including, by eliminating tariff and contract filing requirements, the ability to respond more quickly to market changes and shipper demand for resulting rates and services).

Current competition is reflected in statistics on rates and revenues from rail transportation of ferrous recyclables. These allegedly demonstrate that market share, rates, and revenue for this traffic have all declined in real dollar terms over the last 10–15 years.[3]

(2) The involved rail transportation is limited in scope. The transportation of ferrous recyclables is a small percentage of total rail transportation.[4]

(3) This traffic is subject to significant intermodal, intramodal, and geographic competition, making regulation unnecessary to protect shippers from market power abuse. According to petitioners, this competition in the

[1] These railroads are: Burlington Northern Railroad Co., Chicago and North Western Railway Company, Consolidated Rail Corp., CSX Transportation, Inc., Norfolk Southern Railway Co., The Atchison, Topeka and Santa Fe Railway Company, Soo Line, Inc., Southern Pacific Transportation Co., and Union Pacific Railroad Co.

[2] Accompanying the proposal are supporting verified statements from AAR, AAR member railroad Consolidated Rail Corp., and ISRI members Columbia Iron and Metal Co. and David J. Joseph Co.

[3] Petitioners claim that rail market share has dropped since 1977 from a high of 54.1% to 34% in 1990. Petitioners state that industry revenue per ton-mile for ferrous recyclables declined from 8 cents in 1981 to 4.9 cents in 1991, a 39% decrease.

[4] Petitioners state that ferrous recyclable traffic comprised only 1.3% of total rail carloads of traffic in the United States in 1991.

transportation market is enhanced by competition in the market for the commodities themselves.

We invite comments and data concerning the proposal. Persons submitting comments should address whether the exemption of the subject commodities meets the statutory criteria of 49 U.S.C. 10505. Persons also may address the appropriateness of the exemption for any of these commodities on an individual basis.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption is granted, it will not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have a significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. The impact, if any, would be to reduce the amount of paperwork, tariff filing, and related activities. An exemption, if granted, would be based on a finding that (a) the transportation at issue is of limited scope, and/or (b) regulation of this transportation is not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). Such findings, if made, would indicate that a significant number of small entities would not be substantially affected. We invite comments in this area.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: August 16, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan. Commissioner Simmons dissented in part with a separate expression.

Vernon A. Williams,

Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a), the following new entries are added at the end of the table, and the text following the table is amended in the first sentence by removing the word "Also" and adding in its place "Other than the specific recyclable commodities listed above, also".

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	* * *	* *
33119	6001–V, eff. 1–1–94 ...	Blast furnance, open hearth, rolling mill or coke oven products, NEC.
34912	.....do	Steel shipping containers.
40211	.....do	Iron and steel scrap.
*	* * *	* *

[FR Doc. 94–20841 Filed 8–23–94; 8:45 am]

BILLING CODE 7035–01–P–M

49 CFR Parts 1039 and 1145

[Ex Parte No. 346 (Sub-No. 36)]

Rail General Exemption Authority—Exemption of Non-Ferrous Recyclables and Railroad Rates on Recyclable Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is considering whether to exempt partially from regulation the rail transportation of non-ferrous recyclables set forth in the Appendix. If these commodities are exempted, they will be added to the list of exempt commodities in the Commission's regulations as set forth below, and the exemption will be subject to the conditions and limitations provided therein.

DATES: Comments are due on September 23, 1994.

ADDRESSES: Participants must send an original and 10 copies of their statement referring to Ex Parte No. 346 (Sub-No. 36) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR), numerous member railroads in their individual capacities,[1] and the Institute of Scrap Recycling Industries, Inc. (ISRI) (collectively, petitioners) have petitioned the Commission to institute a proceeding to consider the partial exemption from regulation under 49 U.S.C. 10505 of the rail transportation of 28 non-ferrous recyclable commodities.[2] The proposed exemption would be effected by: (a) Adding the non-ferrous recyclables listed below to the list of exempt commodities set forth at 49 CFR 1039.11(a), (b) adding conforming language at the beginning of the list in paragraph (a),[3] and (c) modifying 49 CFR 1039.14(b)(5), as set forth below.[4] The proposed exemption would apply to all rail carriers nationwide, and would encompass all provisions of Subtitle IV of Title 49 of the United States Code, subject to the exceptions set forth in 49 CFR 1039.11, except the provisions of 49 U.S.C. 10731(e) relating to maximum rates.

In addition, on the theory that the existing regulations are not compatible with a market-driven transportation system, AAR and ISRI have petitioned the Commission for consideration of substantial amendments to 49 CFR part 1145, Railroad Rates on Recyclable Commodities, as set forth below.[5] Thus, petitioners seek exemption from regulation, other than maximum rate regulation (and the limitations at 49 CFR 1039.11(a)), for the rail transportation of non-ferrous recyclables, and the substitution of the new maximum rate regulations they propose for the existing regulations. As discussed below, although there is some opposition to this proposal, we are instituting this rulemaking in order to obtain additional information and public comment.

[1] These railroads are: Burlington Northern Railroad Co., Chicago and North Western Railway Company, Consolidated Rail Corp., CSX Transportation, Inc., Norfolk Southern Railway Co., The Atchison, Topeka and Santa Fe Railway Company, Soo Line, Inc., Southern Pacific Transportation Co., and Union Pacific Railroad Co.

[2] Accompanying the proposal are supporting verified statements from AAR, AAR member railroad Consolidated Rail Corp., and ISRI.

[3] We are not entirely clear on where petitioners intend for this conforming language to be inserted. Petitioners should clarify this matter.

[4] The Commission previously determined that exemptions for non-ferrous recyclables can best be effected by amending 49 CFR 1145.9, rather than 49 CFR 1039. *Exempt. from Regulation—Rail Transp. of Scrap Paper*, 9 I.C.C.2d 957, 964 (1993). Petitioners propose completely revising 49 CFR part 1145 and instead identifying the exempted commodities in 49 CFR 1039.

[5] Petitioners do not propose amending or deleting the reference in 49 CFR 1039.11(a) to 49 CFR 1145.9. Such action, if the rules were adopted, would appear necessary.

Proponents' Views

Section 10505 requires us to grant an exemption when we find that: (1) Regulation is not necessary to carry out the national rail transportation policy of 49 U.S.C. 10101a (NRTP); and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from an abuse of market power. Petitioners assert that their proposal meets these criteria.

Petitioners propose the subject commodities for exemption for the following reasons:

(1) Continued regulation of these commodities is not necessary to carry out the NRTP at 49 U.S.C. 10101a. According to petitioners, although the transportation of this traffic is highly competitive, an exemption would further increase competition for this traffic and promote numerous NRTP goals, such as (a) increased competition for the traffic, (b) safe and efficient transportation, (c) reduced administrative burdens for both rail carriers and shippers, and (d) increased ratemaking flexibility and financial stability for rail carriers (including, by eliminating tariff and contract filing requirements, the ability to respond more quickly to market changes and shipper demand for resulting rates and services). Current competition is reflected in statistics on rates and revenue from rail transportation of non-ferrous recyclables.[6]

(2) The involved rail transportation is limited in scope. The transportation of non-ferrous recyclables is a small percentage of total rail transportation, and shippers have access to alternative transportation modes. Moreover, the proposed exemption would not relieve carriers of their obligations under 49 U.S.C. 10731(e).

(3) This traffic is generally competitive, subject to intermodal, intramodal, and geographic competition, making regulation unnecessary to protect shippers from market power abuse. Moreover, shippers would continue to have the protection of the mandatory rate cap under 49 U.S.C. 10731(e).

Regarding the proposed amendments to 49 CFR part 1145, petitioners state that the proposed streamlined procedure is designed "to assure that rate adjustments do not exceed applicable aggregate maximum rate ratios," and "to simplify the implementation of the [rate] cap and to be compatible with an environment in which carriers must change rates frequently in response to changing market conditions." Petition at 14. Petitioners further assert that, "By agreeing not to request the even greater flexibility of complete deregulation, AAR and ISRI have removed the need for the Commission to make a finding with respect to whether continued regulation of maximum rates is necessary for all non-ferrous recyclable issues." *Id.* at 15 (note omitted).

According to petitioners, the new maximum rate regulations they propose "are designed to be self-policing thus permitting the shipper and railroad to work out adjustments without Commission intervention." *Id.* at 20. Parties may ask the Commission to resolve a dispute only if the shipper and railroad are unable to agree on the relief to be provided under the regulations. *Id.*

Opposition to Petition

Huron Valley Steel Corporation (Huron)[7] and Star Recycling, Inc. (Star) have filed in opposition to petitioners' proposal. They argue that the Commission should dismiss the petition because the proposal would preclude the Commission from fulfilling its statutory mandate with respect to recyclables rate levels, and therefore would violate 49 U.S.C. 10731(e). We withhold our final determination with respect to their requests for dismissal, and elect to treat their pleadings as opposition to AAR and ISRI's petition, and invite comment on Huron and Star's contentions.

Huron and Star reason that the Commission has no statutory authority to grant petitioners' proposed exemption. They argue that Congress singled out recyclable or recycled materials other than iron or steel as a specific exemption from the general deregulatory and procompetitive purposes of the Staggers Rail Act of 1980,[8] and that the Commission's mandate is not limited or preempted by the Commission's exemption authority at 49 U.S.C. 10505.

Star contends that the proposal "would devastate the ability of shippers of recyclables to obtain adequate and efficient rail transportation services" by permitting rail carriers "to refuse to provide a level service meeting shippers' needs (or any service at all), absent the shippers' agreement to transportation contracts that would then be outside the Commission's rate jurisdiction, and would therefore render any controls over rate levels illusory." Star motion at 3. Huron asserts that the partial exemption being sought fails to meet the criteria of 49 U.S.C. 10505.

In addition, Star contends that the "streamlined" rate procedures proposed to be substituted at 49 CFR part 1145 also would undermine the Commission's carefully established balance "between avoidance of regulatory burden on the carriers and effective supervision of recyclables rate levels." Star motion at 2. Huron argues that the proposed rules "would be both cumbersome and costly"; that they would constitute "an impermissible delegation of the ICC's public duties to private groups"; and that they would contravene the law by permitting the railroads to charge rates that are 10 percent above the statutory cap. Huron reply at 33, 41.

We invite comments and data concerning the proposal and its opposition. Although we believe that the approach suggested by the railroads and ISRI may have merit, publication of this notice, along with the rules as proposed by AAR and ISRI, is not intended to suggest a predisposition regarding the rules at this time. The proposal makes substantial changes to a set of rules that were recently adopted by the Commission at the suggestion of a coalition of shipper and carrier interests by, for example, providing a 10 percent rate cushion and eliminating the prejustification requirement for above-the-cap rate groups. Proponents should show how the new system will benefit shippers and carriers and will otherwise advance the objectives of the NRTP. Proponents should also explain in some detail how the new rules will work in practice.[9]

The opponents of the proposal have focused largely on our statutory authority to issue a partial exemption in light of the specific statutory language regarding recyclables. Although we welcome additional comments on our statutory authority to adopt the exemption, commentors objecting to the proposal should, in addition, point out in practical terms why, in their view, the proposal will be unfair to them, or otherwise will not achieve its stated objective. Commentors may also address the appropriateness of the proposed

[6] AAR reports that, from 1981 to 1991, real revenue per car for transportation of non-ferrous recyclables declined 42%. AAR adds that rail market share in 1991 for each non-ferrous recyclable commodity was 25% or less of the market total.

[7] Huron is a member of ISRI, but previously advised ISRI that it opposes the petition and that ISRI was not to file the petition on its behalf.

[8] Pub. L. No. 96–448, 94 Stat. 1905 (1980). Section 204 of the Act, codified at 49 U.S.C. 10731(e), specifically addressed recyclables.

[9] For example, proponents may wish to address in depth operational questions such as how an "average rate" is to be "frozen," and how the rules are designed to work with regard to proportional rates and combinations of local rates.

exemption for any of these commodities on an individual basis.

Environmental and Energy Considerations

We preliminarily conclude that, if an exemption is granted, it will not significantly affect either the quality of the human environment or the conservation of energy resources. We invite comments in this area.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that an exemption would not have a significant economic impact on a substantial number of small entities. No new regulatory requirements would be imposed, directly or indirectly, on such entities. The impact, if any, would be to reduce the amount of paperwork, tariff filing, and related activities. If an exemption were granted, it would be based on a finding that (a) the transportation at issue is of limited scope, and/or (b) regulation of this transportation is not necessary to protect shippers (including small shippers) from abuse of market power. See 49 U.S.C. 10505(a). Such findings, if made, would indicate that a substantial number of small entities would not be significantly affected. We invite comments in this area.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR part 1145

Railroads, Rates, Recyclable commodities.

Decided: August 16, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioner Morgan. Commissioner Simmons dissented in part with a separate expression.

Vernon A. Williams,

Acting Secretary.

NON-FERROUS RECYCLABLES

STCC	Commodity description
2051118 ...	Bakery waste or sweeping: feed.
22941	Textile waste: garnetted, processed, or recovered.
22973	Textile fibres, noils, nubs for spinning.
22994	Packing cloths or rags: processed textile wastes.
24293	Shaving or sawdust.
30311	Declaimed rubber.
3229924 ...	Cullet (broken glass).
33312	Copper matte, flue dust, or residues: skimmings, tailings, scale.
33322	Lead matte, flue dust, slag skimmings, etc.
33332	Zinc dross, residue, ashes, skimmings.
33342	Aluminum residue: ashes, skimmings, slag, smelting residues.
33398	Misc. non-ferrous residue, inc. solder skimmings, type metal dross, tin, nickel dross.
40112	Ashes: fly ash, coal cinders, photo silver ash, incinerator ash, metal bearing.
40212	Brass, bronze, copper, or alloy scrap, tailings, or wastes.
40213	Lead, zinc, or alloy scrap: lead borings, zinc castings.
40214	Aluminum scrap: borings, grindings, turnings, foil scrap.
4021960 ...	Tin scrap: metallic tin, clippings, drippings, shavings, for remelting.
40221	Textile waste: waste cotton, rope, rags, nec.
40231	Wood scrap: woodpulp waste, spent wood, waste bark.
40251	Chemical or petroleum waste: spent acid, lubricating grease, waste oil.
40261	Rubber or plastic scrap, clippings or trimmings.

NON-FERROUS RECYCLABLES—Continued

STCC	Commodity description
4029114 ...	Municipal garbage waste, solid, digested and ground.
4029176 ...	Auto shredder residue.
4111434 ...	Bags, old: Burlap, gunny, jute, or nec.
4111580 ...	Old bags for conversion into bale coverings.
42111	Non-revenue mvmt. of containers moving in reverse of loaded direction.
42112	Non-revenue mvmt. of shipping devices moving in reverse of loaded direction.
42311	Revenue mvmt. of containers moving in reverse of loaded direction.

For the reasons set forth in the preamble, title 49, chapter X, parts 1039 and 1145 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In section 1039.11, paragraph (a) is proposed to be amended by adding the following sentence at the end of the text preceding the table and by adding the following entries at the end of the table to read as follows:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * * The following commodities are exempted from all regulation except maximum rate regulation pursuant to 49 U.S.C. 10731(e), subject to the exceptions set forth in this section unless otherwise exempted from maximum rate regulation.

STCC No.	STCC tariff	Commodity
*	*	*
2051118	6001–V, eff. 1–1–94	Bakery waste or sweeping: feed.
22941	do	Textile waste: garnetted, processed, or recovered.
22973	do	Textile fibres, noils, nubs for spinning.
22994	do	Packing cloths or rags: processed textile wastes.
24293	do	Shaving or sawdust.
30311	do	Reclaimed rubber.
3229924	do	Cullet (broken glass).
33312	do	Copper matte, flue dust, or residues: skimmings, tailings, scale.
33322	do	Lead matte, flue dust, slag skimmings, etc.
33332	do	Zinc dross, residue, ashes, skimmings.
33342	do	Aluminum residue: ashes, skimmings, slag, smelting residues.
33398	do	Misc. non-ferrous residue, inc. solder skimmings, type metal dross, tin, nickel dross.
40112	do	Ashes: fly ash, coal cinders, photo silver ash, incinerator ash, metal bearing.
40212	do	Brass, bronze, copper, or alloy scrap, tailings, or wastes.
40213	do	Lead, zinc, or alloy scrap: lead borings, zinc castings.

STCC No.	STCC tariff	Commodity
40214	....do	Aluminum scrap: borings, grindings, turnings, foil scrap.
4021960	....do	Tin scrap: metallic tin, clippings, drippings, shavings, for remelting.
40221	....do	Textile waste: waste cotton, rope, rags, nec.
40231	....do	Wood scrap: woodpulp waste, spent wood, waste bark.
40251	....do	Chemical or petroleum waste: spent acid, lubricating grease, waste oil.
40261	....do	Rubber or plastic scrap, clippings or trimmings.
4029114	....do	Municipal garbage waste, solid, digested and ground.
4029176	....do	Auto shredder residue.
4111434	....do	Bags, old: burlap, gunny, jute, or nec.
4111580	....do	Old bags for conversion into bale coverings.
42111	....do	Non-revenue mvmt. of containers moving in reverse of loaded direction.
42112	....do	Non-revenue mvmt. of shipping devices moving in reverse of loaded direction.
42311	....do	Revenue mvmt. of containers moving in reverse of loaded direction.

* * * * * * *

§ 1039.14 [Amended]

3. Section 1039.14, paragraph (b)(5) is proposed to be amended by adding parentheses around the words "other than iron and steel", removing the period and adding the following words to the end of the sentence: "to the extent not otherwise exempted from regulation."

4. Part 1145 is proposed to be revised to read as follows:

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

Sec.

1145.1 Purpose.
1145.2 Definitions.
1145.3 Announcement of statutory cap levels.
1145.4 Initial challenge to individual movements.
1145.5 Treatment of contract rates.
1145.6 Regulation of recyclable rates.
1145.7 Commission review.
1145.8 Interest.
1145.9 Jurisdiction.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10505, 10731, and 10707a.

§ 1145.1 Purpose.

This part establishes procedures to encourage shippers and carriers to negotiate directly with one another to secure mutually-satisfactory rates on recyclable commodities or, if such agreement cannot be reached, procedures to regulate rates on recyclable commodities in compliance with 49 U.S.C. 10731(e), and to afford relief, including liquidated damages, rate freezes, rate reductions, reparations and/or such other relief as may be deemed appropriate. The Commission will:

(a) Determine annually the statutory cap levels to apply for the ensuing calendar year for individual Class I carriers, regions, and the nation;

(b) Determine, in response to requests from either shippers or carriers for dispute resolution the applicable individual carrier ratio (in a single line move), or weighted average ratio (in a joint line move);

(c) Adjudicate disputes over whether challenged rates comply with this part and whether any relief is warranted; and

(d) Issue orders directing rate freezes, reductions, payments of reparations, and/or such other relief as may be deemed necessary to comply with this part.

§ 1145.2 Definitions.

(a) *Above-cap rate* means a rate that produces a revenue/variable cost ratio above the Pertinent Statutory Cap Level, on an annual weighted average basis, using all movements of a particular recyclable commodity for a particular shipper between a specific origin and destination over a specified route in a full calendar year.

(b) *Annual Rate-Variable Cost Ratio* means the ratio of the Weighted Average Rate to the Weighted Average Variable Cost.

(c) *Base Year* means the calendar year before the year in which the movements that are the subject of a shipper challenge actually occurred.

(d) *Below-cap rate* means a rate that produces a revenue/variable cost ratio equal to or below the Pertinent Statutory Cap Level, on an annual weighted average basis, using all movements of a particular recyclable commodity for a particular shipper between a specific origin and destination over a specified route in a full calendar year.

(e) *Challenge Year* means the calendar year in which a shipper files a complaint with a carrier(s).

(f) *Complaint Year* means the calendar year in which the movements that are the subject of a shipper challenge actually occurred.

(g) *Freeze Rate* means:

(1) A Transition Rate that has been found to be above the Pertinent Statutory Cap Level;

(2) A non-Transition Rate that has been frozen at a level above the Pertinent Statutory Cap Level, but equal to or below 10 percentage points above the Pertinent Statutory Cap Level; or

(3) A non-Transition Rate found to be more than 10 percentage points above the Pertinent Statutory Cap Level, reduced to 10 percentage points above the Pertinent Statutory Cap Level, and frozen at that level.

(h) *Pertinent Statutory Cap Level* means the cap ratio level that is computed for each individual carrier (if a single-line rate) or weighted average of the individual carrier ratios of participating carriers (if a through rate) for the Base Year.

(i) *Recyclable commodities*, for purposes of this part, means recyclable material defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel.

(j) *Statutory cap levels* means the railroad revenue to variable cost ratio level referred to in 49 U.S.C. 10731(3), determined:

(1) As a national ratio;

(2) As regional ratios for the Eastern and Western regions;

(3) As individual carrier ratios for each Class I railroad; and

(4) As the weighted average of the individual carrier ratios for each carrier participating in a through movement over a specified through route, weighted by the proportion of the variable cost of the through movement accounted for by each participating carrier.

(k) *Ten percentage points above the statutory ratio* means a rate that produces a revenue-variable cost ratio ten percentage points above the Pertinent Statutory Cap Level. For example, if the Pertinent Statutory Cap Level is 150 percent of variable cost, ten percentage points above the cap is 160 percent of variable cost.

(l) *Transition Rate* means a Weighted Average Rate that has not been

increased by more than the increase in the Rail Cost Adjustment Factor (Adjusted) since the Base Year.

(m) *Weighted Average Rate* means the total paid for all movements of a particular recyclable commodity by a particular shipper between a specific origin and destination over a specified route in a full calendar year, divided by the total number of movements or units of shipment of that commodity for that shipper between the specific origin and destination over the specified route in that year, to produce an average charge per car, hundred weight, or other rate unit and an average weight per car.

(n) *Weighted Average Rate-Cost Ratio Cap* means the Rate-Variable Cost Ratio Cap of each carrier participating in a through movement, multiplied by that carrier's percentage of the through movement Weighted Average Variable Cost, and summed for all carriers participating in the through movement.

(o) *Weighted Average Variable Cost* means the sum of the variable cost of each movement of a particular recyclable commodity for a particular shipper between a specific origin and destination over a specified route in a full calendar year divided by the total number of movement units of that commodity for that shipper between the specific origin and destination over the specified route in that year.

§ 1145.3 Announcement of statutory cap levels.

Each calendar year, as soon as the Commission can do so, and based on the latest cost and revenue data available, the Commission will state the statutory cap levels required to apply for the Complaint Year. These cap levels will be stated:

(a) As a national ratio;

(b) As regional ratios for the Eastern and Western regions; and

(c) As individual carrier ratios for each Class I railroad (each non-Class I railroad will apply the regional ratio for the region in which its operations predominate).

§ 1145.4 Initial challenge to individual movements.

(a) *Shipper complaint to carrier.* A shipper may institute a complaint if it asserts, with supporting evidence, that the rate-variable cost ratio of a Weighted Average Rate charged for movements of a particular recyclable commodity from a specific origin to a specific destination over a specified single line or through route exceeded the Pertinent Statutory Cap Level.

(1) Complaints to a carrier(s) shall be accompanied by sworn testimony, including cost evidence, either adjusted or unadjusted, using the Commission's personal computer-based Phase III URCS Costing Model (or a successor model), and evidence of a particular recyclable commodity shipments made or received within the Complaint Year over a specified route between a specific origin and destination.

(2) Complaints to a carrier(s) must show that the Weighted Average Rate-Variable Cost Ratio exceeded the Pertinent Statutory Cap Level. In making the showing, a complaint shall use costs from the Base year, indexed to the Complaint Year. The statutory cap ratios shall be those computed by the Commission based on the data from the Base Year. Any rates charged pursuant to a written contract entered into pursuant to 49 CFR 1145.5 shall not be included in the weighted average for purposes of calculating the Weighted Average Rate. The shipper must state with specificity the relief sought and the reasons and evidence supporting the shipper's claim for relief. The claim shall be served on each carrier participating in the moves not later than February 28th of the Challenge Year, by first class mail or express delivery, or by any other means agreed upon by shipper and carrier(s).

(b) *Carrier(s) reply to shipper's complaint.* (1) If the carrier(s) agrees with the shipper's evidence, the carrier(s) shall reply to the complaining shipper in writing, stating its intention to enter into a settlement agreement for relief, as appropriate. The carrier(s) shall serve its reply on the shipper not later than April 30th of the Challenge Year by first class mail, express delivery, or by any other means agreed upon by shipper and carrier(s).

(2) If the carrier(s) disagrees with the shipper's evidence, the carrier(s) shall file a reply, accompanied by sworn testimony, including cost evidence, either adjusted or unadjusted, using the Commission's personal computer-based Phase III URCS Costing Model (or a successor model), pointing out any errors in the data and calculations submitted to it by the shipper. The carrier(s) shall serve its reply on the shipper not later than April 30th of the Challenge Year by first class mail, express delivery, or by any other means agreed upon by shipper and carrier(s).

(c) *Shipper rebuttal.* The shipper may file a rebuttal not later than May 30th of the Challenge Year by first class mail, express delivery, or by any other means agreed upon by shipper and carrier(s).

(d) *Settlement negotiations.* Shipper and carrier(s) shall negotiate in good faith to reach a voluntary settlement of the issues in any complaint brought under this part.

(1) Any settlement reached under this part shall be in writing and signed by a representative of both the shipper and the carrier(s) within 60 days of the last filing.

(2) If shipper and carrier(s) do not reach a settlement within 60 days of the last filing, then the shipper shall serve notice on the carrier(s) if it intends to submit the matter to the Interstate Commerce Commission for resolution, not later than August 10th of the Challenge Year, and both shipper and carrier(s) shall make a joint filing to the Commission of all written evidentiary material previously provided to the other party, with separate transmittal letters (not to exceed four pages) from the shipper and carrier(s) which shall state the relief requested but shall not include any new evidence, not later than August 31st of the Challenge Year.

(e) The Commission shall determine whether the challenged rate exceeds the Pertinent Statutory Cap Level, and, if so, determine the appropriate remedy under this part.

(f) Filings made under this part shall be prepared in a manner consistent with the rules of practice at 49 CFR parts 1100 through 1102 and 1104.

§ 1145.5 Treatment of contract rates.

Rates charged on movements pursuant to a rate contract executed in writing between a shipper and a carrier will not be included in calculating the annual Rate-Variable Cost Ratio of any shipper complaint about a recyclable rate. Movements made pursuant to "rate quotations," "exempt tariff circulars," or similar types of rate publications normally used for exempt traffic in lieu of published common carrier tariffs filed with the Commission pursuant to 49 U.S.C. 10762, incorporating the terms of the Uniform Straight Bill of Lading, and used without other writing or agreement between the shipper and carrier for line haul service, shall not come within the definition of a contract under this section.

§ 1145.6 Regulation of recyclable rates.

(a) *Determination of whether a rate is a transition rate.* (1) A shipper complaining to a carrier will compute the percentage increase in the RCAF between the third quarter of the year of the Complaint Year and the third quarter of the Base Year. If there has been a decline in the RCAF between two years, then the percentage increase shall be deemed to be zero.

(2) A shipper complaining to a carrier will compute the percentage increase in the Weighted Average Rate between the Base Year and the Complaint Year. If there has been a decline or no change.

then the rate of change shall be deemed to be zero.

(3) If the percentage increase in the Weighted Average Rate in the Complaint Year over the Base Year is either zero or is less than or equal to the percentage increase in the RCAF, the rate in question is a Transition Rate. If the percentage increase is greater than the increase in the RCAF, the rate is not a Transition Rate.

(4) For purposes of comparing rates in the Base Year with rates in the Complaint Year, the Weighted Average Rate per hundred weight or ton shall be used.

(b) *Shipper protection against increases in Transition Rates.* (1) Upon shipper complaint showing that the Annual Rate-Variable Cost Ratio of a Weighted Average Rate that is a Transition Rate was above the Pertinent Statutory Cap Level, a Transition Rate will be frozen for the Challenge Year and that Freeze Rate will not be further increased via RCAF increases or otherwise.

(2) Upon the shipper's complaint to the carrier in the next year, demonstrating that [the] Weighted Average Rate charged per hundred weight or ton exceeded the Freeze Rate and the Pertinent Statutory Cap, the shipper will be entitled to liquidated damages equal to the amount by which the Weighted Average Rate for the previous year exceeded the Freeze Rate for that year, multiplied by the quantity actually shipped.

(3) If in any following year, the Weighted Average Rate produces a ratio that exceeds the pertinent Statutory Cap Level, but the rate is below an existing Freeze Rate, the existing Freeze Rate will remain in place for that year; however, if the Weighted Average Rate produces a ratio below the Pertinent Statutory Cap Level, or no showing is made that the rate produces a ratio above the Pertinent Statutory Cap Level, the rate is unfrozen.

(c) *Relief with respect to rates other than Transition Rates.* (1) Upon a shipper's complaint to a carrier showing that the Weighted Average Rate has been increased above the Pertinent Statutory Cap Level, to a level less than or equal to ten percentage points above the Pertinent Statutory Cap Level in the previous year, the shipper shall be entitled to a Freeze Rate on the movement at that level for the year in which the challenge was filed with the carrier.

(2) Upon a shipper complaint to a carrier showing that a Weighted Average Rate in the Complaint Year produced a ratio that was more than 10 percentage points above the Pertinent Statutory Cap Level, the shipper shall receive as liquidated damages an amount equal to the difference between the Weighted Average Rate actually charged and the Weighted Average Rate that would have applied if the Rate had been at a level producing a ratio equal to 10 percentage points above the Pertinent Statutory Cap Level, multiplied by the quantity actually shipped, and a Freeze Rate for the next year will be set at that level equal to 10 percentage point above the Pertinent Statutory Cap.

(3) Upon a shipper complaint to a carrier demonstrating that a Weighted Average Rate exceeded a Freeze Rate in the next Complaint Year, that shipper shall receive liquidated damages equal to the difference between the Weighted Average Rate and the Freeze Rate, and the Freeze Rate will remain in place for another year.

(4) Upon shipper complaint to the carrier in a subsequent year showing that the Weighted Average Rate produced a ratio exceeding the Pertinent Statutory Cap Level, but was below an existing Freeze Rate, the existing Freeze Rate will remain in place for another year. If the Weighted Average Rate was below the Pertinent Statutory Cap Level, or no showing is made that it is above the Pertinent Statutory Cap Level, then the rate is unfrozen.

(d) *Treatment of through rates.* (1) Once liquidated damages are determined to be owed, whether by agreement of shipper and carrier or by the Commission, the collecting carrier shall pay liquidated damages to the shipper for carriers for whom the carrier collected charges.

(2) If the challenged rate is a combination of local or proportional rates or is a multiple independent factor through rate (MIFTR rate), no carrier whose local or proportional rate or MIFTR rate factor divided by the individual carrier's variable cost produces a rate-variable cost ratio below the individual carrier Pertinent Statutory Cap Level will owe liquidated damages, nor will that carrier's local or proportional rate or MIFTR rate factor be frozen. No carrier participating in a through movement will contribute a greater amount per hundred weight or ton shipped than the amount by which its Weighted Average Rate (or factor) exceeded the Weighted Average Rate set at the carrier's individual Pertinent Statutory Cap Level except that the carriers participating in the through rate will be jointly and severally liable to the shipper for the full amount of the damages suffered by the shipper.

(e) In the event shipper and carrier(s) do not agree on whether a rate is a Transition Rate, the Pertinent Statutory Cap Level, the Weighted Average Rate, Weighted Average Variable Cost, or any other matter arising under these regulations, the shipper or carrier(s) may submit the dispute to the Commission for resolution pursuant to the regulations of this part.

§ 1145.7 Commission review.

Four years after the regulations of this part are implemented, the Commission will institute a proceeding and invite comments from all interested parties on the operation of the regulations of this part, and whether the regulations of this part should be further revised. The Commission will review the record developed in the proceeding and take whatever action it deems to be required.

§ 1145.8 Interest.

Interest on liquidated damages or on reparations ordered by the Commission pursuant to this part will be calculated in accordance with the Commission's regulations on interest, 49 CFR part 1141.

§ 1145.9 Jurisdiction.

The Commission has regulatory jurisdiction over all rates on recyclable commodities subject to this part, and no showing of railroad market dominance is required. The provisions of this part shall not apply, however, to any non-ferrous recyclable commodity to the extent the Commission exempts it from maximum rate regulation.

[FR Doc. 94–20842 Filed 8–23–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, and 676

[Docket No. 050494B; I.D. 081194C]

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Disapproval of fishery management plan amendments and withdrawal of proposed rule.

SUMMARY: NMFS announces that it has disapproved Fishery Management Plan (FMP) amendments that would have imposed a moratorium on the entry of new vessels into the Alaskan groundfish and crab fisheries. Therefore, NMFS withdraws the proposed rule for these FMP amendments and for a moratorium

in the halibut fishery. NMFS determined that provisions of the proposed moratorium would violate the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: On June 3, 1994, NMFS published proposed regulations (59 FR 28827) that would implement proposed Amendment 23 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area, Amendment 28 to the FMP for Groundfish of the Gulf of Alaska, Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, and a proposed regulatory amendment affecting the Pacific halibut fishery in the waters in and off of Alaska. The proposed amendments would have imposed a temporary moratorium on the entrance of new vessels into these fisheries to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce prepare, review, and, if approved, implement a comprehensive management plan for these fisheries.

NMFS disapproved the proposed moratorium amendments on August 5, 1994, because certain provisions are not consistent with the Magnuson Act's national standards and other applicable law. The proposed crossover provision and qualifying period are inconsistent with national standards 1, 4, and 5, and are arbitrary and capricious in violation of the Administrative Procedure Act (APA). In addition, it is not clear that the proposed moratorium program adequately considers present participation in the fisheries, and, therefore, violates Magnuson Act section 303(b)(6) and the APA. The proposed appeals procedure would unnecessarily duplicate an existing limited access appeals procedure, and so violates national standard 7. Finally, NMFS found the proposed moratorium regulatory amendment affecting the halibut fishery would violate section 5(a) of the Northern Pacific Halibut Act because of inadequate consideration of present participation and the crossover provision's exacerbation of the overcapacity problem that the moratorium was intended to control.

NMFS has recommended that the Council submit revised moratorium amendments with additional supporting analysis for consideration by NMFS under the accelerated review schedule provided by the Magnuson Act.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

Dated: August 18, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–20729 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 163
Wednesday, August 24, 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

Forms Under Review by Office of Management and Budget

August 19, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Food Safety and Inspection Service
  Official Marking Devices, Labeling, and Packaging Material
  MP Form 216, FSIS Form 7234–1, FSIS Form 7227–1
  Recordkeeping; On occasion
  Businesses or other for-profit; 545,895 responses; 301,240 hours
  Lee Puricelli (202) 720–7163

Extension

- Food and Nutrition Service
  Food Stamp Accountability Report
  FNS–250
  Monthly
  State or local governments; 19,044 responses; 57,132 hours
  David Walters (703) 305–2385

New Collection

- Food and Nutrition Service
  Nutrient Standard Menu Planning Demonstration Evaluation—Part II
  On occasion
  State or local governments; Non-profit institutions; 1,872 responses; 730 hours
  John R. Endahl (703) 305–2117

Larry K. Roberson,
Deputy Departmental Clearance Officer.
[FR Doc. 94–20779 Filed 8–23–94; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Albuquerque, New Mexico, September 9–10, 1994, with a tour of local projects, September 8, 11:30 a.m. to 5:30 p.m. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is to review the current challenge cost-share grant process and prepare the annual report for Congress. The meeting will be Chaired by William Kruidenier of the International Society of Arboriculture and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held September 9–10, 1994.

ADDRESSES: The meeting will be held at the Hyatt Regency Albuquerque, 330 Tijares N.W., Albuquerque, New Mexico 87102. Send written statements and/or requests for agenda items or participation in the tour to Don Greene, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090–6090, or phone (202) 205–1689. Staff, (202) 205–1689.

Dated: August 18, 1994.

Joan M. Comanor,
Deputy Chief for State and Private Forestry.
[FR Doc. 94–20778 Filed 8–23–94; 8:45 am]
BILLING CODE 3410–11–M

Food and Nutrition Service

Food Stamp Program: Recipient Claims Collection: Expansion of Test of Offsetting Federal Income Tax Refunds

AGENCY: Food and Nutrition Service.

ACTION: General Notice.

SUMMARY: The Department hereby gives notice that it intends to increase the number of State agencies participating in the test of the feasibility and effectiveness of the Federal income tax refund offset program (FTROP). Under FTROP, certain claims against households for overissued food stamp benefits are offset from Federal income tax refunds payable to individuals liable for those claims. This notice identifies additional States which will begin testing FTROP during 1995.

EFFECTIVE DATE: This notice will be effective September 23, 1994. Implementation of the expansion of this test will begin September 23, 1994.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302, telephone (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Paperwork Reduction Act

The public burden for the reporting and recordkeeping provisions of FTROP was submitted to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507. The burden was approved October 4, 1993 (OMB No. 0594–0446). The burden was estimated at 58,555 hours.

The reporting and recordkeeping requirements were specified in the General Notice published on August 20, 1991 (56 FR 41325), which described FTROP procedures, including due process notices to individuals, appeal rights and related requirements for State agencies. Substantially all the public burden for FTROP is associated with due process notices and appeals.

Supplementary Information

In section (a) of the just cited August 20, 1991 General Notice, the Department advised the public about the initial test of FTROP and that it would advise the public of extensions and expansions of the test. In two subsequent General Notices published on August 28, 1992 (57 FR 39176), and on August 12, 1993 (58 FR 42937), the Department advised the public about two expansions of FTROP. In the August 1993 Notice, which addressed FTROP for 1994, the Department stated that it was necessary to evaluate how FTROP would work on a broader scale in States with more varying geographic and demographic characteristics. That Notice also stated that should the second, broad-based test prove successful, the Department was prepared to propose regulations to add FTROP to the Food Stamp Program regulations on a permanent basis.

The Department intends to propose permanent FTROP regulations in late 1994 so that final regulations will be in place to operate FTROP starting in 1996. The Department believes that continued operation and expansion of the test of FTROP in 1995 will be beneficial to the rulemaking process. Accordingly, the Department intends to extend the test of FTROP for an additional year, as set forth below.

General Notice

Recipient Claims Collection: Expansion of Test of Offsetting Federal Income Tax Refunds

For 1995, 32 State agencies will participate in the Federal income tax refund offset program (FTROP.) Of these 32 State agencies, 21 have previously participated and 11 will begin participating in FTROP for the first time in 1995. The State agencies participating for the first time are: Arizona, Connecticut, Indiana, Kansas, Nevada, Mississippi, Montana, New Hampshire, Rhode Island, South Dakota and Wyoming. The 21 State agencies which have previously participated are: Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, West Virginia, and Wisconsin.

In all other respects, the test will continue to be conducted according to the terms contained in the August 20, 1991 General Notice.

Dated: August 16, 1994.

Amanda Dew Manning,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 94–20724 Filed 8–23–94; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping duty orders with July anniversary dates. In accordance with the regulations, we are initiating those administrative reviews. The Department also received a request to revoke in part an antidumping duty order.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22(a) (1994), for administrative reviews of various antidumping duty orders with July anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on silicon metal from Brazil.

Initiation of Reviews

In accordance with 19 CFR 353.22(c), we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews not later than July 31, 1995.

Antidumping duty proceedings	Period to be reviewed
Brazil:	
Silicon Metal (A–351–806)	
Companhia Brasileira Carbureto de Calcio (CBCC)	07/01/93–06/30/94
Camargo Correa Metais S.A. (CCM)	
Eletrosilex Belo Horizonte Companhia Ferroligas Mina Gerais-Minasligas	
RIMA Eletrometalurgica S.A. (RIMA)	
Japan:	
Professional Electric Cutting Tools (A–588–823)	
Makita Corporation	01/04/93–06/30/94

Antidumping duty proceedings	Period to be reviewed
The People's Republic of China:	
Tapered Roller Bearings and Parts Thereof* (A–570–601)	
Harbin Bearing Factory	06/01/93–05/31/94
Luoyang Bearing Factory	
Wafangdian Bearing Factory	
Shanghai General Bearing Co., Ltd.	
Shanghai Rolling Bearing Factory	
Xiangyang Bearing Factory	
Chengdu General Bearing Factory	
Hailin Bearing Factory	
Guiyang Bearing Factory	
Haihong Bearing Factory	
Lanzhou Bearing factory	
Xibei Bearing Factory	
Changzhi Bearing Factory	
Jining Bearing Factory	
Shenyang Bearing Factory	
Gongzhuling Bearing Factory	
Jiamusi Bearing Factory	
Hangzhou Bearing Factory	
Jiangxi Bearing Factory	
Liangshan Bearing Factory	
Yantai Bearing Factory	
Northwest Bearing Plant	
Huangshi Bearing Factory	
Guangxi Bearing Factory	
Chongqing Bearing Factory	
Yunnan Bearing Factory	
Baoji Bearing Facrtory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
The Second Bearing Factory of Xuzhou	
Yuxi Bearing Factory	
Changde Bearing Factory	
Chengdu Bearing Company	
Handan Bearing Factory	06/01/93–05/31/94
Xingcheng Bearing Factory	
Premier Bearing & Equip., Ltd.	
Chin Jun Industrial Ltd.	
China National Machinery & Equipment Import & Export Corporation (CMEC)	
Henan Machinery & Equipment Import & Export Corporation	
Lianoning Machinery & Equipment Import and Export Corporation	
Jilin Machinery Import & Export Corporation	
Guizhou Machinery Import & Export Corporation	
Kenwa Shipping Co., Ltd.	
Far East Enterprising Co. (H.K.) Ltd.	
Far East Enterprising (H.K.) Co.	
Pantainer Express Line Co.	
Intermodal Systems Ltd.	
China Ningbo Int'l Economic & Technical Cooperation Corp.	
China Ningbo Cixi Import/Export Corp.	
Ningbo Xing Li Bearing Co., Ltd.	
Ningbo Yinxian Import/Export Corp. China	
Ningbo Yinxian Import/Export Corp. Hong Kong	
China National Machinery/Equipment Corp.	
China National Machinery Import/Export Corporation	
China National Machinery and Equipment Corp./Hunan Co., Ltd.	
Santoh HK Ltd.	
Huuzhou Import and Export Corp.	
Ideal Consolidators Ltd.	
Cargo Services Far East Ltd.	
China Resources Transportation & Godown Co., Ltd.	
China Travel Service (HK) Ltd.	
Fortune Network Ltd.	
China Jiangsu Technical Import/Export Corp.	
China Jiangsu Machinery Import and Export (Group) Corp.	06/01/93–05/31/94
Shanghai Machinery & Equipment Import & Export Corp.	
Shanghai Machinery Import/Export Corp.	
Hubei Provincial Machinery Import & Export Corporation	
Kaitone Shipping Co., Ltd.	
Profit Cargo Service Co., Ltd.	
United Cargo Management, Inc.	
Zhejang Expanded Bearing Co. (China)	

Antidumping duty proceedings	Period to be reviewed
Zhejang Expanded Bearing Co. (HK)	
Zhejang Yongtong Company (China)	
Zhejang Yongtong Company (HK)	
Zhejang Machinery Import/Export Corp.	
Wafangdian Bearing Industry Co.	
Heilongjang Machinery Import/Export Corp.	
Shandong Machinery Import/Export Corp.	
Wafangdian Hyatt Bearing Manufacturing Co., Ltd.	
China National Bearing Joint Export Corp.	
PFL Pacific Forwarding Ltd.	
Sui Jun International Ltd.	
Wah Shun Shipping Co., Ltd.	
Aempac System, Inc.	
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province	
Sunway Line, Inc.	
Trans-Ocean Bridge Services, Ltd.	
Scanwell Container Line Ltd.	
Scanwell Consolidators & Forwarders Ltd.	
China Machine-Building Int'l Corp.	
Hyaline Shipping (HK) Co., Ltd.	
Long Trend Ltd.	
China National Automotive Industry Guizhou Import/Export Corp.	
Waiwell Shipping Ltd.	
Special Line Ltd.	
YK Shipping International, Inc.	
Blue Anchor Line Co.	
Onan Shipping Ltd.	
Shanghai Bearing Corporation	06/01/93–05/31/94
Wing Tung Wei (China) Ltd.	
All other exporters of tapered roller bearings are conditionally covered by this review.	
United Kingdom:	
Industrial Nitrocellulose (A–412–803)	
Imperial Chemical Industries PLC ICI–NEC	07/01/93–06/30/94
Venezuela:	
Ferrosilicon* (A–307–807)	
CVG–Venezolana de Ferrosilicio	12/29/92–05/31/94

*Inadvertently omitted from pervious initiation notice.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22(c)(1) and 353.25(c)(2).

Dated: August 18, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–20712 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–421–806]

Color Negative Photographic Paper (CNPP) and Chemical Components Thereof From the Netherlands; Suspension of Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has decided to suspend the antidumping investigation involving color negative photographic paper (CNPP) and chemical components thereof from the Netherlands. The basis for the suspension is an agreement by the Dutch producers/exporters, which account for substantially all of the known imports of these products from the Netherlands, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Case History

On September 20, 1993, the Department initiated an AD investigation on CNPP and chemical components thereof from the Netherlands based on a petition filed by the Eastman Kodak Company. The International Trade Commission issued an affirmative preliminary injury determination on October 15, 1993. On March 29, 1994, the Department preliminarily determined that imports of CNPP from the Netherlands are being sold at less than fair value in the United States .

Scope of the Agreement

The merchandise covered by this investigation consists of color negative photographic paper (CNPP) sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Subject chemical components are sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble sales. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase

their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to specific wavelengths of light. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler and other substances.

Specifically excluded from this suspension agreement are: (1) all paper and chemical products not used in the silver-halide process which are used in other imaging technologies; (2) precursors of sensitized (whether chemically or spectrally) and unsensitized emulsions (including "seed emulsions" that are used exclusively in the process of producing unsensitized emulsions and do not exceed 0.25 microns in grain size (in cubic edge length)), couplers and coupler dispersions; and (3) those items entered under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 3707.10.0000, 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000, which are precursors of couplers, emulsions and coupler dispersions (except couplers dispersed in water gel solution) or are couplers, emulsions, and coupler dispersions not for actual use in the color negative photographic paper production process. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging processes (e.g., xerography), products used in laser printing, and instant photography products.

Also excluded from the scope of this investigation are paper that is designed exclusively for use in graphic arts proofing, equipment and does not exceed 160 microns in thickness, and emulsions classified under 3707.10.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS) that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of CNPP.

The CNPP subject to this investigation are classifiable under HTSUS subheadings 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000.

Period of Investigation

The period of investigation (POI) is March 1, 1993 through August 31, 1993.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will eliminate sales of this merchandise to the United States at less than fair value, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed August 19, 1994, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective (date of publication of Federal Register notice), the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of CNPP from the Netherlands, as directed in our notice of "Antidumping Preliminary Determination of Sales at Less than Fair Value, Color Negative Photographic Paper and Chemical Components Thereof from the Netherlands" is hereby terminated. Any cash deposits on entries of CNPP from the Netherlands pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Nothwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: August 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Annex 1: Suspension Agreement; Color Negative Photographic Paper and Chemical Components Thereof From the Netherlands

Under section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of color negative photographic paper and chemical components thereof from the Netherlands enter into this suspension agreement (the Agreement). On the basis of this suspension agreement, the Department shall suspend its antidumping investigation initiated on September 20, 1993 (58 FR 50331), with respect to color negative photographic paper and chemical components thereof from the Netherlands, subject to the terms and provisions set out below.

(A) Product Coverage

The merchandise subject to this Agreement is the following merchandise which has the Netherlands as its origin:

(1) For purposes of the Agreement, color negative photographic paper is all sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Subject chemical components are sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble salts. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to specific wavelengths of light. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler, and other substances.

Specifically excluded from the Agreement are: (1) all paper and chemical products not used in the silver-halide process which are used in other imaging technologies; (2) precursors of sensitized (whether chemically or spectrally) and unsensitized emulsions (including "seed emulsions" that are used exclusively in the process of producing unsensitized emulsions and do not exceed 0.25 microns in grain size (in cubic edge length)), couplers and coupler dispersions; and (3) those items entered under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 3707.10.0000, 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000, which are precursors of couplers, emulsions and coupler dispersions (except couplers dispersed in water-gel solution) or are couplers, emulsions, and coupler dispersions not for actual use in the color negative photographic paper production process. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging processes (e.g., xerography), products

used in laser printing, and instant photography products.

Also excluded from the scope of the Agreement is paper that is designed exclusively for use in graphic arts proofing equipment and does not exceed 160 microns in thickness, and emulsions classified under subheading 3707.10.0000 of the HTSUS that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of color negative photographic paper.

(2) The color negative photographic papers subject to this Agreement are classifiable under HTSUS subheadings 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Netherlands which, during the antidumping investigation on the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in the Netherlands to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price (PP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value (FMV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the FMV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on or after the effective date of the Agreement through November 30, 1994, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement to unrelated purchasers in the United States at prices that are less than its FMV, as determined by the Department based on cost information for the period December 1, 1993, through May 31, 1994, and provided to parties not later than August 19, 1994; and

(2) For all sales occurring on or after December 1, 1994, each producer/exporter agrees not to sell its merchandise subject to the Agreement to any unrelated purchaser in the United States at prices that are less than its FMV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of the Agreement and provided to parties not later than November 20, February 20, May 20, and August 20 of each year. This FMV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the FMV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale (which includes further manufactured sales) of the merchandise subject to the Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The reporting of further manufacturing costs shall be in accordance with Appendix A.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than December 30, 1994, and shall contain the specified sales information covering the period August 19, 1994, to November 30, 1994. Subsequent reports of sales data shall be submitted to the Department not later than March 31, June 30, September 29, and December 30 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producer/exporters must request FMVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting FMVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; further manufacturing costs; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Further manufacturing costs will be subtracted from the U.S. sale price to determine compliance with the FMV. As indicated in Appendix B, profit from sales to a third country [1] will be utilized, and country-specific and consolidated research and development costs will be reported by the producers/exporters on a quarterly basis. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than September 29, 1994, and shall contain the specified cost data covering the period June 1, 1994, through August 31, 1994. Each subsequent report shall be submitted to the Department not later than December 30, March 31, June 30, and September 29 of each year, and each report shall contain specified

[1] The Department calculated this figure based on information collected during the period of investigation.

information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Foreign Market Value

If the Department determines that the FMV is determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust FMV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such agreement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) the amount of the effective price discount resulting from such arrangement shall be reflected in FMV in accordance with Section D(3), or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate fair value, FMV, and/or U.S. price based on best information available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than November 1, February 1, May 1, and August 1 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its FMV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its FMV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations. In the event that the Department determines that the investigation shall be resumed, it will be resumed on the basis of the original administrative record, and the statutes, regulations, policies, and practices in effect on the effective date of the Agreement.

(G) Provision for Existing Commitments

Pursuant to Appendix C and the terms and conditions outlined below, producers/exporters may continue shipments under existing commitments and their existing terms for a period not to exceed 60 days after the effective date of the Agreement. Recognizing that certain long-term contracts must be renegotiated and that terminated customers may require time to find alternative suppliers, the producers/exporters may continue shipments under existing contract terms for a period, the deadline of which is equal to the earliest of: (1) the earliest date on which an alternative supplier can begin supplying the customer; (2) the earliest date, not to exceed 45 days, on which an existing customer has renegotiated the contract terms with the producer/exporter, or (3) 60 days after the effective date of the Agreement to customers who are terminated.

Appendix C contains a list of companies subject to this provision along with their corresponding requirements that have been approved for shipment by the producer/exporter under this provision. Total shipments to a specific company may not exceed that company's corresponding quantity listed on Appendix C or the aggregate for "all other", in the case for smaller customers. Appendix C also contains the total shipment quantity allowable under this provision for *all* companies; this amount is less than the sum of the individual company requirements listed on Appendix C. This difference is in anticipation of termination prior to all permitted shipments taking place to individual customers.

If a company renegotiates or terminates its commitments with the producer/exporter prior to receiving and accepting its maximum shipments approved, this provision no longer applies and the company will be removed from those eligible under Appendix C. The remaining quantities that have not been shipped, but were approved for a certain customer, may not be used to increase another customer's corresponding requirements. The maximum customer-specific quantities listed in Appendix C cannot be increased to account for undershipments to other customers. If a customer would like to accept additional supply above and beyond its corresponding quantity listed in Appendix C, these sales must be made at or above the applicable FMV.

If a company-specific shipment would bring the total shipments for all companies to an amount in excess of the total quantity allowable, the producer/exporter must only ship a quantity that ensures compliance with the total quantity allowable for all companies. Any quantities in excess of the total quantity allowable must be sold at or above the applicable FMV.

The producer/exporter shall notify the Department weekly of each shipment made under this provision and provide a written statement from the producer/exporter certifying that each shipment is

pursuant to commitments listed in Appendix C. The certification must contain all particulars concerning each specific shipment including, but not limited to, customer, date, quantity, price, and delivery and particulars concerning the terms and conditions under which the shipment is being made. The Department will review and approve the certification upon receipt, thereby monitoring on an individual basis all such shipments to ensure compliance with this provision. Where there is reason to believe that shipments, which do not meet the criteria described above, have nonetheless been shipped under this provision, and that certification has been made falsely, the producer/exporter will share within 5 days of any such request from the Department all particulars regarding such shipment(s). After reviewing the information, the Department will determine whether the terms of this provision have been satisfied. If the Department determines that a certification has been provided falsely or does not meet the requirements of this provision, Section F of the Agreement applies.

At the end of the 60 days, the Department will calculate upon request the total difference between the FMV in effect on the date of shipment and the actual net price at which the goods were sold. The total difference will be added to the FMV to be in effect during succeeding period(s). The resulting FMV will apply to a number of units identical to the number for which a difference was calculated. The specific units to which this resulting FMV will apply will be those units first sold in the succeeding quarter.

To the extent necessary, this provision supersedes the dates set forth in Section C of the Agreement.

(H) Non-Participating Signatories

For signatories which did not receive a questionnaire in the less-than-fair-value investigation on the subject merchandise, the Department will issue, if requested in a timely manner, the initial FMV 9 months after the effect date of the Agreement. The total sales volume made during the 9-month period prior to the issuance of the initial FMV may not exceed the total sales volume made by the signatory during the period January 1994 through June 1994. All sales made by the signatories will be made during this 9-month period at prices that are not less than fair value.

At the end of the initial 9 months, the Department may upon request review all sales made during this period. For those sales which have occurred, the Department will calculate an FMV using information for the most recent 9-month period available. The Department will calculate the total difference between the FMV and the actual price at which the goods were sold. The total difference will be added to the FMV to be in effect during the succeeding period(s). The resulting FMV will apply to a number of units identical to the number for which a difference was calculated. The specific units to which this resulting FMV will apply will be those units first sold in the succeeding quarter(s).

For all sales of covered merchandise made after the 9-month period the producer/exporter must request an FMV consistent with Section D(2) of the Agreement. Signatories will collect and report all information required by the Department for the calculation of FMV in the format specified under the Agreement.

The Department will consult with the signatories regarding data preparation and reporting format in order to ensure that all requirements are met.

To the extent necessary, this provision supersedes the dates set forth in Section C of the Agreement.

(I) Re-Export Provision

Imports into the United States of subject merchandise which are physically incorporated into a further manufactured product by a related party and are subsequently exported by the related party, are not covered by the Agreement if the following conditions apply. Upon request by the producer/exporter, the Department may approve a system which tracks imports of covered merchandise through production, to the point of re-export, and allows for verification.

The approved system will reflect an understanding between the Department and the producer/exporter that there have been a historical volume of entries of covered merchandise imported into the United States and subsequently exported in the form of a further manufactured good by a related party. Understanding this history, and taking into consideration an element for growth, the Department and the producer/exporter will agree that the volumes of entries for the duration of the Agreement will not be inconsistent with that history. The producer/exporter agrees to provide quarterly reports detailing the entries and subsequent re-exports which will be subject to verification semi-annually or more frequently as the Department deems appropriate.

(J) Other Provision

(1) In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to the Agreement have been made at less-than-fair-value.

(2) Changes in U.S. legislation resulting from U.S. implementation of Article VI of GATT 1994, shall be applicable to the requirements and obligations of the Agreement for the period beginning on the first full quarter after the effective date of any such changes.

(K) Termination

The Department will not consider requests for termination of this suspended investigation prior to August 1999. Termination will be conducted in accordance with section 353.25 of the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(L) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. PRICE—means the price at which merchandise is sold by the producer or exporter to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

(2) FOREIGN MARKET VALUE—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, as determined by the Department.

(3) PRODUCER/EXPORTER—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the related person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(13) of the Act.

(4) DATE OF SALE—means the date on which the essential terms of the contract, including price, are agreed and determinable normally the date of confirmation of sale.

The effective date of the Agreement is the date on which it is published in the **Federal Register**.

For Dutch Producers/Exporters.

Fuji Photo Film U.S.A. Inc., and Fuji Photo Film B.V.

Date

William H. Barringer, Esq.,

Willkie, Farr & Gallagher.

For U.S. Department of Commerce.

Date

Susan G. Esserman,

Assistant Secretary for Import Administration.

APPENDIX A—COLOR NEGATIVE PHOTOGRAPHIC PAPER (CNPP) AND CERTAIN CHEMICAL COMPONENTS FROM THE NETHERLANDS SUSPENSION AGREEMENT PRINCIPLES OF COST

General Framework

The cost information reported to the Department that will form the basis of the FMV calculations for purposes of the Agreement must be:

- comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards and can be tied to the audited financial statements);
- representative of the company's costs incurred for the general class of merchandise;
- calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- based on fully-absorbed costs of production, including any downtime;
- valued in accordance with generally accepted accounting principles;
- reflective of appropriately allocated common costs so that the cost necessary for the manufacturing of the product are not absorbed by other products; and
- reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility (including further manufacturing in the United States); based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus, and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor, and overhead (COM) and SG&A expenses plus profit.

Calculation of Suspension Agreement FMVs

FMVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both PP and ESP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the FMV.

Purchase price—price at which the exported merchandise is sold to the first unrelated buyer when the sale occurs prior to the importation. Typically, when the producer sells directly to an unrelated U.S. importer or to a foreign trading company for export to the United States. For PP FMVs, the CV is adjusted for movement costs, packing costs, and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Exporter's sales price—price at which the exported merchandise is sold to the first unrelated buyer after importation into the United States. Typically, when a related party in the United States makes the sale. For ESP FMVs, the CV is adjusted similar to PP sales, with differences for adjustments to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, co-op advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

Commission expenses—payments to unrelated parties for sales in the HM.

Credit expenses—expenses incurred for the extension of credit to the HM customers.

Movement expenses—freight, brokerage and handling, packing, and insurance expenses.

Home market indirect-selling expenses—fixed portion of a corporation's expenses and includes such items as salaries of administrative personnel, warehousing expenses, advertising expenses, and sales promotion. These expenses will not increase or decrease depending on production or sales.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred in the United States for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. Typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international ocean, air, or land freight.

U.S. indirect-selling expenses—include general-fixed expenses incurred by the U.S. sales subsidiary or related exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

Further Manufacturing

Further manufacturing costs are calculated by taking the sum of COM, plus SG&A expenses, plus profit in the U.S. market for further manufacturing. Where further manufacturing modifies the subject merchandise to the extent that the finished product is no longer within the scope of the investigation, the Department will provide its calculations of further manufacturing.

For ESP Transactions

direct materials
+ direct labor
+ *factory overhead*
= Cost of Manufacturing
+ *home market SG&A* [2]
= Cost of Production
+ *Profit* [3]
= Constructed Value
+ U.S. direct-selling expense
+ U.S. indirect-selling expense
+ U.S. commission expense
+ U.S. movement expense
+ U.S. credit expense
– HM direct-selling expense
– HM indirect-selling expense [4]
– HM commission expense
– *HM credit expense*
= FMV for ESP sales

[2] Home market SG&A must be at least 10 percent of the cost of manufacturing.

[3] Profit must be at least 8 percent of the cost of production.

[4] This expense is capped and can be no greater than either (1) the total of U.S indirect-selling expense or (2) the combined total of U.S. indirect-selling expense and U.S. commission when no HM commissions are paid.

For PP Transactions

direct materials
+ direct labor
+ *factory overhead*
= Cost of Manufacturing
+ *home market SG&A* [5]
= Cost of Production
+ *Profit* [6]
= Constructed Value
+ U.S. direct-selling expense
+ U.S. commission expense
+ U.S. movement expense
+ U.S. credit expense
– HM direct-selling expense
– HM commission expense [7]
– *HM credit expense*
= FMV for PP sales

For Further Manufacturing

direct materials
+ direct labor
+ *factory overhead*
= Cost of Further Manufacturing
+ *further manufacturing SG&A*
= Further Manufacturing Cost of Production
+ *further manufacturing profit*
= Total Further Manufacturing Costs

[5] Home market SG&A must be at least 10 percent of the cost of manufacturing.

[6] Profit must be at least 8 percent of the cost of production.

[7] If the company does not have HM commissions, HM indirects are subtracted only up to the amount of U.S. commissions.

Appendix B—Profit Calculation

The profit figure represents the profit from sales of CNPP to unrelated customers in Germany during the period of Investigation (POI). The Department computed the profit percentage in the following manner:

Gross Sales Price
—Discounts
—Rebates
—Movement Expenses
=Net Price
Less: Cost of Production (materials, labor, overhead, selling, general and administrative expenses, interest, other, packing)
=Profit per transaction
Profit percentage=Profit from all transactions/COP from all transactions
=[ ] percent

BILLING CODE 3510–DS–M

Appendix C

CUSTOMER	Total Company–Specific Shipment Cap (sq. meters)	Total Company–Specific Shipment Cap (sq. feet)

Total Overall Shipment Cap*		

* Total volume of company–specific shipments may not exceed the total overall cap.

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BILLING CODE 3510–DS–C

[A-588-832]

Color Negative Photographic Paper (CNPP) and Chemical Components Thereof from Japan; Suspension of Investigation

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has decided to suspend the antidumping investigation involving color negative photographic paper (CNPP) and chemical components thereof from Japan. The basis for the suspension is an agreement by the Japanese producers/exporters, which account for substantially all of the known imports of these products from Japan, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Presing, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3793.

SUPPLEMENTARY INFORMATION:

Case History

On September 20, 1993, the Department initiated an AD investigation on CNPP and chemical components thereof from Japan based on a petition filed by the Eastman Kodak Company. The International Trade Commission issued an affirmative preliminary injury determination on October 15, 1993. On March 29, 1994, the Department preliminarily determined that imports of CNPP from Japan are being sold at less than fair value in the United States.

Scope of the Agreement

The merchandise covered by this investigation consists of color negative photographic paper (CNPP) sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Subject chemical components are sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble salts. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to specific wavelengths of light. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler and other substances.

Specifically excluded from this suspension agreement are: (1) all paper and chemical products not used in the silver-halide process which are used in other imaging technologies; (2) precursors of sensitized (whether chemically or spectrally) and unsensitized emulsions (including "seed emulsions" that are used exclusively in the process of producing unsensitized emulsions and do not exceed 0.25 microns in grain size (in cubic edge length)), couplers and coupler dispersions; and (3) those items entered under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 3707.10.0000, 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000, which are precursors of couplers, emulsions and coupler dispersions (except couplers dispersed in water gel solution) or are couplers, emulsion, and coupler dispersions not for actual use in the color negative photographic paper production process. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging process (e.g., xerography), products used in laser printing, and instant photography products.

Also excluded from the scope of this investigation are paper that is designed exclusively for use in graphic arts proofing, equipment and does not exceed 160 microns in thickness, and emulsions classified under 3707.10.0000 of the *Harmonzied Tariff Schedule of the United States* (HTSUS) that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of CNPP.

The CNPP subject to this investigation are classified under HTSUS subheadings 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000.

Period of Investigation

The period of investigation (POI) is March 1, 1993 through August 31, 1993.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will eliminate sales of this merchandise to the United States at less than fair value, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed August 19, 1994, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective (date of publication of Federal Register notice), the suspension of liquidation of all entries entered or withdrawn from warehouse, for consumption of CNPP from Japan, as directed in our notice of "Antidumping Preliminary Determination of Sales at Less than Fair Value, Color Negative Photographic Paper and Chemical Components Thereof from Japan" is hereby terminated. Any cash deposits on entries of CNPP from Japan pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: August 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Annex 1: Suspension Agreement; Color Negative Photographic Paper and Chemical Components Thereof from Japan

Under section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of color negative photographic paper and chemical components thereof from Japan enter into this suspension agreement (the Agreement). On the basis of the Agreement, the Department shall suspend its antidumping investigation initiated on September 20, 1993 (58 FR

50331), with respect to color negative photographic paper and chemical components thereof from Japan, subject to the terms and provisions set out below.

(A) Product Coverage

The merchandise subject to the Agreement is the following merchandise which has Japan as its origin:

(1) For purposes of the Agreement, color negative photographic paper is all sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Subject chemical components are sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble salts. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to specific wavelengths of light. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler, and other substances.

Specifically excluded from the Agreement are: (1) all paper and chemical products not used in the silver-halide process which are used in other imaging technologies; (2) precursors of sensitized (whether chemically or spectrally) and unsensitized emulsions (including "seed emulsions" that are used exclusively in the process of producing unsensitized emulsions and do not exceed 0.25 microns in grain size (in cubic edge length)), couplers and coupler dispersions; and (3) those items entered under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings 3707.10.0000, 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000, which are precursors of couplers, emulsions and coupler dispersions (except couplers dispersed in water-gel solution) or are couplers, emulsions, and coupler dispersions not for actual use in the color negative photographic paper production process. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging processes (e.g., xerography), products used in laser printing, and instant photography products.

Also excluded from the scope of the Agreement is paper that is designed exclusively for use in graphic arts proofing equipment and does not exceed 160 microns in thickness, and emulsions classified under subheading 3707.10.0000 of the HTSUS that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of color negative photographic paper.

(2) The color negative photographic paper subject to the Agreement are classifiable under HTSUS subheading 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Japan which, during the antidumping investigation on the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in Japan to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether the Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price (PP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value (FMV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the FMV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on or after the effective date of the Agreement through January 20, 1994, each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement to unrelated purchasers in the United States at prices that are less than its FMV, as determined by the Department based on cost information for the period October 21, 1993, through July 20, 1994, and provided to parties not later than August 19, 1994; and

(2) For all sales occurring on or after January 21, 1994, each producer/exporter agrees not to sell its merchandise subject to the Agreement to any unrelated purchaser in the United States at prices that are less than its FMV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in Section D of the Agreement and provided to parties not later than January 10, April 10, July 10, and October 10 of each year. This FMV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the FMV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale (which includes further manufactured sales) of the merchandise subject to the Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The reporting of further manufacturing costs shall be in accordance with Appendix A.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than February 20, 1995, and shall contain the specified sales information covering the period August 19, 1994 to January 20, 1994. Subsequent reports of sales data shall be submitted to the Department not later than May 20, August 20, November 20 and February 20 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producers/exporters must request FMVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting FMVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; further manufacturing costs; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Further manufacturing costs will be subtracted from the U.S. sale price to determine compliance with the FMV. As indicated in Appendix B, each producer/exporter will report their actual profit [1] for the class or kind of merchandise and, country-specific and consolidated research and development costs on a quarterly basis. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than November 20, 1994, and shall contain the specified cost data covering the period July 21, 1994 through October 20, 1994. Each subsequent report shall be submitted to the Department not later than February 20, May 20, August 20, and November 20 of each year, and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Foreign Market Value

If the Department determines that the FMV it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust FMV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap, or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and noncovered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: 1) the amount of the effective price discount resulting from such arrangement shall be reflected in FMV in accordance with Section D(3), or 2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate fair value, FMV, and/or U.S. price based on best information available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than December 20, March 20, June 20 and September 20 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its FMV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments of the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its FMV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations. In the event that the Department determines that the investigation shall be resumed, it will be resumed on the basis of the original administrative record, and the statutes, regulations, policies, and practices in effect on the effective date of the Agreement.

(G) Provision of Existing Commitments

Pursuant to Appendix C and the terms and conditions outlined below, producers/exporters may continue shipments under existing commitments and their existing terms for a period not to exceed 60 days after the effective date

[1] The Department will use consolidated audited financial statements to determine the appropriate profit figure.

of the Agreement. Recognizing that certain long-term contracts must be renegotiated and that terminated customers may require time to find alternative supplies, the producers/exporters may continue shipments under contract terms for a period, the deadline of which is equal to the earliest of: (1) the earliest date on which an alternative supplier can begin supplying the customer; (2) the earliest date, not to exceed 45 days, on which an existing customer has renegotiated the contract terms with the producer/exporter, or (3) 60 days after the effective date of the Agreement to customers who are terminated.

Appendix C contains a list of companies subject to this provision along with their corresponding requirements that have been approved for shipment by the producer/exporter under this provision. Total shipments to a specified company may not exceed that company's corresponding quantity listed on Appendix C or the aggregate for "all other", in the case for smaller customers. Appendix C also contains the total shipment quantity allowable under this provision for *all* companies; this amount is less than the sum of the individual company requirements listed on Appendix C. This difference is an anticipation of termination prior to all permitted shipments taking place to individual customers.

If a company renegotiates or terminates its commitments with the producer/exporter prior to receiving and accepting its maximum shipments approved, this provision no longer applies and the company will be removed from those eligible under Appendix C. The remaining quantities that have not been shipped, but were approved for a certain customer, may not be used to increase another customer's corresponding requirements. The maximum customer-specific quantities listed on Appendix C cannot be increased to account for undershipments to other customers. If a customer would like to accept additional supply above and beyond its corresponding quantity listed on Appendix C, these sales must be made at or above the applicable FMV.

If a company-specific shipment would bring the total shipments for all companies to an amount in excess of the total quantity allowable, the producer/exporter must only ship a quantity that ensures compliance with the total quantity allowable for all companies. Any quantities in excess of the total quantity allowable must be sold at or above the applicable FMV.

The producer/exporter shall notify the Department weekly of each shipment made under this provision and provide a written statement from the producer/exporter certifying that each shipment is pursuant to commitments listed on Appendix C. The certification must contain all particulars concerning each specific shipment including, but not limited to, customer, date, quantity, price, and delivery and particulars concerning the terms and conditions under which the shipment is being made. The Department will review and approve the certification upon receipt, thereby monitoring on an individual basis all such shipments to ensure compliance with this provision. Where there is reason to believe that shipments, which do not meet the criteria described above, have nonetheless been shipped under this provision, and that certification has been made falsely, the producer/exporter will share within 5 days of any such request from the Department all particulars regarding such shipment(s). After reviewing the information, the Department will determine whether the terms of this provision have been satisfied. If the Department determines that a certification has been provided falsely or does not meet the requirements of this provision, Section F of the Agreement applies.

At the end of the 60 days, the Department will calculate upon request the total difference between the FMV in effect on the date of shipment and the actual net price at which the goods were sold. The total difference will be added to the FMV to be in effect during succeeding period(s). The resulting FMV will apply to a number of units identical to the number for which a difference was calculated. The specific units to which this resulting FMV will apply will be those units first sold in the succeeding quarter.

To the extent necessary, this provision supersedes the dates set forth in Section C of the Agreement.

(H) Non-Participating Signatories

For signatories which did not receive a questionnaire in the less-than-fair-value investigation on the subject merchandise, the Department will issue, if requested in a timely manner, the initial FMV 9 months after the effective date of the Agreement. The total sales volume made during the 9-month period prior to the issuance of the initial FMV may not exceed the total sales volume made by the signatory during the period January 1994 through June 1994. All sales made by the signatories will be made during this 9-month period at prices that are not less-than-fair-value.

At the end of the initial 9 months, the Department upon request may review all sales made during this period. For those sales which have occurred, the Department will calculate an FMV using information for the most recent 9-month period available. The Department will calculate the total difference between the FMV and the actual price at which the goods were sold. The total difference will be added to the FMV to be in effect during the succeeding period(s). The resulting FMV will apply to a number of units identical to the number for which a difference was calculated. The specific units to which this resulting FMV will apply will be those units first sold in the succeeding quarter(s).

For all sales of covered merchandise made after the 9-month period the producer/exporter must request an FMV consistent with Section D(2) of the Agreement. Signatories will collect and report all information required by the Department for the calculation of FMV in the format specified under the Agreement. The Department will consult with the signatories regarding data preparation and reporting format in order to ensure that all requirements are met.

To the extent necessary, this provision supersedes the dates set forth in Section C of the Agreement.

(I) Re-Export Provision

Imports into the United States of subject merchandise which are physically incorporated into a further manufactured product by a related party and are subsequently exported by the related party, are not covered by the Agreement if the following conditions apply. Upon request by the producer/exporter, the Department may approve a system which tracks imports of covered merchandise through production, to the point of re-export, and allows for verification.

The approved system will reflect an understanding between the Department and the producer/exporter that there have been a historical volume of entries of covered merchandise imported into the United States and subsequently exported in the form of a further manufactured good by a related party. Understanding this history, and taking into consideration an element for growth, the Department and the producer/exporter will agree that the volumes of entries for the duration of the Agreement will not be inconsistent with that history. The producer/exporter agrees to provide quarterly reports detailing the entries and subsequent re-exports which will be subject to verification semi-annually or more

frequently as the Department deems appropriate.

(J) Other Provision

(1) In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less-than-fair-value.

(2) Changes in U.S. legislation resulting from U.S. implementation of Article VI of GATT 1994, shall be applicable to the requirements and obligations of the Agreement for the period beginning on the first full quarter after the effective date of any such changes.

(K) Termination

The Department will not consider requests for termination of this suspended investigation prior to August 1999. Termination will be conducted in accordance with § 353.25 of the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(L) Definitions

For purposes of the Agreement, the following definitions apply:

(1) *U.S. Price*—means the price at which merchandise is sold by the producer or exporter to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

(2) *Foreign Market Value*—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, as determined by the Department.

(3) *Producer/Exporter*—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the related person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(13) of the Act.

(4) *Date of Sale*—means the date on which the essential terms of the contract, including price, are agreed and determinable, normally the date of confirmation of sale.

The effective date of the Agreement is the date on which it is published in the **Federal Register**.

For Japanese Producers/Exporters

Fuji Photo Film U.S.A., Inc., and Fuji Photo Film Co., Ltd.

Date

William H. Barringer, Esq.
Willkie, Farr & Gallagher

Konica Corporation, Konica U.S.A., Inc., Konica Manufacturing U.S.A., Inc.,

Date

Lawrence R. Walders, Esq.
Graham & James

For U.S. Department of Commerce

Date

Susan G. Esserman
Assistant Secretary for Import Administration

Appendix A—Color Negative Photographic Paper (CNPP) and Certain Chemical Components From Japan Suspension Agreement Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the FMV calculations for purposes of the Agreement must be:

- comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards and can be tied to the audited financial statements);
- representative of the company's costs incurred for the general class of merchandise;
- calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- based on fully-absorbed costs of production, including any downtime;
- valued in accordance with generally accepted accounting principles;
- reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility (including further manufacturing in the United States); based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus, and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor, and overhead (COM) and SG&A expenses plus profit.

Calculation of Suspension Agreement FMVs

FMVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both PP and ESP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the FMV.

Purchase price—price at which the exported merchandise is sold to the first unrelated buyer when the sale occurs prior to the importation. Typically, when the producer sells directly to an unrelated U.S. importer or to a foreign trading company for export to the United States. For PP FMVs, the CV is adjusted for movement costs, packing costs, and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Exporter's sales price—price at which the exported merchandise is sold to the first unrelated buyer after importation into the United States. Typically, when a related party in the United States makes the sale. For ESP FMVs, the CV is adjusted similar to PP sales, with differences for adjustments to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result

of a sale. These include such expenses as commissions, co-op advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

Commission expenses—payments to unrelated parties for sales in the HM.

Credit expenses—expenses incurred for the extension of credit to the HM customers.

Movement expenses—freight, brokerage and handling, packing, and insurance expenses.

Home market indirect-selling expenses—fixed portion of a corporation's expenses and includes such items as salaries of administrative personnel, warehousing expenses, advertising expenses, and sales promotion. These expenses will not increase or decrease depending on production or sales.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred in the United States for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. Typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international ocean, air, or land freight.

U.S. indirect-selling expenses—include general-fixed expenses incurred by the U.S. sales subsidiary or related exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

Further Manufacturing

Further manufacturing costs are calculated by taking the sum of COM, plus SG&A expenses, plus profit in the U.S. market for further manufacturing. Where further manufacturing modifies the subject merchandise to the extent that the finished product is no longer within the scope of the investigation, the Department will provide its calculations of further manufacturing.

For ESP Transactions

direct materials
+ direct labor
+ *factory overhead*
= Cost of Manufacturing
+ *home market SG&A*[2]
= Cost of Production
+ *profit*[3]
= Constructed Value
+ U.S. direct-selling expense
+ U.S. indirect-selling expense
+ U.S. commission expense
+ U.S. movement expense
+ U.S. credit expense
− HM direct-selling expense
− HM indirect-selling expense[4]
− HM commission expense
− *HM credit expense*
= FMV for ESP sales

For PP Transactions

direct materials
+ direct labor
+ *factory overhead*
= Cost of Manufacturing
+ *home market SG&A*[5]
= Cost of Production
+ *Profit*[6]
= Constructed Value
+ U.S. direct-selling expense
+ U.S. commission expense
+ U.S. movement expense
+ U.S. credit expense
− HM direct-selling expense
− HM commission expense[7]
− *HM credit expense*
= FMV for PP sales

For Further Manufacturing

direct materials
+ direct labor
+ *factory overhead*
= Cost of Further Manufacturing
+ *further manufacturing SG&A*
= Further Manufacturing Cost of Production
+ *further manufacturing profit*
= Total Further Manufacturing Costs

[2] Home market SG&A must be at least 10 percent of the cost of manufacturing.

[3] Profit must be at least 8 percent of the cost of production.

[4] This expense is capped and can be no greater than either (1) the total of U.S. indirect-selling expense or (2) the combined total of U.S. indirect-selling expense and U.S. commission when no HM commissions are paid.

[5] Home market SG&A must be at least 10 percent of the cost of manufacturing.

[6] Profit must be at least 8 percent of the cost of production.

[7] If the company does not have HM commissions, HM indirects are subtracted only up to the amount of U.S. commissions.

Appendix B—Profit Calculation

The profit percentages applicable to this agreement will be calculated from the signatories' sales of color negative photographic paper, and chemical components thereof, in the Japanese market. The data which the Department will utilize in making this calculation will be taken directly from the companies' internal financial statements.

BILLING CODE 3510-DS-M

Appendix C

CUSTOMER	Total Company–Specific Shipment Cap (sq. meters)	Total Company–Specific Shipment Cap (sq. feet)
Total Overall Shipment Cap*		

*Total volume of company–specific shipments may not exceed the total overall cap

[FR Doc. 94–20870 Filed 8–22–94; 8:45 am]
BILLING CODE 3510–DS–C

[C–475–815]

Postponement of Preliminary Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe ("Seamless Pipe") from Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Kristin Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–5055 and 482–3798, respectively.

POSTPONEMENT: On July 13, 1994, the Department of Commerce ("the Department") initiated a countervailing duty investigation of seamless pipe from Italy. The Government of Italy, the Delegation of the Commission of the European Communities and the company under investigation have indicated that they will be cooperating in the investigation. In addition, the company under investigation has undergone complex restructuring in the past and examination of the potential subsidies received will require extensive analysis. Accordingly, we deem this investigation to be extraordinarily complicated. Therefore, pursuant to 19 CFR 355.15(b) we are postponing the preliminary determination in this investigation until no later than November 18, 1994.

Dated: August 17, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–20713 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–433–806, C–475–817]

Postponement of Preliminary Countervailing Duty Determinations: Oil Country Tubular Goods ("OCTG") From Austria and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske (Austria) or Kristin M. Heim (Italy), Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or 482–3798, respectively.

POSTPONEMENT: On July 20, 1994, the Department of Commerce ("the Department") initiated countervailing duty investigations of OCTG from Austria and Italy. Respondents in both cases have indicated that they will be cooperating in these investigations. In addition, the companies, under investigation in both the Austrian and Italian investigations have undergone complex restructuring in the past and examination of the potential subsidies received by the respondents will require extensive analysis. Accordingly, we deem these investigations to be extraordinarily complicated. Therefore, pursuant to 19 CFR 355.15(b)(1994) we are postponing the preliminary determinations in these investigations until no later than November 23, 1994.

Dated: August 17, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–20714 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration, North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Binational Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of the Binational Panel Review of the final determination made by the Canadian International Trade Tribunal, respecting Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples Imported in Non-Standard Containers for Processing, Secretariat File No. CDA–94–1904–01.

SUMMARY: Notice is hereby given pursuant to Rule 78 of the NAFTA Rules of Procedure for Article 1904, that the Binational Panel Review in the subject described above was completed on July 27, 1994, the day on which the binational panel review was terminated pursuant to subrule 71(2).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were established in the **Federal Register** on February 23, 1994. The panel review in this matter was conducted in accordance with these rules.

Dated: August 17, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94–20711 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 081894B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of its Reef Fish Scientific and Statistical Committee on September 8, 1994, from 8:00 a.m. until 5:00 p.m., and its Reef Fish Advisory Panel on September 9, 1994, from 8:00 a.m. until 5:00 p.m., to review and discuss stock assessment information, and social and economic information on red snapper and gag. Based on this review, they will recommend to the Council levels for setting total allowable catch, trip limits, bag limits, size limits, and closed seasons or areas, or gear restrictions for 1995. They will also review and discuss an evaluation by the Special Management Zone Monitoring Team of a request from the State of Alabama to designate certain areas in the exclusive economic zone off the coast of Alabama as Special Management Zones with gear restrictions for reef fish fishing.

The meetings will be held at the Guest Quarters Hotel, 4400 West Cypress Street, Tampa, FL; telephone: (813) 873–8675.

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Populations Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by September 1, 1994.

Dated: August 19, 1994.

Richard H. Schaefer,

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

[FR Doc. 94–20818 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 081894C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Small Boat Pelagic Fisheries Working Group will hold meetings during September and October 1994 in Conference Room 306 of the Executive Centre Hotel, 1088 Bishop Street, Honolulu, HI. Tentative meeting dates and times are as follows:

September 7, 1994; 6:00 - 9:00 p.m.
September 28, 1994; 6:00 - 9:00 p.m.
October 19, 1994; 6:00 - 9:00 p.m.

At these meetings, the group may discuss the following topics:

(1) Catch competition among pelagic fishery sectors;

(2) Trends in fishery indicators (e.g., average fish size, populations, status, etc.);

(3) Special problems and solutions near seamounts, fishery attraction devices and weather buoys;

(4) Individual fishermen's quotas;

(5) Market conditions and minimum size limits for small tunas;

(6) Off-market (unauthorized) fish sales;

(7) Effects of imports on local markets;

(8) Bag limits for recreational tuna catches;

(9) Commercial sales of blue marlin;

(10) Definitions of recreational, commercial and subsistence fishing/fishermen;

(11) Marine recreational fishing licenses;

(12) Restricted areas;

(13) Marine Mammal regulations;

(14) Coast Guard regulations for commercial fishermen;

(15) Constraints in enforcement and prosecution;

(16) Weakness of inter-agency coordination;

(17) Data requirements; and

(18) Sustainable resource production and major environmental variations.

The goal of the meetings is to develop an issues paper containing recommendations for the Council to consider regarding immediate and longer-term solutions to problems.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed, in writing, to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date(s).

Dated: August 18, 1994.

David S. Crestin,

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

[FR Doc. 94–20817 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–22–F

Minority Business Development Agency

Native American Business Development Center Applications: Cherokee

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Amended.

SUMMARY: This notice amends the advertisement as it appeared in the August 15, 1994, issue for the Minority Business Development Agency (MBDA) announcing that it is soliciting competitive applications for its Native American Business Development Center (NABDC).

CLOSING DATE: The closing date for applications is September 23, 1994. Applications must be post-marked on or before September 23, 1994. Anticipated processing time of this award is 120 days.

ADDRESS: U.S. Department of Commerce, Minority Business Development Agency, Atlanta Regional Office, 401 W. Peachtree Street NW., Suite 1715, Atlanta, Georgia 30308–3516.

A pre-application conference will be held on September 7, 1994 at 9:00 a.m., at the Atlanta Regional Office.

FOR FURTHER INFORMATION CONTACT: Robert Henderson, Acting Regional Director, at 404/730–3300.

SUPPLEMENTARY INFORMATION: The funding instrument for this project will be a cooperative agreement. The award has been amended to reflect the budget period January 1, 1995 to December 31, 1995.

Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

11.801 Native American Program (Catalog of Federal Domestic Assistance)

Dated: August 18, 1994.

Mel A. Jackson,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–20752 Filed 8–23–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[Docket No. 940831–4231]

GLOBE Joint Project Agreement(s)

AGENCY: NOAA, Commerce.

ACTION: Notice, solicitation of interest.

SUMMARY: NOAA solicits indications of interest by one or more non-profit, research or public organizations to participate in joint projects supporting the GLOBE (Global Learning and Observations to Benefit the Environment) Program. Under that program, students in grades K through 12 will carry out scientific experiments and conduct environmental observations which will be transmitted through Internet and satellite communications to a central processing site. At the central site, global environmental images will be created and relayed back to the students. The data acquired by the students will also support ongoing work of environmental scientists throughout the world.

DATES: Responses should be received no later than September 8, 1994.

ADDRESSES: All responses should be sent by mail to Thomas N. Pyke, Director, The GLOBE Program, 744 Jackson Place NW., Washington, DC 20503 or delivered by express or courier service to Director, The GLOBE Program, The White House, New Executive Office Building, 725 17th Street NW., Room G–1, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Thomas N. Pyke, (202) 395–7600.

SUPPLEMENTARY INFORMATION: This is a notice to solicit interest in joint project agreements in support of The GLOBE Program, which is an international environmental science and education program. Students throughout the world will participate in environmental science experiments by using personal computers connected to networks like the Internet. Their observational data will be shared with students at other schools through the creation of global environmental pictures of the world based on the student-acquired data. The data will also be employed to support environmental science research.

The GLOBE Program will bring school children, educators, and scientists together to monitor the worldwide environment. Its goals are to enhance the collective awareness of individuals throughout the world concerning the environment and the impacts of human activities on it and to increase scientific understanding of the earth.

Students in grades K through 12 or equivalent grades at schools throughout the world will conduct scientific experiments. Student environmental observations will be transmitted through the international Internet and direct satellite communications to a central processing site, at which global environmental images will be created and relayed back to the students. The data acquired by the students will also be made available through the Internet to environmental scientists throughout the world to support their research. GLOBE will begin operation in a number of schools throughout the world on April 22, 1995, the 25th Earth Day. Over the following several years, thousands of schools are expected to participate in GLOBE.

The GLOBE Program is managed by an interagency team that includes National Oceanic Atmospheric Administration (NOAA), National Aeronautics and Space Administration, National Science Foundation, Environmental Protection Agency, and the Departments of Education and State. GLOBE Leadership also includes the White House Office on Environmental Policy and Office of Science and Technology Policy. NOAA, as the host agency for GLOBE, intends to enter into one or more joint project agreements with joint project partners as a part of The GLOBE Program as authorized under 15 U.S.C. 1525.

An organization is eligible for consideration as a joint project partner under this authority if it is a nonprofit organization, research organization, or public organization or agency with a mutual interest in the project, and must agree to bear an equitable portion of the project's costs, as determined by NOAA. NOAA also intends to enter into a joint project agreement with a non-profit organization that will coordinate and encourage private sector participation in The GLOBE Program and support the application of private sector resources in implementing GLOBE in schools in the United States and throughout the world.

The GLOBE Program is interested in establishing these agreements with eligible organizations through which GLOBE program goals are supported and the activity also benefits the goals of each partner. The GLOBE Program intends to build on environmental education activities and supporting computing and networking infrastructure that is in place or planned to the greatest extent possible, through the use of these agreements.

For example, joint project agreements may be entered into with organizations that sponsor or carry out environmental education programs in one country or internationally, in which students participate in environmental science experiments and use personal computers connected to the Internet to share the data they acquire with students in other schools. The addition of GLOBE environmental measurements, scientific instruments, global environmental image viewing capability, and educational materials to a program at a school might enable it to broaden its hands-on Science program and, at the same time, actively support GLOBE program goals. This example is illustrative only, and respondents are encouraged to be creative in proposing possible areas for these agreements that may be of mutual benefit to The GLOBE Program and their organizations.

As a guideline, organizations that may be considered as candidates for these agreements should have or plan to have some significant part of a national or international environmental education infrastructure having characteristics such as those described in the above example, and have members, employees or staff who possess substantial experience in setting up such programs in a large number of schools. Of special interest to the GLOBE Program may be organizations that have experience in setting up such programs in a diverse, multi-cultural environment, involving schools such as would be expected to participate in a program such as GLOBE, which will encompass many nations and a broad cross section of the United States. NOAA reserves the right to waive the use of the guideline stated above, to not select an organization even though it may meet this guideline, to rely on other criteria, and to select joint project partner(s) through means other than this notice process.

All interested parties, including those organizations that respond to this notice, should be aware that NOAA, as host agency, and other Federal agencies participating in the GLOBE program may enter into contracts or financial assistance agreements in the future in addition to the agreements as solicited in this notice. Solicitations for applicants for contracts or financial assistance programs will be announced in a separate notice. Any organizations with whom these agreements are entered into relative to the GLOBE program would not be precluded solely as a result of their status as a party to the agreement from competing or otherwise being considered for such contracts or financial assistance agreements.

In the interest of minimizing the burden on respondents to this notice and on the Government in considering such responses, respondents are requested to limit their response to no more than five single-spaced, typed pages. Additional descriptive material about the responding organization or its programs may be attached, at the option of the respondent.

Dated: August 19, 1994.

James W. Brennan,

Acting General Counsel.

[FR Doc. 94–20844 Filed 8–22–94; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 081094A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Return of Applications for Public Display Permits, Aqua Circus (P23D) and Safari World (P533A).

SUMMARY: Notice is hereby given that the issuance of public display permits as authorized by the Marine Mammal Protection Act of 1972 (MMPA), (16 U.S.C. 1361 *et seq.*) has been affected by the passage of the MMPA Amendments of 1994 (1994 Amendments). Under these new amendments, a public display permit is not required for a transfer of captive animals. Therefore, requests for public display permits affected by the new amendments have been returned to the following applicants: Aqua Circus of Cape Cod (59

CFR 5180) and Safari World (58 CFR 54554).

EFFECTIVE DATE: The 1994 Amendments were enacted on April 30, 1994.

ADDRESSES: Inquiries regarding the issuance of public display permits should be submitted to: Chief, Permits Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ann Terbush (301) 713–2289.

SUPPLEMENTARY INFORMATION: Under the 1994 Amendments, (P.L. 103–238), a public display permit is not required for the transport of captive marine mammals from one public display facility to another; however, all recipients of marine mammals for public display purposes must: (1) Offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community; (2) be registered or hold a license issued under 7 U.S.C. 2131 *et seq.*, i.e., from the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (or, for foreign facilities, meets comparable standards); and (3) maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and to which access is not limited or restricted other than by charging of an admission fee.

Additionally, when marine mammals are transported from one facility to another, NMFS must be provided with 15-days' advance notification by the facility from which the animals are to be transferred. If the animals to be transported are from captive stock, no further NMFS authorization would be required. However, in the case of beached and stranded animals, a permit may be required if the animals are otherwise determined to be releasable to the wild.

NMFS intends to revise regulations establishing new procedures for public display permits issued pursuant to 50 CFR part 216.

Dated: August 17, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–20728 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 080994B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 934 (P63C).

SUMMARY: Notice is hereby given that Robert Elsner, Ph.D., Institute of Marine Science, University of Alaska, Fairbanks, AK 99775, has been issued a permit to take beached/stranded rehabilitated harbor seals (*Phoca vitulina richardii*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: On June 27, 1994, notice was published in the **Federal Register** (59 FR 32597) that a request for a scientific research permit to take Pacific harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 17, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–20727 Filed 8–23–94; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0015]

Great Lakes Products, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR Part 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Great Lakes Products, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 8, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0015, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 16, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Great Lakes Products, Inc. (hereinafter, "Great Lakes"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Great Lakes knowingly caused the export of certain banned hazardous products, namely volatile alkyl nitrites used for inhaling or otherwise introducing into the human body for euphoric or physical effects, in violation of sections 8 and 18 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057 and 2067, which are prohibited acts under sections 19(a)(10) of the CPSA, 15 U.S.C. 2068(a)(10).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Great Lakes is a corporation organized and existing under the laws of the State of Indiana with its principal corporate offices located at 1491 N. Harding St., Indianapolis, IN 46202. Great Lakes is engaged in the business of manufacturing for export, room odorants, under various trade names including, but not limited to, Rush, Hardware, Quicksilver, Bolt and Ram. These products are commonly used as sexual stimulants.

II. Allegations of the Staff

4. From early 1991 until early 1994, Great Lakes exported to various foreign countries quantities of the above described products on at least 93 separate occasions.

5. Pursuant to section 18 of the CPSA, 15 U.S.C. 2067, and the Commission's export regulations, 16 CFR 1019, Great Lakes is required to notify the Commission, in writing, prior to the exportation of any banned hazardous substance. This notice must specify the (1) anticipated shipment date; (2) country and port of destination; (3) quantity of the substance that will be exported; and (4) any additional information required by regulation.

6. On or about March 18, 1994 Great Lakes voluntarily informed the staff that an employee had failed to file with the Commission the "Notification of Intent To Export" required prior to exporting the products which made up the 93 shipments referred to above.

7. Up until February of 1991 the firm had filed the necessary notification, and admittedly was fully aware of its legal obligation to continue to do so.

8. Great Lakes knowing failure to file the required statements informing the Commission of its intent to export is a violation of section 18(b) of the CPSA and thereby a prohibited act under section 19(a)(10) of the CPSA. The violation of section 19(a)(10) is punishable by a civil penalty as prescribed in section 20 of the CPSA, 15 U.S.C. 2069.

IV. Response of Great Lakes

9. Great Lakes denies the allegations of the staff that it knowingly failed to comply with export notification requirements of the CPSA.

V. Agreement of the Parties

10. The Consumer Product Safety Commission has jurisdiction over Great Lakes and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*).

11. Great Lakes agrees to pay to the Commission a civil penalty in the amount of TEN THOUSAND AND 00/100 DOLLARS ($10,000.00).

12. The Commission and Great Lakes agree that this Agreement is entered into for the purposes of settlement only.

13. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Great Lakes knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Great Lakes failed to comply with the CPSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

14. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

16. The parties further agree that the Commission shall issue the attached Order, incorporated herein by reference; and that a violation of the Order shall subject Great Lakes to appropriate legal action.

17. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or to contradict its terms.

18. The provisions of the Settlement Agreement and Order shall apply to Great Lakes and each of its successors and assigns.

Dated: July 7, 1994.

Respondent Great Lakes Products, Inc.

Joseph F. Miller,

President, Great Lakes Products, Inc., 1491 N. Harding St., Indianapolis, IN 46202.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Office of Compliance and Enforcement, Division of Administrative Litigation.

Dated: July 15, 1994.

Melvin I. Kramer,

Trial Attorney, Office of Compliance and Enforcement, Division of Administrative Litigation.

Order

Upon consideration of the Settlement Agreement entered into between respondent Great Lakes Products Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Great Lakes; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that within 20 days of service of this final Order upon Great Lakes, Great Lakes shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of TEN THOUSAND AND 00/100 DOLLARS ($10,000.00).

Provisionally accepted and Provisional Order issued on the 16th day of August 1994.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–20709 Filed 8–23–94; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 94–C0014]

Youngland Import and Export, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR Part 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Youngland Import and Export, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 8, 1994.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0014, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 16, 1994.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Youngland Import and Export, Inc. (hereinafter, "Youngland"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of The Agreement and Order is to settle the staff's allegations that Youngland knowingly caused the introduction into commerce of certain banned hazardous substances, namely toys, and caused the export of certain banned hazardous substances in violation of sections 2(q)(1)(A) and 14(d) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261(q)(1)(A) and 1273(d), which are prohibited acts under sections 4 (a) and (i) of the FHSA, 15 U.S.C. 1263 (a) and (i).

I. Jurisdiction

2. The Commission had jurisdiction over Youngland and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(A), 4 (a) and (i) and 5(c) of the FHSA, 15 U.S.C. 1261(F)(1)(A), 1263 (a) and (i) and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Youngland is a corporation organized and existing under the laws of the State of New Jersey with its principal corporate offices located at 2510 Valentine Avenue, Bronx, NY 10458. Youngland is engaged, among other things, in the business of importing and selling in the United States children's toys and novelty items.

III. Allegations of the Staff

5. From at least September 25, 1991, to September 15, 1992, Youngland introduced into interstate commerce, certain toys, namely "Breakfast Set" model 686, and "Flip Over Buggy Car" model 2008, which are intended for use by children under three years of age. These toys failed to comply with the Commission's requirements for toys and other articles intended for use by children under three years of age which present choking, aspiration, or ingestion hazards because of small parts. (Small Parts Regulation, 16 CFR Part 1501.) One or more of the parts of the toys in question separated when subjected to the use and abuse testing specified in 16 CFR 1500.51 and 1500.52. The separated parts fit entirely within the test cylinder specified in 16 CFR 1501.4.

6. Because these toys failed to meet the requirements of the Small Parts Regulation, each of them presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts). Pursuant to 16 CFR 1500.18(A)(9), each of those toys is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance). The knowing introduction or delivery for introduction into interstate commerce of these banned hazardous substances and/or the knowing receipt in interstate commerce and the delivery or proffered delivery by Youngland are prohibited acts pursuant to sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c).

7. Pursuant to section 14(d) of the FHSA 15 U.S.C. 1273(d) and 16 CFR 1019, Youngland is required to notify the Commission, in writing, prior to the exportation of any banned hazardous substance. This notice must specify the (1) anticipated shipment date; (2) country and port of destination; (3) the quantity of the substance that will be exported; and (4) any additional information required by regulation.

8. On September 15, 1992, the staff collected samples of Model 2008 "Flip Over Buggy Car." Based on testing by the Commission's Engineering laboratory this product was found to be a "banned hazardous substance" under the Federal Hazardous Substance Act, 15 U.S.C. 1261 *et seq.* The Commission's Eastern Regional Office advised Youngland of these findings in a letter dated September 30, 1992.

9. In the September 30, 1992 letter, and in previous contact with the staff, Youngland was advised, or otherwise made aware, of the alternatives for disposing of these violative products, including reexport, and the appropriate procedures to follow.

10. On January 15, 1993, Youngland submitted an export notification request detailing plans to export "600 dozen" of these toys to Hong Kong. Permission was granted by the staff on March 3, 1993.

11. No further export notification requests were received from Youngland. On March 3, 1994 an inspection of Youngland to check on the disposition of these toys revealed that Youngland had exported 7200 units of them to a firm in Costa Rica on or about August 18, 1993. No export notification was ever received for this shipment.

12. Youngland's knowing failure to provide the Commission with advance notice of its intent to export these products to Costa Rica constitutes a violation of the export notification requirements of section 14(d) of the FHSA, 15 U.S.C. § 1273(d), and is a prohibited act under section 4(i) of the FHSA, 15 U.S.C. § 1263(i).

IV. Response of Youngland

13. Youngland denies the allegations of the staff that it has knowingly introduced or delivered for introduction into commerce or received in commerce and then delivered or proffered for delivery thereof for pay or otherwise of the aforesaid banned hazardous toys, that it knowingly failed to comply with export notification requirements of the FHSA, or that it has violated the FHSA in any way.

V. Agreement of the Parties

14. The Consumer Product Safety Commission has jurisdiction over Youngland and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

15. Youngland agrees to pay to the Commission a civil penalty in the amount of FIFTEEN THOUSAND AND 00/100 DOLLARS ($15,000.00) to be paid in three (3) equal installments of $5,000. The first payment will be due within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, Youngland agrees to pay $5,000 by January 1, 1995 and $5,000 by June 1, 1995. These payments are made in full settlement of the staff's allegations set forth in paragraphs five through twelve above that Youngland violated the FHSA. Upon the failure by Youngland to make a payment or upon the making of a late payment by Youngland (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. (a) and (b).

16. The Commission does not make any determination that Youngland knowingly violated the FHSA. The Commission and Youngland agree that this Agreement is entered into for the purposes of settlement only.

17. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Youngland knowingly,

voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Youngland failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

20. The parties further agree that the Commission shall issue the attached Order, incorporated herein by reference; and that a violation of the Order shall subject Youngland to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

22. The provisions of the Settlement Agreement and Order shall apply to Youngland and each of its successors and assigns.

Respondent Youngland Import and Export, Inc.

Dated: June 17, 1994.

Raymond Srour,

President, Youngland Import and Export, Inc., 2510 Valentine Avenue, Bronx, New York 10458.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Office of Compliance and Enforcement, Division of Administrative Litigation.

Dated: July 18, 1994.

Melvin I. Kramer,

Trial Attorney, Office of Compliance and Enforcement, Division of Administrative Litigation.

Order

Upon consideration of the Settlement Agreement entered into between respondent Youngland, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Youngland; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Youngland shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of FIFTEEN THOUSAND AND 00/100 DOLLARS ($15,000.00) to be paid in three equal installments of $5,000. The first payment will be due within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, Youngland agrees to pay $5,000 by January 1, 1995 and $5,000 by June 1, 1995. Payment of the total $15,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 12 of the Settlement Agreement and Order that Youngland violated the FHSA. Upon the failure by Youngland to make a payment or upon the making of a late payment by Youngland (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 16th day of August 1994.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–20708 Filed 8–23–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Ballistic Missile Defense Advisory Committee (BMDAC)

ACTION: Notice.

SUMMARY: The BMDAC is being renewed for a two-year period in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The BMDAC provides timely advice to the Secretary of Defense and Director, Ballistic Missile Defense Organization on policy issues concerned with the acquisition and development of ballistic missile systems, subsystems, components, elements and architectures to achieve approved objectives. These include the research and development of home-based anti-ballistic missile defenses, as well as theater missile defensive emplacements.

BMDAC will continue to be composed of approximately 15–20 members who are recognized experts and leaders in policy, acquisition, and technical areas related to ballistic missile programs. The membership will be a well-balanced mix of individuals from the public sector, the academic community, and other governmental agencies and departments, with the general selection criteria that focus on the functions to be performed and interest groups affected.

For further information regarding the BMDAC, contact: Ms. Pat McCready, BMDO, (703) 693–1530.

Dated: August 17, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20704 Filed 8–23–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will have a closed session meeting in Huntsville, Alabama, on September 7–8, 1994.

The mission of the BMD Advisory Committee is to advise the Secretary and Deputy Secretary of Defense, through the Under Secretary of Defense for Acquisition and Technology, on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d), as amended in 5 U.S.C., App II, it has been determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(b) (c)(1); therefore, this meeting is closed to the public.

Dated: August 18, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–20705 Filed 8–23–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes at the Hanford Site, Richland, WA and Announcement of Public Hearings; Correction

AGENCY: Department of Energy (DOE).

ACTION: Correction and Notice of Additional Public Hearings.

SUMMARY: On Tuesday, August 2, 1994, DOE published a Draft Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes at the Hanford Site, Richland, WA and announcement of Public Hearings (59 FR 39329). Today's notice is correcting the listed address for Washington Department of Ecology (Ecology) for the submission of written comments on the Draft Statement, correcting the toll-free phone number located in the Comment Procedure section, and adding two additional public hearing meeting dates and locations in the Public Hearings section.

ADDRESSES: On page 39329, 2nd column, the address for submission of public comments to the Washington Department of Ecology is corrected as follows: Mr. Geoff Tallent, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (206) 407-7112.

PUBLIC HEARINGS: On page 39330, 2nd column, the toll free Hanford Cleanup Hotline Number is corrected to read: 1-800-321-2008 (prior to 3:00 p.m. Pacific Time).

HEARING SCHEDULES AND LOCATIONS: On page 39330, third column, under the heading "Hearing, Schedules & Locations" add the following hearings:

1. *Seattle, WA* Monday, September 12, 1994, Sheraton Seattle, 1300 Sixth Avenue, Seattle, WA 98101, Phone: (206) 621-9000.

2. *Hood River, OR* Tuesday, September 13, 1994, The Hood River Inn/Best Western, 1108 E. Marina Way, Hood River, OR 97031, Phone: (503) 386-2200, Joan Uphoff.

Signed in Richland, WA, this 16th day of August 1994, for the United States Department of Energy.

Donald H. Alexander,

Branch Chief, Technical Support Branch.

[FR Doc. 94–20831 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

Record of Decision; Proposed Polk Unit 1 Clean Coal Technology Project, Polk County, FL

AGENCY: Department of Energy.

ACTION: Record of Decision; Proposed Polk Unit 1 Clean Coal Technology Project, Polk County, Florida.

SUMMARY: The U.S. Department of Energy (DOE) is a Federal Cooperating Agency, with the Region IV (Atlanta, Georgia) Office of the U.S. Environmental Protection Agency (EPA) as the Federal lead agency, for the purpose of the preparation of an Environmental Impact Statement (EIS; EPA 904/9–94–002) for Tampa Electric Companys (TECs) proposed 1,150 megawatt (MW) Polk Power Station. DOEs participation results from the proposal by its Clean Coal Technology (CCT) Program to provide cost-sharing financial assistance for the development of the first generating facility to be built at the Polk Power Station site. Specifically, the proposed 260 MW integrated gasification combined cycle (IGCC) unit, called Polk Unit 1, is being considered by DOE for cost-shared financial assistance in the amount of $130 million under the terms of the CCT Demonstration Program. DOE considers the proposal to provide cost-shared financial assistance for the IGCC demonstration project to be a major federal action subject to the provisions of the National Environmental Policy Act (NEPA) and to the corresponding DOE regulations (10 CFR Part 1021). In accordance with these provisions, alternatives available to DOE include the proposed action (which is DOE's preferred alternative), and reasonable alternatives to the proposed action (i.e., the no-action alternative, including scenarios reasonably foreseeable as a consequence of the no-action alternative).

In March 1993, EPA, DOE, and the U.S. Army Corps of Engineers (USACOE) entered into a Memorandum of Understanding whereby EPA was designated as the Federal Lead Agency for the preparation of this EIS, and DOE and USACOE were designated as Cooperating Agencies. The EPA Notice of Intent (NOI) to Prepare an EIS for this proposed project was published in the **Federal Register** (58 FR 29577) on May 21, 1993. DOE has adopted this EIS as being adequate and appropriate for the purpose of developing DOE's Record of Decision for its proposed action.

Accordingly, after careful consideration of the potential environmental impacts assessed in the EIS for the proposed Polk Unit 1, along with consideration of CCT Demonstration Program goals and objectives, DOE has decided that it will provide approximately $130 million in federal funding support for the construction and operation of the IGCC technology to be demonstrated at Polk Unit 1.

FOR FURTHER INFORMATION CONTACT: For further information on DOE's activities related to the EIS, contact Bruce J. Buvinger, Environmental Specialist, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV. Telephone (304) 291–4379. For further information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Oversight [EH–25], Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508) and DOE regulations (10 CFR Part 1021). This Record of Decision is based on the EPA Final EIS for the Proposed Tampa Electric Company—Polk Power Station (EPA 904/9–94–002).

An overall NEPA compliance strategy was developed for the CCT Demonstration Program, consistent with the Council on Environmental Quality (CEQ) NEPA regulations and DOE regulations for compliance with NEPA, that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. This strategy is called tiering (40 CFR Part 1508.28), which refers to the coverage of general matters in a broader EIS (e.g., for the CCT Demonstration Program), with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the particular project under consideration.

The DOE strategy has three principal elements. The first element involved preparation of a comprehensive Programmatic EIS for the CCT Demonstration Program (DOE/EIS–0146,

November 1989) to address the potential environmental consequences of widespread commercialization of each of 22 successfully demonstrated clean coal technologies in the year 2010. The Programmatic EIS evaluated (1) A no-action alternative, which assumed that the CCT Demonstration Program was not continued and that conventional coal-fired technologies with flue gas desulfurization controls would continue to be used for new plants or as replacements for existing plants that are retired or refurbished, and (2) a proposed action, which assumed that CCT Demonstration Program projects were selected for funding and that successfully demonstrated technologies would undergo widespread commercialization by 2010.

The second element involved preparation of a preselection environmental review of project-specific environmental data and analyses that the CCT Demonstration Program offerors supplied to DOE as part of their CCT Demonstration Program proposals.

The third element consists of preparing site-specific NEPA documents for each selected project. For Polk Unit 1, DOE determined that an EIS should be prepared to address project- specific concerns. EPA agreed with DOE's determination that an EIS should be prepared to satisfy both agencies' NEPA regulations. As part of the overall NEPA strategy for the CCT Demonstration Program, the Polk Power Station EIS draws upon the Programmatic EIS and preselection environmental reviews that have already analyzed various alternatives and scenarios (e.g., alternative technologies and sites).

The DOE proposal to provide cost-shared financial assistance to TEC for construction and operation of the 260 MW IGCC unit was determined by DOE to be a major federal action subject to NEPA. Because of DOE's CCT involvement, DOE and EPA initially agreed that DOE would assume the Federal lead agency role for the development of the EIS, and that EPA would be a Cooperating Agency. However, EPA's proposed federal action, in its role as permitting authority for the proposed issuance of a National Pollutant Discharge Elimination System (NPDES) permit, pertains to the entire 1,150 MW Polk Power Station project, which extends beyond DOE's involvement with Polk Unit 1. An additional consideration in determining the Federal lead agency was the fact that, if either DOE or TEC were to withdraw from the IGCC demonstration agreement, DOE's interest in the EIS would cease, whereas EPA's NEPA obligations regarding the preparation of the EIS would continue by virtue of TEC's NPDES sitewide permit application. Therefore, it was mutually determined that EPA would assume the lead agency role for the preparation of the EIS for the proposed 1,150 MW complex. This change in Federal lead agency from DOE to EPA was announced in the EPA's **Federal Register** Notice of Intent (NOI) of May 21, 1993 (58 FR 29577).

Project Description

TEC proposes to expand its electric generating capacity by establishing an 1,150 MW power station on an approximately 4,348-acre site in southwestern Polk County, Florida. Approximately 94 percent of the site has been mined to recover phosphate or has been disturbed by mining-related activities. Portions of the proposed site continue to be mined. Existing mine cuts at the site would be modified to become the Polk Power Station cooling reservoir. Much of the Polk Power Station storm water would be reused in the cooling reservoir. Over one-third of the Polk Power Station site (approximately 1,511 acres) would be reclaimed as a wildlife habitat area of mixed forested and nonforested uplands and wetlands. The proposed power station would be formally known as the "Tampa Electric Polk Power Station."

At completion to its full 1,150 MW generating capacity, the proposed Polk Power Station would consist of one 260 MW (net) IGCC generating facility, two 220 MW (net) combined cycle (CC) generating units, and six 75 MW (net) combustion turbine (CT) generating units. This DOE ROD is specific to Polk Power Station Unit 1, the 260 MW IGCC unit that is the portion of the project for which DOE has decided to provide cost-shared financial assistance to TEC.

The IGCC project was selected under DOE's CCT Demonstration Program to demonstrate the commercial application of an IGCC system. The plant is a combination of two leading technologies. The first technology, combined cycle, is currently the most efficient commercially available method of producing electricity. The second technology, gasification, uses coal to produce a clean-burning gas. The integration of these technologies will allow TEC to couple the high efficiency of the combined cycle design with the low cost of coal for fuel. Project objectives include demonstrating the IGCC technology in a commercial electric utility application at the 260 MW size, demonstrating commercial operation of the facilitys innovative hot gas cleanup technology, and assessing long-term reliability, availability, and maintainability.

The IGCC system offers several advantages over conventional coal-based power generation technology, including: (1) Major reductions in sulfur dioxide, oxides of nitrogen, carbon dioxide, and dust emissions, (2) decreased coal consumption associated with increased generating efficiency, (3) modular construction for economic increments of capacity to match load growth, (4) fuel flexibility, (5) reduced land area and cooling water requirements, and (6) potential for design standardization due to modular construction, which should reduce engineering effort, construction time, and permitting complications for subsequent plants.

The proposed Polk Power Station Unit 1 would consist of a 260 MW IGCC power plant that would include a pressurized, oxygen-blown, entrained flow gasifier designed by Texaco. Gas cleanup is accomplished by low temperature acid gas removal, plus hot gas moving bed desulfurization. The combined cycle portion of the system is an advanced 150 MW General Electric gas turbine heat recovery steam generator and a 130 MW steam turbine. The IGCC generation process is about 10 to 12 percent more efficient than a conventional coal-fired power plant because combined cycle generation reuses the exhaust heat from the combustion turbines to produce additional electricity. The combined cycle design consists of a combustion turbine/generator, a heat recovery steam generator, and a steam turbine/generator. In the gasification portion of the plant, coal would be partially burned to produce coal gas, which is first cleaned and then used as fuel in the combustion turbine to produce electricity. The exhaust heat from the combustion turbine is recovered in the heat recovery steam generator to produce steam, which then passes through a steam turbine to power another generator, thereby producing additional electricity.

The proposed IGCC facility would be constructed in two phases. The first phase would be a 150 MW advanced combustion turbine, fueled by oil, to begin operation in 1995. In 1996, the coal gasification system and combined cycle portion of the plant would begin operation, bringing the total output to 260 MW.

Project Status

Project activities to date include applications for permits and approvals necessary to construct and operate the Polk Power Station, preparation of

designs and specifications necessary to apply for these permits and approvals, and preparation, publication, and distribution of the draft and final EIS.

In July 1992, TEC submitted to the Florida Department of Environmental Protection (FDEP) and other appropriate agencies a site certification application (SCA) for the construction and operation of the proposed Polk Power Station pursuant to the Florida Electrical Power Plant Siting Act (PPSA). The PPSA provides for the coordination of all applicable state, regional, and local regulatory requirements, permits, and approvals for steam electric generating facilities with capacities greater than 75 MW under the SCA review and certification process.

In accordance with the PPSA process, a land-use hearing was held in Bartow, Florida, on October 29, 1992. The Florida Power Plant Siting Board (FPPSB) found the project to be consistent with state, regional, and local land-use plans on January 26, 1993. The site certification hearing for the project was held in Bartow, Florida, on October 13, 1993. On January 25, 1994, the FPPSB concurred with the Recommended Order granting certification for the proposed Polk Power Station subject to specific conditions of certification.

TEC's application for a Prevention of Significant Deterioration (PSD) permit (i.e., air quality construction and operation permit), which was submitted to FDEP as part of the SCA process, included modeling analyses and potential impact assessments for the proposed 1,150 MW build-out of the power station. However, FDEP approval of the PSD permit has been granted only for the initial 260 MW IGCC unit. Additional PSD permit application approvals will need to be pursued by TEC for each additional proposed generating increment up to the full 1,150 MW level.

Under the PPSA, the determination of need for new electrical generating capacity is the exclusive responsibility of the Florida Public Service Commission (FPSC). TEC submitted a need for power petition to the FPSC on September 5, 1991, including a "Polk Unit One Need Determination Study." On January 31, 1992, the FPSC voted to approve and issue a certification of need for TECs planned IGCC unit (Polk Power Station Unit 1). Additional need for power petitions must be filed with the FPSC by TEC and approved prior to determination of need for power beyond the initially-approved level.

TEC has submitted a National Pollutant Discharge Elimination System (NPDES) permit application to EPA that seeks approval for discharge of water from the proposed power station cooling reservoir to waters of the United States. TEC also requested that EPA provide an NPDES "new source determination." By letter to TEC dated January 11, 1994, EPA tentatively determined that the proposed Polk Power Station is a "new source" that requires an NPDES permit based on New Source Performance Standards (NSPS). The pending EPA Notice of Determination for the NPDES permit would constitute a formal "new source determination" by EPA.

In addition, TEC has applied to the USACOE for a "Section 404" (of the Clean Water Act) permit to conduct dredge-and-fill activities in waters of the United States. The USACOE is also a Federal Cooperating Agency to EPA for this EIS because of these permitting responsibilities. The USACOE is expected to issue its permit following the issuance of the RODs by each federal agency.

Alternatives Considered

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by nonfederal-government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for the project. However, when DOE signs a Cooperative Agreement with an industrial partner, the scope of alternatives is necessarily more restricted, because the agency must focus on alternative ways to accomplish its purpose, which reflect both the industrial partner's needs and the functions it plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the industrial partner's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the reasonable alternative to the proposed action is the no-action alternative (including scenarios reasonably foreseeable as a consequence of the no-action alternative). The proposed action for the EIS under consideration here is TEC's proposed project, described in the EIS as the "Preferred Alternative with DOE Financial Assistance." Reasonable alternatives and subalternatives to the proposed project were considered in the EIS. In addition to TEC's "Alternative Power Resource Proposal (Without DOE Financial Assistance)" and the "No-Action Alternative," alternative and subalternative analyses performed by EPA as the Lead Agency included Alternatives to Constructing New Generating Facilities, Alternative Generating Technologies, Alternative Sites, and Alternative Processes and Facilities.

The "EIS Action Alternatives" available to DOE are either to provide cost-shared financial assistance for the proposed initial 260 MW IGCC unit, or to deny the financial assistance. After reviewing the environmental effects associated with the Action Alternatives, DOE has determined that its Preferred Alternative is to provide cost-shared financial assistance for the proposed project.

EPA's "EIS Action Alternatives" are to issue, issue with conditions, or deny the NPDES permit for TEC's proposed project. EPA's preferred permitting action is to issue the NPDES permit with conditions, following completion of the EIS process.

DOE's Proposed Action

The proposed federal action is the provision of approximately $130 million in cost-shared federal funding support for the construction and operation of the 260 MW Unit 1 of the Polk Power Station, a proposed new 1,150 MW power generating facility in Polk County, Florida. The CCT program will demonstrate environmentally acceptable and economically viable means of generating electricity with coal, the most abundant energy resource in the United States.

The IGCC integrates coal gasification and combined cycle technologies to develop a highly efficient new technology for removing sulfur from synthetic fuelgas ("syngas") prior to combustion. The 150 MW advanced General Electric Model 7F combustion turbine unit would be integrated with heat recovery steam generator (HRSG) and steam turbine (ST) generator facilities to form a combined cycle generating unit with coal gasification facilities to complete the proposed 260 MW Polk Power Station Unit 1.

A Texaco pressurized, oxygen-blown, entrained-flow gasifier would be used to produce a medium-Btu fuel gas. Coal/water slurry and oxygen would be combined at high temperature and pressure to produce a high-temperature syngas. Molten coal-ash would flow out of the bottom of the vessel into a water-filled quench tank where it would be turned into a solid slag. The syngas from the gasifier would move to a high-temperature heat recovery unit that cools the gases. The cooled gases would flow to a particulate removal section, and then enter two gas cleanup trains,

i.e., a demonstration hot gas cleanup (HGCU) train and a conventional cold gas cleanup (CGCU) train. When both the HGCU and CGCU systems are used, a portion of the syngas would be passed through a moving bed of zinc titanate absorbent in the HGCU system to remove sulfur. The remaining syngas would be cooled further through a series of heat exchangers before entering a conventional CGCU train, where sulfur would be removed by an acid gas removal system.

The cleaned gases then would be routed to a combined cycle system for electric power generation. The advanced combustion turbine unit would have a generating capacity of 190 MW (net) when fired on the syngas. An HRSG would use heat from the combustion turbine exhaust to produce high-pressure steam. This steam, along with the steam generated in the gasification process, would be routed to the ST to generate an additional 70 MW (net). By-products from the process—sulfur, sulfuric acid, and slag—can be sold commercially: the sulfur by-product as a raw material to make agricultural fertilizer, and the non-leachable slag for use in roofing shingles, asphalt roads, and as a structural fill in construction projects.

The proposed IGCC unit would provide DOE the opportunity to demonstrate oxygen-blown entrained-flow IGCC technology, which is expected to achieve significant reductions of sulfur dioxide and oxides of nitrogen emissions as compared to conventional pulverized coal technologies used in existing and planned future coal-burning power plants. In accordance with a cooperative agreement with DOE under the CCT Demonstration Program, TEC would be required to use coal from various domestic sources for the IGCC unit. The potential coal supply sources during the demonstration period are expected to be coal seams in the eastern and midwestern United States. The project participant would obtain all applicable permits for the Polk Power Station and would comply with all applicable laws, regulations, and ordinances. The proposed IGCC unit would require approximately 2,325 tons per day of coal on a dry weight basis when operating at full capacity.

No Action

This alternative does not provide DOE cost-shared financial assistance for the 260 MW IGCC unit. The Programmatic EIS for the CCT Demonstration Program (DOE/EIS–0146) evaluated the consequences of no action on a programmatic basis. Under the no-action alternative for Polk Unit 1, the commercial readiness of the proposed integrated gasification combined cycle technology for the combustion of coal would not be demonstrated in Florida at the Polk Power Station, and probably would not be demonstrated elsewhere because there are currently no other similar proposals in the CCT Program. The opportunity to demonstrate this technology would likely be lost. As a result, commercialization of the technology could be delayed or might not occur because the utility and industrial sectors tend to utilize known and demonstrated technologies over new, unproven, technologies.

Under the no-action alternative, i.e., without DOE cost-shared financial assistance, TEC's "Alternative Power Resource Proposal (Without DOE Financial Assistance)" calls for construction and operation of a 500 MW pulverized coal-fired unit to replace the IGCC and several other of the planned units. Environmental consequences of this alternative are additional sulfur dioxide and oxide of nitrogen emissions, additional water use, additional coal consumption, less flexibility in relation to load growth, and additional land area required for the power generation facilities.

Alternative Sites

TEC employed a citizens' Power Plant Siting Task Force composed of public and private representatives to select its preferred site. The overall goal of the TEC Power Plant Site Selection Assessment Program was to select a site, or sites, that were considered the most suitable for developing the needed electric generating facilities to meet TEC's future power supply demands. In addition to the preferred site, two alternative Polk County sites with similar attributes were selected. Although differences in impacts existed among the three sites, TEC considered all three sites suitable and potentially permittable as potential sites for the proposed facilities. Use of the final proposed site would result in less environmental impact than the other two sites; it also would be less costly to develop.

Environmentally Preferred Alternative (with DOE Financial Assistance)

DOE's providing TEC with approximately $130 million in cost-shared financial assistance to construct the proposed Polk Power Station Unit 1 is the environmentally preferred alternative, and is the same as DOE's proposed action. TEC would demonstrate an HGCU system for removing sulfur compounds, particulates, and other potential pollutants from syngas produced in the coal gasification facility prior to firing in the advanced combustion turbine. The demonstration HGCU system has the potential to achieve pollutant removal efficiencies equivalent to or greater than the conventional CGCU technology, while providing a more efficient power generation system. The HGCU process is also a factor in minimizing air emissions, land and water impacts, and other negative environmental consequences as compared with the conventional pulverized coal technology described in the EIS under the "No Action" alternative.

Potential Environmental Impacts and Mitigation Measures

Potential impacts that could result from construction and operation of the proposed Polk Power Station were analyzed in the EIS, including air quality, surface water and groundwater quality, biological resources, noise, cultural resources, socioeconomics, hazardous and nonhazardous wastes, and human health and risk to wildlife.

Air Quality

Generally accepted computer models, appropriate for establishing compliance with Clean Air Act (CAA) regulatory requirements, were used for analyzing potential impacts within the Polk Power Station area (a Class II air quality area) and within the Chassahowitzka National Wildlife Area (a Class I air quality area where stringent standards have been established by EPA). The CAA standards were used as one means of assessing the magnitude of potential impacts associated with Polk Power Station air emissions.

EPA's National Ambient Air Quality Standards (AAQS) were used to establish absolute limits for pollutant concentrations in the ambient air, whereas Prevention of Significant Deterioration (PSD) increments were employed to define permissible air quality degradation. Air quality modeling results indicated that the operation of the proposed Polk Power Station at completion would not cause or contribute to a violation of any air quality regulations, including consumption of PSD increments and the National and State of Florida AAQS. Maximum ambient concentrations at or beyond the facility perimeter are predicted to be less than the National and Florida AAQS for all cases, although the predicted short term particulate matter (PM) concentrations approach the standard. The results of a No-Threat Level analysis indicate that public health in Polk County and

adjacent counties would not be jeopardized due to human inhalation of air emissions from the proposed project operations.

To minimize potential air quality impacts, TEC would implement Best Available Control Technology measures for the proposed project wherever feasible to reduce combustion, process, and fugitive emissions. Use of low-sulfur and low-ash fuels would minimize emissions of sulfur dioxide and particulates. Coal handling and slag systems would be designed to effectively control fugitive particulate matter emissions.

Surface Water and Groundwater Quality

No unacceptable surface water or groundwater impacts are expected from the construction or operation of the proposed Polk Power Station. The results of modeling efforts conducted by TEC indicate that discharges from the cooling reservoir and from storm water are expected to meet all state Class III surface water quality standards. The proposed groundwater withdrawals and associated drawdowns are not expected to affect other water users in the site vicinity. No impacts to water quality in the Floridan or intermediate aquifers are anticipated from the proposed project operations, due to the presence of confining layers between these aquifers and the overlying surficial aquifer. Water in the proposed cooling reservoir would meet applicable FDEP Class G–II standards, with only exceedances of secondary drinking water standards for iron and color. However, the concentrations of iron and color are below ambient levels in the surficial aquifer.

Biological Resources

Approximately 1,090 acres of land would be affected by construction of the power plant, cooling water reservoir, and other associated power facilities. Most of these facilities would be located on mined or highly disturbed lands. Approximately 253 acres of USACOE jurisdictional wetlands would be displaced by the construction of the power facilities. Potential adverse effects to local or regional terrestrial and wetland vegetation resulting from Polk Power Station operation are not anticipated, since air emissions and water discharges would be in compliance with applicable ambient air quality standards and water quality standards. Groundwater withdrawals from the Floridan aquifer are not expected to result in drawdown of the surficial aquifer and, therefore, would not cause changes to terrestrial or wetland habitats. Construction of the Polk Power Station is not expected to affect regional populations of any endangered, threatened, or special concern species, which was confirmed by coordination letters and a site inspection by the U.S. Fish and Wildlife Service. The proposed plant construction and operation are not expected to affect biodiversity on a local or regional scale.

Project mitigation for the loss of USACOE jurisdictional wetlands, including FDEP-required reclamation measures, would be implemented for the site. TEC's wetland mitigation/reclamation plan for the proposed Polk Power Station site has been approved by the Florida Department of Environmental Protection (FDEP). Implementation of this plan would result in 799 acres of wetlands after reclamation of the site is completed. The 799 acres of wetlands represent an increase of 187 acres of wetlands relative to site pre-mining conditions.

Noise

Construction noise modeling was performed to determine the effects at the nearest residential receptor. Because of the distance of 1.6 miles between the Polk Power Station site and the nearest residence, construction noise levels would only have minor and temporary effects on the noise environment around the plant site. Average noise levels associated with Polk Power Station operation would be at or below the existing ambient noise levels at the nearest residence. However, instantaneous noise levels, such as from steam line blowout, flare stack operation, or coal trucks, would be noticeable.

Construction noise would be mitigated by operating construction machinery according to design specifications and only within daylight hours. Operation noise would be mitigated through use of a vegetative buffer. In addition, TEC would evaluate additional noise reduction measures, such as combustion turbine air intake silencers, in its detailed plant design.

Cultural Resources

Based on a cultural resource assessment conducted for the site and confirmation of the results by the Florida Division of Historical Resources and the Florida State Historic Preservation Officer, Polk Power Station construction is not expected to affect any known archaeological or historical feature listed or eligible for listing on the National Register of Historic Places, or any other known cultural resources. No mitigation is necessary.

Socioeconomics

Proposed Polk Power Station construction and operation would have positive socioeconomic effects. Plant construction would begin in 1994 and extend through 1996. About 600 contract construction workers would be employed at the peak of construction activity. About 130 persons would be employed for Polk Power Station Unit 1 operations and maintenance, the majority of which are expected to be drawn from the local labor pool. The total cumulative annual operational financial effect is estimated to be approximately $109 million (in 1992 dollars) from 1995 to 2010. Ad valorem taxes to Polk County expected to be generated by the project would increase from $1.9 million in 1996 (Unit 1 only) to $19.6 million in 2011 (complete 1,150 MW). Operation of the proposed project would not unduly impact any community services or facilities, including community water or wastewater systems or local roads. Visual buffering between the main operating facilities and surrounding land use has been incorporated into the design of the project to reduce any potentially negative aesthetic impacts.

Hazardous and Nonhazardous Wastes

Hazardous waste generated by the facility would be minimized through the use of source reduction techniques, such as product substitution, and waste reduction techniques, such as recycling and regeneration. Hazardous wastes and nonhazardous wastes would be managed onsite and shipped offsite by licensed handlers to permitted waste disposal or recycle facilities, in accordance with local, state, and federal regulations. Consequently, these wastes are not expected to cause adverse environmental effects.

Human Health and Risk to Wildlife

No significant adverse human health effects are anticipated as a result of the direct inhalation of the proposed Polk Power Station emissions. Projected air emission levels would not significantly degrade ambient air, and all regulated air toxics emissions would be at concentrations below Florida No-Threat Levels developed to protect human health. Potential impacts to wildlife from particulate deposition relate to toxic effects from metals. However, based on the air modeling analysis, the maximum levels of metals expected from particulate deposition, even at completion of the station, are expected to be below the threshold limits for wildlife.

No Action Alternative

The no-action alternative would result if DOE does not provide cost-shared financial assistance under the DOE CCT Demonstration Program for Polk Power Station Unit 1. TEC is expected to build the Polk Power Station without the IGCC unit using more conventional technology as an alternate means of implementing the project. Without DOE cost-shared financial assistance, TEC's Proposed Project (Preferred Alternative with DOE Financial Assistance) was compared to TEC's Alternative Power Resource Proposal (Without DOE Financial Assistance) relative to potential environmental impacts.

Under the Alternative Power Resource Proposal, the proposed 260 MW IGCC unit and two 75 MW combustion turbines would be replaced by a 500 MW pulverized coal with flue gas desulfurization generating unit. Primarily because of the resource requirements and effectiveness of pollution control and minimization measures associated with the proposed IGCC unit, the alternative proposal would be expected to create greater negative environmental impacts than the proposed project. Disadvantages of the Alternative Power Resource Proposal include the need for more land area for the main plant facilities and coal and by-product storage; a larger cooling reservoir area and greater groundwater makeup and surface water discharge requirements; increased sulfur dioxide, oxides of nitrogen, and particulate matter air emissions; less generation flexibility in relation to load growth; and increased coal usage which, in turn, would require more frequent truck/train deliveries.

Decision

DOE will implement the proposed action of providing approximately $130 million in cost-shared federal funding support for the construction and operation of Polk Power Station Unit 1 to demonstrate the IGCC clean coal technology. All practicable means to avoid or minimize environmental harm from this alternative have been adopted.

DOE has determined that the Congressionally-mandated goals and objectives of demonstrating clean coal technologies would be achieved through the construction and operation of Polk Power Station Unit 1. The Polk Power Station would demonstrate the integrated performance of HGCU and CGCU, and an advanced gas turbine with oxides of nitrogen control. The IGCC project would successfully demonstrate a promising technology ready to be commercialized in the 1990s. The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of these technologies to new or existing generating facilities. In addition, no unacceptable adverse impacts are expected from the construction or operation of the proposed Polk Power Station Unit 1.

The decision to provide cost-shared funding for the proposed Polk Power Station Unit 1 was made after careful review of the potential environmental impacts analyzed in the EIS, consideration of the public's concerns, and after consultation with Federal and State regulatory agencies.

Issued in Washington, DC, on August 17, 1994.

Patricia Fry Godley,

Assistant Secretary for Fossil Energy.

[FR Doc. 94–20824 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Mississippi State University

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Mississippi State University under Grant Number DE–FG01–94CE15554. The proposed grant will provide funding in the estimated amount of $93,280 to the Dr. Fred Taylor of Mississippi State University to further develop his Apparatus and Process for Second Stage Drying, which will reclaim waste exhaust heat from primary wood drying kilns to power secondary wood drying kilns.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Dr. Fred Taylor of Mississippi State University is meritorious based on the general evaluation required by 10 600.14(d) and that the proposed project represents a unique technology which has a strong possibility of allowing for future reductions in the Nation's energy consumption. The invention conserves energy by reclaiming heat from primary kiln exhaust and should offer significant fuel cost reduction and a short payback period. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the program, the Energy-Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION, COMMENTS AND QUESTIONS CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Lisa Tillman, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

The anticipated term of the grant is for twenty-four (24) months from the date of the award. This grant will not be awarded for at least 14 days after publication of this notice to allow for public comment.

Issued in Washington, DC, on August 17, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–20823 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

Pittsburgh Energy Technology Center; Intent To Award Noncompetitive Financial Assistance

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Intent to award a grant to The Oklahoma Geological Survey/University of Oklahoma.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7 (b)(2)(i)(B), it intends to make a NonCompetitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the Oklahoma Geological Survey (OGS) (University of Oklahoma) for continued development and upkeep of the "Natural Resources Information System (NRIS) for the State of Oklahoma"—a joint effort with the Geological Information Systems (GIS) Department of the University of Oklahoma Sarkeys Energy Center.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: Donna J. Lebetz, Contract Specialist, 412/892–6206.

SUPPLEMENTARY INFORMATION: *Grant No.:* DE–FG22–94BC14832.

Title of Research Effort: Continuation of "Natural Resources Information System (NRIS)" Development for the State of Oklahoma.

Awardee: Oklahoma Geological Survey (University of Oklahoma).

Term of Assistance (Grant) Award: 12 months.

Cost of Assistance Effort: The total estimated project value is $375,000 of which $75,000 will be borne by the awardee, with the remaining $300,000 funded by DOE.

Objective: The objective is to continue to develop, edit, maintain, utilize and make available to the public the oil and gas Well History File portion of the Natural Resources Information System (NRIS) for the State of Oklahoma. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechanism for communication and interactive research efforts between DOE and the Oklahoma Geological Survey in the development and maintenance of an information system in response to the need for a computerized, centrally located library containing accurate, detailed information on the state's natural resources. The one-year cooperative research program extends a unique opportunity to complete the foundation of the NRIS oil and gas Well History File by processing the remaining historical records of Osage County, estimated to total 53,000, bringing the Well History File to approximately 420,000 records when completed.

Dated: August 12, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–20822 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: University of Virginia

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to the University of Virginia under Grant Number DE–FG01–94CE15593. The proposed grant will provide funding in the estimated amount of $96,562 to Dr. Glenn Stoner of the University of Virginia, School of Engineering and Applied Science, to further develop his "Method of Making Non-toxic Corrosion Resistant Coatings for Aluminum and its Alloys", which is a method of using non-toxic materials to replace toxic chromium salts in improving corrosion resistance of aluminum surfaces.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Dr. Glenn Stoner of the University of Virginia is meritorious based on the general evaluation required by 10 600.14(d) and that the proposed project represents a unique technology which has a marginial possibility of allowing for future reductions in the Nation's energy consumption. However, there are other considerations. The U.S. aluminum industry would be freed from the use of chromium, a strategic material and in the long run, the high cost of treating chromium induced cancers would be reduced as a source of carcinogenic chromium is removed from our environment. The invention will develop the non-chromate conversion coating to a sufficient level of performance to demonstrate it as a practical replacement for chromate coatings in the aluminum metal finishing industry. A product specification document will be produced, in cooperation with Reynolds Metals, which will provide an objective comparison between this new coating and the standard practice chromate costing. The proposed project is not eligible for financial aassistance under a recent, current or planned solicitation because the program, the Energy-Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FUTHER INFORMATION, COMMENTS AND QUESTIONS CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Lisa Tillman, HR–531.23, 1000 Independence Avenue SW., Washington, DC 20585.

The anticipated term of the grant is for twenty-four (24) months from the date of the award. This grant will not be awarded for at least 14 days after publication of this notice to allow for public comment.

Issued in Washington, DC, on August 17, 1994.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–20821 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF92–123–002]

AES WR Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

August 18, 1994.

On August 11, 1994, AES WR Limited Partnership (AES WR) of Arlington, Virginia submitted for filing an application for recertification of a facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located near Cumberland, Maryland. The Commission previously certified the facility as a qualifying cogeneration facility, *AES WR Limited Partnership,* 60 FERC ¶ 62,011 (1992), *reh'g denied* ¶ 61,300 (1992), *aff'd sub nom. Liquid Carbonic Corp. v. FERC* (D.C. Cir. July 22, 1994). The instant application for recertification is due to a possible change in the thermal host.

Any person desiring to be heard or objecting to the granting of qualifying status 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 Rule of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20745 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–89–000, et al.]

CNG Power Services Corporation, et al.

Electric Rate and Corporate Regulation Filings

August 17, 1994.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. EG94–89–000]

CNG Power Services Corporation (CNGPS) (c/o Michael J. Zimmer, Reid & Priest, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on August 12, 1994, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. According to its application, CNGPS is a corporation formed under the laws of Delaware. CNGPS further states that it will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), and exclusively in the business of owning an interest in the Lakewood Cogeneration Facility and selling at wholesale electric energy from the Facility and other power sources not owned by CNGPS.

Comment date: September 9, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Florida Power & Light Company

[Docket Nos. ER93–465–007 and ER93–922–006]

Take notice that on August 12, 1994, Florida Power & Light Company filed an amendment to its compliance filing in the above-captioned dockets.

Comment date: August 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Colorado

[Docket Nos. ER94–977–001 and ER94–978–001]

Take notice that on June 24, 1994, Public Service Company of Colorado tendered for filing an amendment in the above-referenced dockets.

Comment date: August 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Atlantic City Electric Company

[Docket Nos. ER94–1411–000, ER94–992–000, and ER94–970–000]

Take notice that on August 4, 1994, Atlantic City Electric Company tendered for filing an amendment in the above-referenced dockets.

Comment date: August 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER94–1548–000]

Take notice that on August 11, 1994, Entergy Services, Inc. (Entergy Services), on behalf of itself, Gulf States Utilities Company (GSU), Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the "Entergy Operating Companies"), tendered for filing the Letter Agreement between Entergy Services, Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T) and East Texas Electric Cooperative, Inc., dated as of July 14, 1994, ("Letter Agreement"). Entergy Services requests that the Letter Agreement be made effective on July 28, 1994.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER94–1549–000]

Take notice that on August 11, 1994, Portland General Electric Company (PGE) tendered for filing a Special Storage Agreement (Agreement) Between Portland General Electric Company and the Bonneville Power Administration (BPA), BPA Contract No. DE–MS79–94BP94269. Copies of this filing have been served on the parties included in the service list attached the filing letter.

The Agreement provides for BPA to sell storage services to PGE. PGE asks that the agreement be effective as of the date that the Agreement is accepted for filing by the Commission, or sixty (60) days after the date of filing, whichever is sooner.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Company

[Docket No. ER94–1552–000]

Take notice that on August 12, 1994, Puget Sound Power & Light Company (Puget) tendered for filing on behalf of itself and Portland General Electric Company, The Washington Water Power Company, PacifiCorp and The Montana Power Company the 1994–95 Operating Procedures under the Pacific Northwest Coordination Agreement (PNCA).

Puget states that the 1994-95 Operating Procedures relate to service under the PNCA. A copy of the filing was served upon the parties to the PNCA.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER94–1553–000]

Take notice that Northeast Utilities Service Company (NUSCO), on August 12, 1994, tendered for filing, a Service Agreement to provide non-firm transmission service to Louis Dreyfus Electric Power, Inc. (LDEP) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to LDEP.

NUSCO requests that the Service Agreement become effective on the date of receipt of the filing by the Commission.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. CNG Power Services Corporation

[Docket No. ER94–1554–000]

Take notice that on August 12, 1994, CNG Power Services Corporation (CNGPS) petitioned the Commission for acceptance of CNGPS Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. CNGPS is a subsidiary of Consolidated Natural Gas, an integrated natural gas company.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Power Company

[Docket No. ER94–1555–000]

Take notice that American Electric Power Service Corporation (AEPSC) on behalf of Ohio Power Company (OPCO), by letter dated August 15, 1994, tendered for filing as an initial Rate Schedule an Interchange Agreement, dated September 1, 1994, between OPCO and Consolidated Edison Company of New York (Con Edison).

The Interchange Agreement allows the parties to sell power and energy to one another on a short-term or long-term basis. The parties request an effective date of September 1, 1994.

A copy of the filing was served upon the Public Utility Commission of Ohio, the Public Utilities Commission of New York, and Con Edison.

Comment date: August 31, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. El Paso Electric Company

[Docket No. ES94–35–000]

Take notice that on August 12, 1994, El Paso Electric Company (El Paso) filed application under § 204 of the Federal Power Act seeking authorization:

(1) to assume liability in connection with the redemption and reissuance of the Annual Tender Pollution Control Revenue Bonds (PCRBs), 1983 Series A, principal amount $35.805 million issued by City of Farmington, New Mexico; and

(2) to assume liability for a new letter of credit that will be issued to secure the replacement PCRBs.

Also, El Paso requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: September 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Cal Ban Corp.

[Docket Nos. QF83–333–002 and QF83–333–003]

On July 5, 1994, and July 25, 1994, Cal Ban Corp. (Applicant) of 2764 Five Mile Road, Cattaraugus County, Allegheny, New York 14706, submitted for filing applications for certification of a facility as both a qualifying small power production facility and as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittals constitute a complete filing. Applicant also petitioned for waiver of the applicable filing fees pursuant to Section 381.106 of the Commission's Regulations.

In accordance with the Commission's final rule on the interpretation of "waste" natural gas (Order No. 471, Docket No. RM87–18–000, 39 FERC ¶61,169 (1987)), the applications for certification are being re-noticed to identify more accurately the proposed facility's primary energy source in the form of "waste" natural gas, to notify potential buyers that may have been overlooked by the Applicant of the opportunity to purchase the gas, and to ensure that potential buyers that were notified were not willing to purchase the gas under reasonable terms and conditions.

The facility, which is located in Allegheny, New York, consists of three internal combustion engine generators with a maximum electric power production capacity of 790 kW. According to the Applicant, the primary energy source of the facility is waste gas. Thermal energy recovered from the facility is used to heat a greenhouse. Installation of the facility commenced in February of 1984.

Supplemental "Waste" Natural Gas Information

According to the applicant, the primary energy source of the facility will be "waste" natural gas produced from several oil wells located in the vicinity of the facility. Applicant provided quality characteristics of two samples of the "waste" natural gas. The first sample has a heat content of 1335.4 BTU/SCF and is chiefly composed of methane—70.5%, ethane—20.3%, propane—5.6%, iso-butane—.64%, n-butane—1.6%, and smaller amounts of other gases. The second sample has a heat content of 1473.6 BTU/SCF and is chiefly composed of methane—61.1%, ethane—23.7%, propane—8.3%, iso-butane—1.1%, n-butane—2.7%, and smaller amounts of other gases. The wells are currently producing between 0–190 MCF/day of natural gas. Applicant states that the "waste" gas was offered for sale to Columbia Gas Company and National Gas Company and both refused to buy. Any person interested in purchasing this gas is encouraged to file a response with the Commission expressing such desire.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20749 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–284–001]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

August 18, 1994.

Take notice that on August 15, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, with an effective date of July 1, 1994:

Sub First Revised Sheet No. 97A

Algonquin states that the revised tariff sheet reflects a reduction in gas supply realignment costs to be billed to Algonquin by Texas Eastern Transmission Corporation.

Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent that may be necessary to place this tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions and all parties in RP94–248–000.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20743 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–59–001]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

August 18, 1994.

Take notice that on August 15, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of September 1, 1994:

Second Revised Sheet No. 1100
Second Revised Sheet No. 1101

Algonquin states that the purpose of this filing is to correct two tariff sheets filed on August 1. The August 1, filing was made to revise Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party 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, N.E., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20746 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–1372–000 et al.]

Altamont Gas Transmission Company; Site Visit

August 18, 1994.

On August 30, and 31, 1994, members of the environmental staff of the Federal Energy Regulatory Commission (FERC) will conduct aerial and ground inspections with the applicant in the southwest portion of Wyoming along the route certificated for the Altamont Gas Transmission Company in the above docket. This will include the South Pass area of the project. All interested persons are welcome to attend; however, they must provide their own transportation.

For further information, contact Robert Arvedlund, Chief, Environmental Review and Compliance Branch I, at (202) 208–0091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20748 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–001]

Pacific Gas Transmission Company; Compliance Filing

August 18, 1994.

Take notice that on August 15, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to Section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain revised tariff sheets in compliance with the Commission's Order in this proceeding dated August 3, 1994. PGT states that the revised tariff sheets reflect the Commission's Order to make minor modifications to PGT's FERC Gas Tariff, First Revised Volume No. 1–A relative to its previously approved Hub Services. PGT requests these tariff sheets become effective on September 14, 1994.

PGT states that a copy of this filing has been served on PGT's jurisdictional customers and interested state commissions and all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's rules of Practice and Procedure. All such protests should be filed on or before August 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20744 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–32–002]

Robbins Resource Recovery Partners, L.P.; Amended Application

August 18, 1994.

Take notice that on August 12, 1994, Robbins Resource Recovery Partners, L.P. (RRRP) filed an amendment to its application under section 204 of the Federal Power Act to increase from $390 to $405 million the amount of long-term taxable and tax exempt bonds for which it seeks an order authorizing RRRP to assume an obligation.

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 August 31, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20747 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1348–000 and EL94–85–000]

Southern Company Services; Initiation of Proceeding and Refund Effective Date

August 18, 1994.

Take notice that on August 12, 1994, the Commission issued an order in the above-indicated dockets initiating an investment in Docket No. EL94–85–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL94–85–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 94–20815 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–309–001]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 18, 1994.

Take notice that on August 15, 1994, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets:

Substitute Third Revised Sheet No. 22
Substitute Third Revised Sheet No. 24
Substitute Fourth Revised Sheet No. 22
Substitute Fourth Revised Sheet No. 24

Tennessee states that the purpose of this filing is to comply with the Commission's orders of April 29, 1994, and July 29, 1994, in the referenced docket. 67 FERC ¶ 61,122 (1994), 68 FERC ¶ 61,143 (1994). Tennessee states that the revised sheets contain revised rates for Rate Schedule IT that reflect the GSR costs allocated to volumetric recovery from interruptible services pursuant to Section 3 of Article XXVI of the General Terms and Conditions of Tennessee tariff for the period following May 1, 1994, using the design throughput underlying Tennessee's filings in Docket No. RS92–23 that were accepted by the Commission in its orders in that docket. The resulting GSR component of the IT rates is $.0307 dth effective May 1, 1994, and $.0376 per dth effective August 1, 1994.

Tennessee states that copies of this filing were served on all parties to this proceeding included on the Restricted Service List established by order of Presiding Judge Charles E. Bullock in these consolidated dockets.

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 protests should be filed on or before August 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–20742 Filed 8–23–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–56–NG]

Amoco Energy Trading Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Energy Trading Corporation authorization to import up to 300 Bcf of natural gas from Canada over a two-year period beginning on the date of the first import after November 9, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., August 15, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–20835 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–49–NG]

Hermiston Generating Company, L.P., Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Hermiston Generating Company, L.P. (Hermiston) authorization to import up to 44,700 Mcf of Canadian natural gas per day for a period of 15 years, to begin in late 1996. Hermiston will consume the gas at a 474-megawatt combined-cycle cogeneration facility it plans to build near Hermiston, Oregon. The imports will be provided by CanStates Gas Marketing and Home Oil Company Limited from reserves in the Provinces of Alberta and British Columbia.

Hermiston's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 4, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–20832 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–54–NG]

Northern States Power Company (Minnesota); Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Northern States Power Company (Minnesota) authorization to import from Amoco Canada Petroleum Company Limited up to 16,000 Mcf per day of Canadian natural gas beginning November 1, 1994, through October 31, 2004.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–56, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 12, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–20834 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 94–53–NG]

Numac Energy (U.S.) Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Numac Energy (U.S.) Inc. authorization to import up to a maximum of 50 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–56, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 15, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–20833 Filed 8–23–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5058–1]

Acid Rain Program: Draft Compliance Plans and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft compliance plans and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year nitrogen oxides (NO_X) compliance plans for 69 units at 24 utility plants that amend previously-issued Phase I Acid Rain Permits in accordance with the Acid Rain Program regulations (40 CFR part 76). EPA is also proposing to modify a Phase I (SO_2) Extension plan that amends previously-issued Phase I Acid Rain Permits for 7 units at 3 plants.

DATES: Comments on draft NO_X compliance plans and the proposed permit modifications must be received no later than 30 days after the publication date of this notice or the publication date of a similar notice in local newspapers.

ADDRESSES: Administrative Records. The administrative record for draft NO_X compliance plans and other proposed

permit modifications, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee: EPA Region 4, 345 Courtland St., NE, Atlanta, GA 30365.

For plants in Utah and Wyoming: EPA Region 8, 999 18th St., Denver, CO 80202–2466.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft NO_X compliance plan or other proposed permit modifications to the following:

For plants in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee: EPA Region 4, Air, Pesticides, and Toxics Management Division, Attn: Winston Smith, Director (address above).

For plants in Utah and Wyoming: EPA Region 8, Air, Radiation and Toxics Division, Attn: Patricia Hull, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan or permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the NO_X compliance plan or the other proposed permit modifications. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan or the other proposed permit modifications and other comments not relevant to the NO_X compliance plan or the other proposed permit modifications.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decisionmaking process by clarifying significant issues affecting the NO_X compliance plan or the other proposed permit modifications.

FOR FURTHER INFORMATION: For plants in Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee: Scott Davis, (404) 347–5014.

For plants in Utah and Wyoming: Mark Komp, (303) 293–0956.

SUPPLEMENTARY INFORMATION: NO_X Compliance Plans. EPA proposes to approve NO_X compliance plans under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limit") or other indicated compliance options for NO_X for the following:

Colbert in Alabama: Five averaging plans, one for each year, for units 1, 2, 3, and 4; for each plan, the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.47 lbs/MMBtu, and actual annual heat input for each unit shall not be less than the annual heat input limit of 6,800,000 MMBtu. The other units designated in the plans are Gallatin units 1, 2, 3, and 4 and Johnsonville units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. Standard emission limitation of 0.50 lbs/MMBtu for unit 5; unit is not be required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. Approval of the plans for 1995 and 1996 is contingent upon approval of the modification (proposed below) to the Phase I Extension plan designating Gallatin units 1, 2, 3, and 4 as transfer units. The designated representative is Joseph W. Dickey.

E C Gaston in Alabama: Five averaging plans, one for each year, for units 1, 2, 3, 4, and 5; for each plan, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu for units 1, 2, 3, and 4, and 0.45 lbs/MMBtu for unit 5. The designated representative is T. Harold Jones.

Crist in Florida: Standard emission limitations of 0.50 lbs/MMBtu for units 6 and 7. Unit 7 is not required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is Earl B. Parsons, Jr.

Bowen in Georgia: Five averaging plans for units 1BLR, 2BLR, 3BLR, and 4BLR. For 1995, the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and the actual annual heat input shall not be less than the annual heat input limits of 39,759,000 MMBtu for unit 1BLR, 40,517,000 MMBtu for unit 2BLR, 51,842,000 MMBtu for unit 3BLR, and 56,342,000 MMBtu for unit 4BLR. The other units designated in this plan are Hammond units 1, 2, and 3, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1996, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.44 lbs/MMBtu for units 1BLR and 2BLR and 0.43 lbs/MMBtu for units 3BLR and 4BLR, and the actual annual heat input shall not be less than the annual heat input limits of 41,364,000 MMBtu for unit 1BLR, 39,602,000 MMBtu for unit 2BLR, 59,069,000 MMBtu for unit 3BLR, and 50,085,000 MMBtu for unit 4BLR. The other units designated in this plan are Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1997, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu for units 1BLR and 2BLR and 0.43 lbs/MMBtu for units 3BLR and 4BLR, and the actual annual heat input shall not be less than the annual heat input limits of 38,963,000 MMBtu for unit 1BLR, 41,793,000 MMBtu for unit 2BLR, 55,950,000 MMBtu for unit 3BLR, and 54,806,000 MMBtu for unit 4BLR. The other units designated in this plan are Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1998, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.43 lbs/MMBtu, and actual annual heat input units shall not be less than the annual heat input limits of 41,147,000 MMBtu for unit 1BLR, 42,046,000 MMBtu for unit 2BLR, 52,158,000 MMBtu for unit 3BLR, and 53,975,000 MMBtu for unit 4BLR. The other units designated in this plan are Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1999, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.43 lbs/MMBtu, and the actual annual heat input shall not be less than the annual heat input limits of 41,669,000 MMBtu for unit 1BLR, 39,597,000 MMBtu for unit 2BLR, 56,227,000 MMBtu for unit 3BLR, and 51,592,000 MMBtu for unit 4BLR. The other units designated in this plan are Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. The designated representative is R. H. Haubein, Jr.

Hammond in Georgia: Five averaging plans for units 1, 2, 3, and 4. Unit 4 is not required to meet an emission limit until 1996 pursuant to 40 CFR 76.6. For 1995, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.80 lbs/MMBtu, and actual annual heat input shall not be greater than the annual heat input

limits of 1,500,000 MMBtu for unit 1, 1,473,000 MMBtu for unit 2, and 4,175,000 MMBtu for unit 3. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1996, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.80 lbs/MMBtu for units 1, 2, and 3 and 0.50 lbs/MMBtu for unit 4, and the actual annual heat input shall not be greater than the annual heat input limits of 3,135,000 MMBtu for unit 1, 2,622,000 MMBtu for unit 2, and 4,280,000 MMBtu for unit 3. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1997, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.80 lbs/MMBtu for units 1, 2, and 3 and 0.50 lbs/MMBtu for unit 4, and actual annual heat input shall not be greater than the annual heat input limits of 2,692,000 MMBtu for unit 1, 2,340,000 MMBtu for unit 2, and 4,320,000 MMBtu for unit 3. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1998, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.80 lbs/MMBtu for units 1, 2, and 3 and 0.50 lbs/MMBtu for unit 4, and actual annual heat input shall not be greater than the annual heat input limits of 3,126,000 MMBtu for unit 1, 2,927,000 MMBtu for unit 2, and 4,642,000 MMBtu for unit 3. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1999, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.80 lbs/MMBtu for units 1, 2, and 3 and 0.50 lbs/MMBtu for unit 4, and actual annual heat input shall not be greater than the annual heat input limits of 4,132,000 MMBtu for unit 1, 3,585,000 MMBtu for unit 2, and 4,603,000 MMBtu for unit 3. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. The designated representative is R. H. Haubein, Jr.

Jack McDonough in Georgia: Five averaging plans for units MB1 and MB2. For 1995, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 12,263,000 MMBtu for unit MB1 and 12,239,000 MMBtu for unit MB2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, and 3, Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1996, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 13,137,000 MMBtu for unit MB1 and 12,755,000 MMBtu for unit MB2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4 Wansley units 1 and 2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1997, each unit's actual annual average emission rate for NOx shall not exceed the alternative contemporaneous annual emission limitation of 0.43 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 12,397,000 MMBtu for unit MB1 and 12,988,000 MMBtu for unit MB2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1998, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.43 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 13,388,000 MMBtu for unit MB1 and 13,418,000 MMBtu for unit MB2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1999, each unit's actual annual average emission rate for NOx shall not exceed the alternative contemporaneous annual emission limitation of 0.42 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 13,861,000 MMBtu for unit MB1 and 13,777,000 MMBtu for unit MB2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Wansley units 1 and 2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. The designated representative is R.H. Haubein, Jr.

Wansley in Georgia: Five averaging plans for units 1 and 2. For 1995, each unit's actual annual average emission rate for NOx shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 41,413,000 MMBtu for unit 1 and 41,707,000 MMBtu for unit 2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, and 3, Jack McDonough units MB1 and MB2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1996, each unit's actual annual average emission rate for NOx shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 41,447,000 MMBtu for unit 1 and 42,712,000 MMBtu for unit 2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Yates units Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1997, each unit's actual annual average emission rate for NOx shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 46,236,000 MMBtu for unit 1 and 46,533,000 MMBtu for unit 2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. For 1998, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 42,146,000 MMBtu for unit 1 and 48,015,000 MMBtu for unit 2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR,

Y5BR, Y6BR, and Y7BR. For 1999, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.44 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limits of 45,099,000 MMBtu for unit 1 and 43,718,000 MMBtu for unit 2. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. The designated representative is R.H. Haubein, Jr.

Yates in Georgia: Five averaging plans for units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR. Unit Y1BR is not required to meet an emission limit until 1997 pursuant to 40 CFR 72.42. For 1995, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.63 lbs/MMBtu for units Y2BR and Y3BR and 0.44 lbs/MMBTU for units Y4BR, Y5BR, Y6BR, and Y7BR, and actual annual heat input shall not be greater than the annual heat input limits of 1,589,000 MMBtu for unit Y2BR and 1,138,000 MMBtu for unit Y3BR, and shall not be less than the annual heat input limits of 1,727,000 MMBtu for unit Y4BR, 1,880,000 for unit Y5BR, 6,996,000 MMBtu for unit Y6BR, and 5,326,000 MMBtu for unit Y7BR. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, and 3, Jack McDonough units MB1 and MB2, and Wansley units 1 and 2. For 1996, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.63 lbs/MMBtu for units Y2BR and Y3BR and 0.44 lbs/MMBTU for units Y4BR, Y5BR, Y6BR, and Y7BR, and actual annual heat input shall not be greater than the annual heat input limits of 2,369,000 MMBtu for unit Y2BR and 2,331,000 MMBtu for unit Y3BR, and shall not be less than the annual heat input limits of 3,418,000 MMBtu for unit Y4BR, 2,948,000 for unit Y5BR, 9,338,000 MMBtu for unit Y6BR, and 8,819,000 MMBtu for unit Y7BR. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Wansley units 1 and 2. For 1997, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.63 lbs/MMBtu for units Y1BR, Y2BR, and Y3BR, and 0.44 lbs/MMBTU for units Y4BR, Y5BR, Y6BR, and Y7BR, and actual annual heat input shall not be greater than the annual heat input limits of 3,487,000 for unit Y1BR, 2,380,000 MMBtu for unit Y2BR and 2,398,000 MMBtu for unit Y3BR, and shall not be less than the annual heat input limits of 3,176,000 MMBtu for unit Y4BR, 2,970,000 for unit Y5BR, 10,249,000 MMBtu for unit Y6BR, and 9,947,000 MMBtu for unit Y7BR. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Wansley units 1 and 2. For 1998, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.63 lbs/MMBtu for units Y1BR, Y2BR, and Y3BR and 0.44 lbs/MMBTU for units Y4BR and Y5BR, and 0.43 lbs/MMBtu for units Y6BR, and Y7BR, and actual annual heat input shall not be greater than the annual heat input limits of 4,270,000 for unit Y1BR, 3,136,000 MMBtu for unit Y2BR, and 3,311,000 MMBtu for unit Y3BR, and shall not be less than the annual heat input limits of 3,717,000 MMBtu for unit Y4BR, 3,904,000 for unit Y5BR, 11,481,000 MMBtu for unit Y6BR, and 10,651,000 MMBtu for unit Y7BR. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Wansley units 1 and 2. For 1999, each unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitations of 0.63 lbs/MMBtu for units Y1BR, Y2BR, and Y3BR, and 0.43 lbs/MMBTU for units Y4BR, Y5BR, and Y7BR, and 0.42 lbs/MMBtu for unit Y6BR, and actual annual heat input shall not be greater than the annual heat input limits of 4,210,000 for unit Y1BR, 3,881,000 MMBtu for unit Y2BR and 3,956,000 MMBtu for unit Y3BR, and shall not be less than the annual heat input limits of 6,011,000 MMBtu for unit Y4BR, 4,537,000 for unit Y5BR, 13,702,000 MMBtu for unit Y6BR, and 12,475,000 MMBtu for unit Y7BR. The other units designated in this plan are Bowen units 1BLR, 2BLR, 3BLR and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, and Wansley units 1 and 2. The designated representative is R.H. Haubein, Jr.

Coleman in Kentucky: Standard emission limitation of 0.50 lbs/MMBtu for units C1, C2, and C3. The designated representative is Gregory F. Black.

Cooper in Kentucky: Averaging plan for 1995–1999 for units 1 and 2; for each year, the actual annual average emission rates for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.50 lbs/MMBtu for units 1 and 2. The designated representative is Robert E. Hughes, Jr.

E.W. Brown in Kentucky: Standard emission limitations of 0.50 lbs/MMBtu for unit 1 and 0.45 lbs/MMBtu for units 2 and 3. The designated representative is James W. Tipton.

East Bend in Kentucky: Averaging plan for 1995 for unit 2; the actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.39 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limit of 23,500,000 MMBtu. The other units designated in the plan are Miami Fort unit 6 and Walter C. Beckjord units 5 and 6. For 1996–1999, standard emission limitation of 0.50 lbs/MMBtu. The designated representative is Gregory C. Ficke.

Elmer Smith in Kentucky: Standard emission limitation of 0.45 lbs/MMBtu for unit 2. The designated representative is Robert M. Carper.

Ghent in Kentucky: Standard emission limitation of 0.45 lbs/MMBtu for unit 1. The designated representative is James W. Tipton.

Green River in Kentucky: Standard emission limitation of 0.50 lbs/MMBtu for unit 5. The designated representative is James W. Tipton.

H.L. Spurlock in Kentucky: Standard emission limitation of 0.50 lbs/MMBtu for unit 1. The designated representative is Robert E. Hughes.

HMP & L Station 2 in Kentucky: Standard emission limitation of 0.50 lbs/MMBtu for units H1 and H2. The designated representative is Gregory F. Black.

R.D. Green in Kentucky: Standard emission limitation of 0.50 lbs/MMBtu for units G1 and G2. The designated representative is Gregory F. Black.

Jack Watson in Mississippi: Standard emission limitation of 0.50 lbs/MMBtu for units 4 and 5. The designated representative is Robert G. Dawson.

Gallatin in Tennessee: Five averaging plans, one for each year, for units 1, 2, 3, and 4; for each plan, the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.43 lbs/MMBtu, and actual annual heat input shall not be less than the annual heat input limit of 10,200,000 MMBtu for units 1 and 2, and 10,800,000 MMBtu for units 3 and 4. The other units designated in the plans are Colbert units 1, 2, 3, and 4, and Johnsonville units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. Approval of the plans

for 1995 and 1996 is contingent upon approval of the modification (proposed below) to the Phase I Extension plan designating units 1, 2, 3, and 4 as transfer units. The designated representative is Joseph W. Dickey.

Johnsonville in Tennessee: Five averaging plans, one for each year, for units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10; for each plan, the actual annual average emission rate for NO_X for each unit shall not exceed the alternative contemporaneous annual emission limitation of 0.51 lbs/MMBtu, and actual annual heat input shall not be greater than the annual heat input limit of 4,000,000 MMBtu for units 1, 2, 3, and 4, 3,100,000 MMBtu for units 5 and 6, and 5,500,000 for units 7, 8, 9, and 10. The other units designated in the plans are Colbert units 1, 2, 3, and 4, and Gallatin units 1, 2, 3, and 4. Approval of the plans for 1995 and 1996 is contingent upon approval of the modification (proposed below) to the Phase I Extension plan designating Gallatin units 1, 2, 3, and 4 as transfer units. The designated representative is Joseph W. Dickey.

Gadsby in Utah: Standard emission limitation of 0.45 lbs/MMBtu for unit 3. The designated representative is Jene L. Robinson.

Jim Bridger in Wyoming: Standard emission limitation of 0.45 lbs/MMBtu for units BW71, BW72, and BW73. The designated representative is Jene L. Robinson.

Wyodak in Wyoming: Standard emission limitation of 0.50 lbs/MMBtu for unit BW91. The designated representative is Jene L. Robinson.

Permit Modifications

EPA proposes to amend previously-issued Phase I permits as follows:

Paradise in Kentucky: Phase I Extension plan designating unit 3 as a transfer unit is modified to request 40 additional allowances for 1995 and 1996.

Cumberland in Tennessee: Phase I Extension plan designating units 1 and 2 as control units is modified to change the allowance requests for five transfer units designated in the plan (Paradise unit 3 and Gallatin units 1, 2, 3, and 4) for 1995 and 1996; this does not change the total allocation of allowances.

Gallatin in Tennessee: Phase I Extension plan designating units 1, 2, 3, and 4 as transfer units is modified to request 10 fewer allowances per unit for 1995 and 1996; the previous extension, until January 1, 1997, of the deadline for compliance with applicable emission limitations for NO_X is withdrawn for these units.

Dated: August 17, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–20809 Filed 8–23–94; 8:45 am]

BILLING CODE 6560-50-P

[FRL–5055–3]

Environmental Statistics Subcommittee of the National Advisory Council for Policy and Technology Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Statistics Subcommittee (of the Environmental Information and Assessment Committee) of the National Advisory Council on Environmental Policy and Technology (NACEPT) will hold a one and one-half day meeting of the full Subcommittee.

The Environmental Statistics Subcommittee was formed to provide key recommendations and strategic advice on the statistical products and activities necessary to enhance the Agency's knowledge about environmental statistics and trends, and to explore information gaps from the perspective of the users/producers of these data products. The meeting is being held to discuss and offer critical advice on four of the products the Environmental Statistics and Information Division has been developing and to provide input and advise on the strategic plans of the Division.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meetings will be held on September 21, 1994 from 9:00 a.m. to 5:00 p.m. and September 22, 1994 from 9:00 a.m. to 1:00 p.m. The meetings will be held at the Hall of States, 444 North Capitol Street NW., Rooms 283–285, Washington, DC 20011. The hall telephone number is (202) 624–5490. This meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis.

ADDRESSES: Written comments should be sent to: James Morant, Environmental Statistics and Information Division, U.S, Environmental Protection Agency, Mail Code 2163, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James Morant, Designated Federal Official, Direct Line (202) 260–2266, General Line (202) 260–2680, Fax (202) 260–4968.

Dated: August 16, 1994.

Chapman Gleason,

Acting Designated Federal Official.

[FR Doc. 94–20806 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5057–5]

Governmental Advisory Committee to the U.S. Government Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the first meeting of the Governmental Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the North American Commission on Environmental Cooperation. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation". The Committee is responsible for providing advice to the United States Representative on implementation and further elaboration of the Agreement.

The Committee consists of a group of 12 independent representatives drawn from among state and local government agencies and tribal governments.

DATES: The Committee will meet on September 13, 1994. The meeting will start at 8:30 a.m. and end at 4:30 p.m.

ADDRESSES: DuPont Plaza Hotel, 1500 New Hampshire Avenue, Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hardaker, Designated

Federal Official, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2477.

Dated: August 10, 1994.

Robert Hardaker,

Designated Federal Official, Governmental Advisory Committee.

[FR Doc. 94–20800 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5056–3]

National Advisory Committee to the U.S. Government Representative to the North American Commission on Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (P.L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of the first meeting of the National Advisory Committee (NAC) to the U.S. Government Representative to the North American Commission on Environmental Cooperation (CEC).

The Committee is established within the U.S. Environmental Protection Agency (EPA) to advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the North American Commission on Environmental Cooperation. The Committee is authorized under Article 17 of the North American Agreement on Environmental Cooperation, North America Free Trade Implementation Act, P.L. 103–182 and is directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation". The Committee is responsible for providing advice to the United States Representative on implementation and further elaboration of the Agreement.

The Committee consists of a group of 15 independent representatives drawn from among environmental groups, business and industry, public policy organizations, and educational institutions.

DATES: The Committee will meet on September 13, 1994. The meeting will start at 8:30 a.m. and end at 4:30 p.m.

ADDRESSES: Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Lena Nirk, Designated Federal Official, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–8169.

Dated: August 10, 1994.

Lena Nirk,

Designated Federal Official, National Advisory Committee.

[FR Doc. 94–20801 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30304B; FRL–4772–3]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Checkmate CM Technical Pheromone, Checkmate CM, and Bedoukian CM Technical Pheromone, containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 18, 1990 (55 FR 14469), which announced that Consep Membranes, Inc., (now known as Consep Inc.) 213 Southwest Columbia, Bend, OR 97708, had submitted applications to register the pesticide products Checkmate CM Technical Pheromone and Checkmate CM (EPA File Symbols 56336–U and 56336–L), containing the active ingredient *(E,E)*-8,10-dodecadien-1-ol at 92 percent respectively, an active ingredient not included in any previously registered products.

EPA also received an application from Bedoukian Research Inc., 21 Finance Drive, Danbury, CN 06810–4192, to register the pesticide product Bedoukian CM Technical Pheromone (File Symbol 52991–E) an insecticide, containing the active ingredient *(E,E)*-8,10-dodecadien-1-ol at 96.32 percent. However, since the notice of receipt of application was not published in the **Federal Register** for this product, interested parties may submit written comments within 30 days from the date of publication of this notice for this product.

On February 24, 1994, EPA approved three new products (one end-use and two technicals) as follows:

1. Checkmate CM (EPA Registration Number 56336–5) for control of codling moths on apples, nectarines, peaches, pears, plums, prunes, quince, and walnuts.

2. Checkmate CM Technical Pheromone (EPA Registration Number 56336–4) for use in formulating end-use products to control codling moths.

3. Bedoukian CM Technical Pheromone (EPA Registration Number 52991–2) for formulation use only.

The Agency has considered all required data on risks associated with the proposed use of *(E,E)*-8,10-dodecadien-1-ol, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *(E,E)*-8,10-dodecadien-1-ol when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on *(E,E)*-8,10-dodecadien-1-ol.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St.,

SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 9, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20328 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30370; FRL–4903–1]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by September 23, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30370] and the registration/file number, attention Product Manager (PM) 18, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment 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 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. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Currently Registered Products

1. File Symbol: 55638–ET. Applicant: Ecogen Incorporated, 2005 Cabot Boulevard West, Langhorne, PA 19042–1810. Product name: Raven OF. Insecticide. Active ingredient: *Bacillus thuringiensis* subspecies *kurstaki* strain EG7673, coleopteran active toxin at 8 percent and lepidopteran active toxin at 2 percent. Proposed classification/Use: None. For the control of the Colorado potato beetle on potatoes, tomatoes, and eggplants. (PM 18)

2. File Symbol: 55638–EA. Applicant: Ecogen Incorporated, 2005 Cabot Boulevard West, Langhorne, PA 19042–1810. Product name: Raven Technical Powder. Insecticide. Active ingredient: *Bacillus thuringiensis* subspecies *kurstaki* strain EG7673, coleopteran active toxin at 40 percent and lepidopteran active toxin at 10 percent. Proposed classification/Use: None. For manufacture of bioinsecticide end-use products; for application on potatoes, tomatoes, and eggplants. (PM 18)

Bacillus thuringiensis subspecies *kurstaki* strain EG7673, the active ingredient in file symbols 55638–ET and 55638–EA, constitutes the first application for a FIFRA section 3 registration of a viable microbial pesticide that has been developed via recombinant DNA technology.

3. File Symbol: 68186–R. Applicant: IJO Products, Inc., P.O. Box 778, El Centro, CA 92244. Product name: Detur. Insecticide. Active ingredient: Jojoba oil at 97.5 percent. Proposed classification/Use: None. For use on all raw agricultural commodities. (PM 18)

4. File Symbol: 45729–E. Applicant: Safe and Sure Pesticide Products Company, P.O. Box 5547, Sarasota, FL 34277. Product name: De-Flea Shampoo Concentrate. Insecticide. Active ingredients: Docusate sodium sulfosuccinate at 12 percent and undecylenic acid at 2 percent. Proposed classification/Use: None. For flea control on dog, cats, puppies, and kittens. (PM 18)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 10, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20438 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180948; FRL–4904–4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 18 States and to United States Department of Agriculture. Six crisis exemptions were initiated by various States. These exemptions, issued during the months of April and May 1994, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied five specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following

information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of imidacloprid on melons to control the sweet potato whitefly; April 15, 1994, to April 14, 1995. A notice of receipt published in the **Federal Register** of April 6, 1994 (59 FR 16205); the time available for a decision required that the comment period be shortened. No comments were received in response to this notice. EPA determined that the situation is an emergency. This is a recently introduced strain of the sweet potato whitefly which is a relatively new pest to melons and is not adequately controlled with registered materials. Damage from this pest can lead to severe yield and economic losses. (Andrea Beard)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on artichokes to control powdery mildew; April 8, 1994, to December 31, 1994. (Susan Stanton)

3. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of avermectin on celery to control the serpentine leafminer; April 8, 1994, to April 7, 1995. (Larry Fried)

4. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on peppers to control powdery mildew; May 4, 1994, to November 1, 1994. (Larry Fried)

5. California Department of Pesticide Regulation for the use of cyfluthrin on oranges to control citrus thrips; May 12, 1994, to June 30, 1994. California had initiated a crisis exemption for this use. (Larry Fried)

6. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of avermectin on pears to control two-spotted spider mites, European red mites, and pear psylla; May 5, 1994, to September 15, 1994. California had initiated a crisis exemption for this use. (Larry Fried)

7. Colorado Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; April 19, 1994, to July 15, 1994. (Susan Stanton)

8. Colorado Department of Agriculture for the use of propazine on sorghum to control pigweed; May 20, 1994, to August 1, 1994. A notice of receipt published in the **Federal Register** of April 15, 1994 (59 FR 18119). The situation was determined to be urgent and nonroutine. Since the registrant voluntarily canceled the use of propazine on sorghum due to reregistration requirements, growers were left without adequate control for pigweed. The registered alternatives do not provide adequate control, or may cause crop injury, especially through carryover to sensitive rotational crops. Significant economic loss is expected without the use of propazine. Since the voluntary cancellation of propazine, another company has agreed to support registration of this use and is currently working to fulfill the necessary data requirements. (Andrea Beard)

9. Connecticut Department of Environmental Protection for the use of avermectin on pears to control pear psylla and mites; May 5, 1994, to September 30, 1994. (Larry Fried)

10. Idaho Department of Agriculture for the use of avermectin on pears to control pear psylla and spider mites; May 5, 1994, to September 1, 1994. (Larry Fried)

11. Indiana State Office of the Chemist and Seed Commissioner for the use of sethoxydim on mint to control grasses; April 20, 1994, to November 1, 1994. (Susan Stanton)

12. Michigan Department of Agriculture for the use of avermectin on pears to control pear psylla and pear rust mites; May 5, 1994, to September 30, 1994. (Larry Fried)

13. Montana Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; April 19, 1994, to July 15, 1994. (Susan Stanton)

14. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray and white molds; May 27, 1994, to September 30, 1994. (Libby Pemberton)

15. New York Department of Environmental Conservation for the use of chlorothalonil on blueberries to control anthracnose; May 4, 1994, to July 31, 1994. (Susan Stanton)

16. New York Department of Environmental Conservation for the use of avermectin on pears to control pear psylla; May 5, 1994 to, September 30, 1994. (Larry Fried)

17. New Jersey Department of Environmental Protection and Energy for the use of chlorothalonil on blueberries to control anthracnose; May 4, 1994, to December 31, 1994. (Susan Stanton)

18. North Dakota Department of Agriculture for the use of sethoxydim on crambe to control volunteer grains; April 26, 1994, to July 31, 1994. (Susan Stanton)

19. North Dakota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; April 19, 1994, to July 31, 1994. (Susan Stanton)

20. Ohio Department of Agriculture for the use of avermectin on pears to control pear psylla; May 5, 1994, to September 30, 1994. (Larry Fried)

21. Oklahoma Department of Agriculture for the use of propazine on sorghum to control pigweed; May 20, 1994, to August 1, 1994. A notice of receipt published in the **Federal Register** of February 9, 1994 (59 FR 6022); no comments were received. The situation was determined to be urgent and nonroutine. Since the registrant voluntarily canceled the use of propazine on sorghum due to reregistration requirements, growers were left without adequate control for pigweed. The registered alternatives do not provide adequate control, or may cause crop injury, especially through carryover to sensitive rotational crops. Significant economic loss is expected without the use of propazine. Since the voluntary cancellation of propazine, another company has agreed to support registration of this use and is currently working to fulfill the necessary data requirements. (Andrea Beard)

22. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; May 27, 1994, to September 16, 1994. (Libby Pemberton)

23. Oregon Department of Agriculture for the use of avermectin on pears to control pear psylla and spider mites; May 5, 1994, to August 30, 1994. Oregon had initiated a crisis exemption for this use. (Larry Fried)

24. Oregon Department of Agriculture for the use of fenarimol on hazelnuts to control eastern filbert blight; April 19, 1994, to May 30, 1994. (Susan Stanton)

25. Pennsylvania Department of Agriculture for the use of vinclozolin on snap beans to control gray and white molds; May 27, 1994, to October 31, 1994. (Libby Pemberton)

26. Pennsylvania Department of Agriculture for the use of avermectin on pears to control pear psylla; May 5, 1994, to July 31, 1994. (Larry Fried)

27. Utah Department of Agriculture for the use of avermectin on pears to control pear psylla and spider mites; May 5, 1994, to September 1, 1994. (Larry Fried)

28. Virginia Department of Agriculture for the use of clomazone on

snap beans to control broadleaf weeds; May 12, 1994, to September 10, 1994. (Margarita Collantes)

29. Washington Department of Agriculture for the use of avermectin on pears to control pear psylla and spider mites; May 5, 1994, to September 1, 1994. Washington had initiated a crisis exemption for this use. (Larry Fried)

30. Washington Department of Agriculture for the use of clomazone on cucumbers to control weeds; May 6, 1994, to May 5, 1995. (Margarita Collantes)

31. Wisconsin Department of Agriculture for the use of mancozeb on ginseng to control leaf and stem blight; May 17, 1994, to August 31, 1994. (Margarita Collantes)

32. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on mint to control grasses; April 20, 1994, to July 15, 1994. (Susan Stanton)

33. United States Department of Agriculture for the use of methyl bromide on oak logs for export to control oak wilt diseases at sites throughout the United States; May 20, 1994, to May 19, 1995. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on April 29, 1994, for the use of cyhalothrin on wheat to control armyworms. This program has ended. (Andrea Beard)

2. California Department of Pesticide Regulation on April 16, 1994, for the use of cyfluthrin on navel oranges to control citrus thrips. This program has ended. (Libby Pemberton)

3. Montana Department of Agriculture on April 20, 1994, for the use of permethrin on wheat, barley, and oats to control cutworms. This program has ended. (Andrea Beard)

4. Nebraska Department of Agriculture on May 2, 1994, for the use of permethrin on wheat to control cutworms. This program has ended. (Andrea Beard)

5. South Carolina Division of Agriculture and Natural Resources on April 29, 1994, for the use of tralomethrin on tomatoes to control stinkbugs. This program is expected to last until December 31, 1994. (Andrea Beard)

6. Washington Department of Agriculture on May 20, 1994, for the use of chlorpyrifos on currants to control the currant borer. This program is expected to last until August 1, 1994. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato whitefly. (Andrea Beard)

2. Virginia Department of Agriculture and Consumer Services for the use of iprodione on tobacco to control target spot, stem rot, and collar rot. This specific exemption was denied because of inadequate progress toward registration. (Susan Stanton)

3. Washington Department of Agriculture for the use of chlorotahlonil on rhubarb to control ramularia leaf and stalk spot. This specific exemption was denied because an emergency condition does not exist and did not meet the criteria specified in 1993, for consideration of future section 18 requests for this use. (Susan Stanton)

4. Washington Department of Agriculture for the use of thiabendazole on lentil seed to control ascochyta blight. This specific exemption was denied because an emergency condition does not exist. (Susan Stanton)

5. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sethoxydim on red beets to control annual and perennial grasses. The exemption was denied because an emergency condition does not exist. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: August 12, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–20439 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

[PF–602; FRL–4896–1]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition, three amended pesticide petitions, and one amended food/feed additive petition.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7505C), 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 Hwy., Arlington, VA 22202. Information submitted as a comment 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 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. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attention: [Product Manager (PM) named in the petition], Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 204, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2 703-305-5540.	Do.
Joanne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.

SUPPLEMENTARY INFORMATION: EPA has received an initital filing of a pesticide petition (PP), two filings of amendments to previously issued pesticide petitions, and one filing of an amended food/feed additive petition, as follows:

Initial Filing

1. *PP 4F4361.* Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.415 by increasing established tolerances for the residues of the fungicide fosetyl-Al, aluminum tris (*O*-ethyl phosphonate), in or on the raw agricultural commodities as follows: Strawberries from 20 parts per million (ppm) to 75 ppm; brassica (cole) leafy vegetables group from 55 ppm to 60 ppm; leafy vegetables (except brassica vegetables) from 80 ppm to 100 ppm.

The proposed analytical method for determining residues is gas chromatography. (PM 22)

Amended Petitions

2. *PP 1F3952.* In the **Federal Register** of April 3, 1991 (56 FR 13642), EPA issued a notice that ICI Americas, Inc., Agricultural Products, Wilmington, DE, 19897, had submitted the petition proposing to amend 40 CFR 180.438 by establishing a regulation to permit residues of the insecticide *lambda*-cyhalothrin [1-*alpha*-(S),3-*alpha*-(Z)]-(±)-cyano-(3-phenoxyphenyl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] in or on tomatoes at 0.06 part per million (ppm), cabbage at 0.4 ppm, and broccoli at 0.4 ppm. ICI Americas, Inc., has submitted to EPA an amendment to the petition for tomatoes, increasing the proposed tolerance from 0.06 ppm to 0.1 ppm. (PM-13)

3. *PP 3F4187.* In the **Federal Register** of October 21, 1993 (58 FR 54354), EPA issued notice that Monsanto Co., 700 14th St., NW., Washington, DC 20005, proposed to amend 40 CFR part 180 by establishing a regulation to permit residues of thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-[[(2-sulfoethyl)amino] carbonyl)-6-(trifluoromethyl) and expressed as parent equivalents, in or on citrus whole fruit at 0.05 part per million (ppm), cotton seed at 0.05 ppm, and cotton forage at 0.2 ppm. Monsanto Co. has amended the citrus whole fruit commmodity to request instead, tolerances of 0.05 ppm for orange, whole fruit and 0.05 ppm for grapefruit, whole fruit. The proposed analytical method for determining residues is mass spectral multiple-ion detection. (PM-23)

4. *PP 6F3436.* In the **Federal Register** of October 29, 1986 (51 FR 39577), EPA issued notice that Roussel Uclaf of Paris, France, U.S. Agent: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, had proposed amending 40 CFR 180.422 by establishing tolerances for combined residues of the insecticide tralomethrin and its major metabolites in or on various agricultural commodities. Hoechst-Roussel Agri-Vet Co. has submitted to EPA an amended tolerance of 1.0 part per million (ppm) in head lettuce, instead of 0.5 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 13)

5. *FAP 1H5607.* In the **Federal Register** of April 3, 1991 (56 FR 13643), EPA issued a notice that ICI Americas, Inc., Agricultural Products, Wilmington, DE, 19897, had submitted the petition proposing to amend 40 CFR part 186 by establishing a regulation to permit residues of the insecticide *lambda*-cyhalothrin [1-*alpha*-(S),3-*alpha*-(Z)]-(±)-cyano-(3-phenoxyphenyl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] in or on wet tomato pomace at 0.6 ppm and dry tomato pomace at 4.0 ppm. ICI Americas, Inc., has submitted to EPA an amendment to the petition, to propose a tolerance of 6.0 ppm for tomato pomace, wet or dry. (PM-13)

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food and feed additives, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: August 17, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20814 Filed 8–23–94; 8:45 am]
BILLING CODE 6560–50–F

[OPP–180949; FRL–4908–8]

Receipt of Application for Emergency Exemption to use Sodium Fluoroacetate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a public health exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide sodium fluoroacetate [CAS 62–74–8] to treat up to 34,837,687 acres in gray fox rabies epizootic areas in Texas to control vectors of rabies. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 8, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180949," should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8326).

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a public health exemption for the use of sodium fluoroacetate to reduce gray fox, red fox, coyote, bobcat, striped skunk, ringtail, and raccoon populations in 43 counties in central Texas. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant indicates that in the first 6 months of 1994, 182 cases of fox rabies were reported in 19 counties. At least 126 people from the most active counties in the epizootic received post-exposure rabies treatment during January and May, 1994. The Applicant claims that rabies is a disease of overpopulation which has resulted from the loss of fur markets. The Applicant claims that if not controlled the epizootic will continue to move towards human population centers.

The Applicant proposes to apply sodium fluoroacetate (Compound 1080) as a single dose bait (SDB). Each bait will contain five milligrams active ingredient. Only one SDB may be placed at any single site. Sites may not be closer than 300 feet on any one ownership. The number of baits in use may not exceed 10 on properties of less than 100 acres; or 25 on properties of 101 to 639 acres; or a density greater than 50 on any section (640 acres of land). Baits will be checked every 7 days. A maximum of 30 pounds of active ingredient will be required.

This notice does not constitute a decision by EPA on the application itself. The regulations governing Section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for an emergency exemption proposing use of a pesticide if the pesticide was the subject of a notice under section 6(b) of the Act and was subsequently cancelled, and is intended for a use that poses a risk similar to the risk posed by any use of the pesticide which was the subject of the notice under section 6(b).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: August 19, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–20950 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPE; FRL–5057–7]

Sustainable Industry: Promoting Strategic Environmental Protection in the Inductrial Sector (Phase 1 Report); Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The document "Sustainable Industry· Promoting Strategic Environmental Protection in the Industrial Sector, Phase 1 Report" is available to the public. This report outlines the progress made to date in developing policy options that will improve environmental and economic performance in the metal finishing, photoimaging, and thermoset plastic industries. Hard copy and microfiche copies of the report can be purchased through the National Technical Information Service (NTIS). Ordering information is provided.

DOCUMENT DESCRIPTION: The Sustainable Industry Project represents a new approach to development of environmental policy for industry. The project is based on the premise that environmental policies for the industrial sector in the 1990s must be developed from a thorough understanding of the complex set of characteristics and decision-making factors that are unique to individual industrial sector or sub-sectors. Working with industries, states, non-governmental organizations, and other interested parties, EPA intends to design policies that will protect the environment and human health while fostering competitive and sustainable industries.

The primary goal of the Sustainable Industry Project is to develop, test, and implement industry-specific policy recommendations that will remove barriers to innovation and promote strategic environmental protection. The Phase 1 Report details the selection of the three industries, the development of a network of "stakeholders" for the project, identification of the key drivers and barriers that influence environmental performance in each industry, and selection of the policy options that will effect changes in that performance.

ORDERING INFORMATION: The Phase 1 Report has been assigned the NTIS number PB94–195054. The price is $36.50 ($17.50 for microfiche). Orders may be placed by telephone to the NTIS order desk and charged against American Express, VISA, Mastercard, or sent by mail with a check, money order or account number.

ADDRESSES: National Technical Information Services, Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

FOR FURTHER INFORMATION CONTACT: Robert Benson, Waste and Chemical Policy Division (2125), Office of Policy, Planning and Evaluation, EPA, 401 M Street, SW., Washington, DC 20460 Office location and telephone number: Rm. 3000 Waterside Mall, EPA. (202–260–8668).

Dated: August 17, 1994.

Richard Morgenstern,

Director, Office of Policy Analysis.

[FR Doc. 94–20805 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5057–4]

42 U.S.C. Section 122(g); Proposed Settlement of Administrative Order on Consent

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *De Minimis* Settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 122 of CERCLA with *de minimis* potentially responsible parties for pasts costs and costs that will be incurred during removal activities at the Lead Battery Recycler Site in Toledo, Lucas County, Ohio. Four (4) Respondents have agreed to pay a total of $196,562.46. The money will be used to reimburse the U.S. EPA for past costs and oversight costs which will be incurred during removal actions to be taken at the Site. This action is being taken to settle all liability related to the Lead Battery Recycler Site with these Respondents pursuant to the intent of Section 122(g) of CERCLA, as amended.

DATE: Comments on this proposed settlement must be received by September 23, 1994.

ADDRESSES: A copy of the proposed settlement is available at the following address for review: (It is recommended that you telephone Pamela Ciarrocchi at (312) 886–0559, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Office of Superfund, Emergency and Enforcement Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Comments on the proposed settlement should be addressed to: (Please submit an original and three copies, if possible.)

Pamela Ciarrocchi, Special Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard (CS–29A), Chicago, Illinois 60604–3590, (312) 886–0559.

FOR FURTHER INFORMATION CONTACT: Pamela Ciarrocchi, Office of Regional Counsel, at (312) 886–0559.

SUPPLEMENTARY INFORMATION: From 1981 to 1983, Detroit Lead Recyclers, a partnership doing business as Battery Recyclers of Detroit and Battery Recyclers of Toledo, operated the 2.75

acre Site as a battery recycling facility. The Site is located at 5715 Angola Road, Toledo, Lucas County, Ohio, in a mixed residential/industrial area. While in operation, the Lead Battery Recycler Site received batteries from numerous locations and companies for recycling. The facility has been closed since 1983.

On September 14, 1994, L. Keith Brunner, general partner of Detroit Lead Recyclers, sent a letter to the U.S. EPA and the Ohio Environmental Protection Agency (OEPA) noting that a release of a reportable quantity of lead may have occurred at the Lead Battery Recycler Site.

The Respondents are alleged generators of spent batteries that were shipped to the Lead Battery Recycler Site. Each Respondent's share of the waste delivered to the Site is believed not to exceed nine-tenths of one percent (.9%) of the total waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to Section 122(i) of CERCLA for comments on the proposed settlement.

David A. Ullrich,

Acting Regional Administrator-Region V, U.S. Environmental Protection Agency.

[FR Doc. 94–20803 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–211038; FRL–4901–9]

Response to TSCA Section 21 Petition to Amend the Definition of Generator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Denial of TSCA Section 21 Petition.

SUMMARY: This notice responds to a citizen's petition submitted by Environmental Protection Services, Inc. under section 21 of the Toxic Substances Control Act (TSCA)(15 U.S.C. 2620) to initiate a rulemaking to amend the definition of "generator" under 40 CFR 761.3 to include persons who ship more than five transformers to rebuilding/decommissioning facilities for repair, unless they certify that the transformers are shipped for repair and are not PCB waste. EPA is denying this petition because amending the definition of generator at § 761.3 is unnecessary and would not result in greater protection to health or the environment, because the existing regulations provide equivalent and adequate protection against unreasonable risk.

ADDRESSES: Copies of the petition and all related information used by the Agency to develop this response are located in the TSCA Nonconfidential Information Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. B–607, Northeast Mall, 401 M St., SW., Washington, DC, 20460. They are available for review and copying from 12 noon to 4 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: In this notice, EPA is responding to the petition of Environmental Protection Services, Inc. under section 21 of TSCA regarding amending the definition of "generator" under 40 CFR 761.3.

I. Background

A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of, among other things, rules imposing substantive controls on chemical substances or mixtures under section 6 of TSCA. Section 21(b)(3) requires that EPA grant or deny a petition within 90 days of its filing. If EPA, grants a section 21 petition, EPA must promptly commence an appropriate proceeding. If EPA denies the petition, the reasons for denial must be published in the **Federal Register.**

If EPA denies a petition within 90 days of the filing date, or fails to grant or deny within the 90–day period, the petitioner may commence a civil action in a Federal district court to compel EPA to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90–day period if EPA fails to grant or deny the petition within that period.

B. Summary of Petition

On May 27, 1994, Environmental Protection Services, Inc. (herein referred to as "petitioner") petitioned EPA under section 21 of TSCA, for the amendment of EPA's PCB regulations to address the need to manifest PCB-Contaminated Transformers that are shipped to rebuilding/decommissioning facilities for repair but are actually unsuitable for repair and are therefore PCB waste. The petitioner is currently in the business of reclaiming valuable metals from PCB-Contaminated Transformers that have been taken out of service based on a determination that the transformer is unsuitable for repair. It is the petitioner's position that many shippers know in advance that their transformers cannot be repaired but are claiming ignorance of this fact to avoid the provisions of the PCB regulations at 40 CFR part 761, subparts D and K. [Note: The petitioner also mentions subpart H; however, there is no subpart H in the PCB regulations]. In order to remedy this situation the petitioner requests that EPA revise the definition of "generator" at 40 CFR 761.3 to read as follows:

> Any person who, in a single shipment, causes to be transported greater than five (5) distribution class oil filled equipment (pole mounts, pad mounts, switch gear, etc.) to a facility which has the capability to decommission, which includes but not limited to scrap metal production, as well as a rebuilding and reconditioning capability shall be considered a "generator" unless it provides a certification that none of the transformers have been subject to the disposal, recordkeeping and manifest requirements of subparts D, H, and K of this part.

The petitioner states that in average shipments of 75 to 150 pole-mounted transformers shipped to service facilities, between 0% to 35% are actually repairable. Furthermore, the petitioner states, "By permitting such shipments without manifesting the transformers' owners are essentially under no control with respect to on-site storage for disposal practices." As such, the petitioner strongly believes that, based upon their own experience, large shipments of transformers will contain units that are clearly unsuitable for rebuilding or remanufacture and that the corresponding dangers during transport of such large shipments of unmanifested PCBs present an unreasonable risk of injury to health and the environment.

In support of their petition, the petitioner provided data which is representative of the criteria (e.g., age of the unit, non-standard size, nature of damage to internal or external components, etc.) used by large shippers of transformers for determining whether these units should be processed as salvage or reconditioned. If one were to use these criteria, the petitioner states, it would be immediately obvious to the owner and certainly to the rebuilding/decommissioning facility, that the transformer is unsuitable for repair and should be scrapped. In short, the petitioner believes that these practices are used to postpone the generator being subject to subpart D, H and K under 40 CFR part 761.

The petitioner has also obtained information from a confidential source

that the number of transformers being sent to rebuilding/decommissioning facilities is increasing while at the same time, the percentage of transformers repaired is decreasing. To substantiate this claim the petitioner requested that EPA conduct an investigation to determine statistics that provide the percentage of transformers that are repaired versus decommissioned.

II. EPA's Decision

EPA has concluded that the petitioner has not presented information which would warrant initiating rulemaking to amend the definition of generator at 40 CFR 731.3; therefore, EPA is denying the petition. Specifically, EPA is denying the petition because amending the definition of generator as proposed by the petitioner is unnecessary because the existing regulations adequately protect against unreasonable risk. Moreover, the petitioners proposed changes would not result in greater protection to health and the environment or even address the petitioner's concern that shippers are circumventing the disposal requirements by sending unmanifested waste to rebuilding/decommissioning facilities.

The current regulations have a mechanism for handling situations where unmanifested waste is received by a commercial storer or permitted disposer (40 CFR 761.211 - Unmanifested Waste Reports). EPA's position on this matter is further expressed on page 52733 in the preamble of the December 21, 1989 **Federal Register** (54 FR 52716) where EPA states:

> ...the preparation of an Unmanifested Waste Report should not be a frequent event for these facilities, since the proposed regulation would otherwise prohibit the acceptance by any transporter, off-site commercial storer, or disposer, of any unmanifested PCB waste... [emphasis added]

If any rebuilding/decommissioning facility receives waste generated by others, that facility becomes a commercial storer of PCB waste as defined by §761.3, and as such is subject to the provisions of 40 CFR part 761 applicable to commercial storers which would require notification to, and possible approval by, EPA. If this waste is received at the facility without a manifest, the owner or operator of the facility shall submit an Unmanifested Waste Report. Owners or Operators of commercial storage or PCB disposal facilities are required to prepare an Unmanifested Waste Report whenever they receive from an offsite source any PCB waste without the required manifest. The report must be sent, within 15 days after receiving the waste, to both the Regional Administrator in the region where the waste was generated and the region where the receiving facility is located. The report includes information on the disposition of the waste, such as, whether it was stored for disposal, disposed of or returned to the generator. Properly submitted Unmanifested Waste Reports could be used to initiate an investigation whether shippers were attempting to circumvent the disposal regulations as described by the petitioner.

It should be noted that the rebuilding/decommissioning facility may also fall within the definition of "generator of PCB waste." The preamble to the Notification and Manifesting rule (54 FR 52716, December 21, 1989, at page 52718) states, "If either the servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste." Therefore, if the rebuilding/decommissioning facility decides that the transformer cannot be repaired and is in effect PCB waste, then they become the generator for the purpose of disposal and subject to the notification and manifesting requirements of subpart K.

The petitioner also maintained that this activity would present a risk of injury to health and the environment. EPA believes that amending the definition of generator at §761.3 is unnecessary and would not result in greater protection to health or the environment, because the existing regulations provide equivalent and adequate protection against unreasonable risk. Broadening the definition of generator would not provide additional protection to health or the environment or enhance compliance/enforcement of the requirements of subparts D, H, and K under 40 CFR part 761. In addition, risks are further mitigated by the shippers requirement to be in compliance with the Department of Transportation (DOT) regulations at 49 CFR 172.102 for the transport of PCBs.

In summary, section 21 of TSCA authorizes any person to petition the Administrator to "initiate a proceeding for the issuance, amendment, or repeal" of a rule under section 4, 6, or 8, or an order under section 5(e) or 6(b)(2) of TSCA. Accordingly, to the extent the petitioner seeks review of the compliance and enforcement of the regulations, that challenge is not appropriate in the form of a TSCA section 21 petition. The situation described by the petitioner in the petition would be more appropriately addressed by contacting enforcement officials in the regional offices or EPA's Office of Enforcement and Compliance Assurance (OECA).

III. Public Record

A. Supporting Documentation

EPA has established a record for its response to this petition under section 21 of TSCA (docket number OPPTS–211038). The record contains the basic information considered by EPA in reaching this decision.

B. References

The following references are included in the record for this action:

(1) Petition submitted to USEPA by Mark E. Fogel, Attorney for Environmental Protection Services, Inc. (May 31, 1994) and attachments.

(2) Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Final Rule (54 FR 52716).

(3) Letter from Joseph J. Kelly, S.D. Myers (June 21, 1994) to USEPA.

IV. Conclusion

For the reasons detailed above, EPA is denying the TSCA section 21 petition by Environmental Protection Services, Inc. to amend the definition of "generator" in 40 CFR 761.3.

Authority: 15 U.S.C. 2620.

Dated: August 19, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–20949 Filed 8–23–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Classic Voyages Company, Two North Riverside Plaza, Suite 600, Chicago, Illinois 60606.

Vessels:

CONSTITUTION

INDEPENDENCE

Dated: August 18, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–20707 Filed 8–23–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Campello Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 15, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Campello Bancorp, Brockton, Massachusetts; to become a mutual-owned bank holding company by acquiring 100 percent of Campello Co-operative Bank, Brockton, Massachusetts, which will operate under the name of The Community Bank, Brockton, Massachusetts.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20764 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

Compagnie de Suez and Banque Indosuez, Paris, France; Application to Engage in Nonbanking Activities

Compagnie de Suez and Banque Indosuez, Paris, France

(Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, Indosuez Carr Futures Inc., Chicago, Illinois (Company), a futures commission merchant registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), in executing and clearing, clearing without executing, executing without clearing, purchasing and selling through the use of omnibus accounts, and providing investment advisory services with regard to the following contracts on the following exchanges: No. 2 Heating Oil Futures, Options on No. 2 Heating Oil Futures, Light Sweet Crude Oil Futures, Options on Light Sweet Crude Oil Futures, New York Harbor Unleaded Gasoline Futures, Options on New York Harbor Unleaded Gasoline Futures, Propane Futures, Natural Gas Futures, Options on Natural Gas Futures, Palladium Futures, Platinum Futures, and Options on Platinum Futures on the New York Mercantile Exchange; Corn Futures, Options on Corn Futures, Wheat Futures, Options on Wheat Futures, Soybean Futures, Options on Soybean Futures, Soybean Meal Futures, Options on Soybean Meal Futures, Soybean Oil Futures, Options on Soybean Oil Futures, Oat Futures, and Options on Oat Futures, on the Chicago Board of Trade; Live Cattle Futures, Options on Live Cattle Futures, Feeder Cattle Futures, Options on Feeder Cattle Futures, Live Hog Futures, Options on Live Hog Futures, Frozen Pork Bellies Futures, and Options on Frozen Pork Bellies Futures, on the Chicago Mercantile Exchange; Copper Futures and Options on Copper Futures on the Commodity Exchange, Inc.; Hard Red Winter Wheat Futures and Options on Hard Red Winter Wheat Futures on the Kansas City Board of Trade; White Sugar Futures on the Marche a Terme International de France; Corn Futures, Options on Corn Futures, Live Cattle Futures, Live Hog Futures, Oat Futures, Platinum Futures, Rough Rice Futures, Options on Rough Rice Futures, Soybean Futures, Options on Soybean Futures, Soybean Meal Futures, Wheat Futures, and Options on Wheat Futures on the MidAmerica Commodity Exchange (Chicago Board of Trade); Cocoa Futures, Options on Cocoa Futures, Coffee "C" Futures, Options on Coffee "C" Futures, Domestic Sugar No. 14 Futures, World Sugar No. 11 Futures, and Options on World Sugar No. 11 Futures on the Coffee Sugar & Cocoa Exchange, Inc. (New York); Hard Red Spring Wheat Futures, Options on Hard Red Spring Wheat Futures (American Exercise), and Options on Hard Red Spring Wheat Futures (European Exercise), on the Minneapolis Grain Exchange; Cotton Futures, Options on Cotton Futures, Frozen Concentrated Orange Juice Futures, and Options on Frozen Concentrated Orange Juice Futures on the New York Cotton Exchange; High Sulphur Fuel Oil Futures and Gas Oil Futures on the Singapore International Monetary Exchange Limited. Applicants propose to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

Applicants believe that the proposed activities are closely related to banking or managing or controlling banks.

Except as noted below, the Board previously has approved acting as a futures commission merchant for the proposed commodity contracts. *See Bank of Montreal*, 79 Federal Reserve Bulletin 1049 (1993); *J.P. Morgan & Company Incorporated*, 80 Federal Reserve Bulletin 151 (1994) (*Morgan*). The Board also has approved providing a combination of advisory services regarding nonfinancial commodity derivatives and acting as a futures commission merchant in the execution and clearance of these derivatives. *See Morgan; Caisse Nationale de Credit Agricole S.A.*, 80 Federal Reserve Bulletin 552 (1994); *Societe Generale*, 80 Federal Reserve Bulletin 649 (1994).

The Board has approved the following contracts for omnibus trading only, and Applicants propose to engage in FCM activities in these contracts only through omnibus accounts: Cocoa Futures, Options on Cocoa Futures, Coffee "C" Futures, Options on Coffee "C" Futures, Domestic Sugar No. 14 Futures, World Sugar No. 11 Futures, and Options on World Sugar No. 11 Futures on the Coffee and Sugar & Cocoa Exchange, Inc. (New York); Hard Red Spring Wheat Futures, Options on Hard Red Spring Wheat Futures (American Exercise), and Options on Hard Red Spring Wheat Futures (European Exercise), on the Minneapolis Grain Exchange; and Cotton Futures, Options on Cotton Futures, Frozen Concentrated Orange Juice Futures, and Options on Frozen Concentrated Orange Juice Futures on the New York Cotton Exchange.

Applicants propose to conduct the proposed activities in a manner consistent with the *Societe Generale* order in that Company's customers would include managed commodity funds (or commodity pools) that are formed outside of the United States and are owned solely by non-U.S. persons, and that are owned or sponsored by or otherwise affiliated with Applicant.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicants believe that the proposed activities will benefit the public by promoting competition. Applicants also believe that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicants believe that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 16, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20761 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

First Virginia Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 16, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to merge with Farmers National Bancorp, Annapolis, Maryland, and thereby indirectly acquire Farmers National Bank of Maryland, Annapolis, Maryland, The Caroline County Bank, Greensboro, Maryland, and Atlantic National Bank, Ocean City, Maryland.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Investors Banking Corporation, Salem, Oregon; to acquire 83 percent of the voting shares of BKLA Bancorp, West Hollywood, California and thereby indirectly acquire Bank of Los Angeles, West Hollywood, California.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20762 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

First United Bancorporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First United Bancorporation, Anderson, South Carolina; to engage *de novo* through its subsidiary Quick Tax Refund, Inc., Anderson, South Carolina, in offering tax preparation services and electronic income tax return filings, pursuant to § 225.25(b)(21) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20765 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

Huntington Bancshares Incorporated; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, through its subsidiary, Huntington Bancshares Kentucky, Inc., both of Columbus, Ohio, to acquire by merger FirstFed Northern Kentucky Bancorp, Inc., and thereby indirectly acquire First Federal Bank for Savings of Northern Kentucky, both of Covington, Kentucky, whereupon First Federal Bank for Savings of Northern Kentucky will be merged into The Huntington Bank, Inc., Covington, Kentucky, as permitted under § 225.25(b)(9) of the Board's Regulation Y and 12 USC 1815(d)(3).

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20763 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its wholly-owned subsidiary, Norwest Mortgage Inc., acquiring substantially all of the mortgage servicing rights of Michigan National Bank and its wholly-owned subsidiary, Independence One Mortgage Corporation, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20766 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

Redman Financial, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-18015) published on page 37758 of the issue for Monday, July 25, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for Redman Financial, Inc., is revised to read as follows:

1. Redman Financial, Inc., Simpson, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Simpson, Kansas.

In connection with this application, Applicant has also applied to acquire all the assets and all the liabilities of Simpson Insurance Agency, Simpson, Kansas, and thereby engage in the sale of general insurance pursuant to § 225.(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope for this activity is a 10 mile radius of Simpson, Kansas.

Comments on this application must be received by September 6, 1994.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20767 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

Vincent Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 16, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Vincent Bancorporation, Vincent, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Savings Bank, Vincent, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Summerfield Corporation, Summerfield, Kansas; to become a bank holding company by acquiring 90.40 percent of the voting shares of The First National Bank of Summerfield, Summerfield, Kansas.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20768 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

John Wisniewski; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. John Wisniewski, New Ulm, Minnesota; to acquire, as a result of a proposed stock redemption, an additional 7.95 percent for a total of 32.45 percent of the voting shares of Minnesota Valley Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire Courtland State Bank, Courtland, Minnesota.

Board of Governors of the Federal Reserve System, August 18, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20769 Filed 8–23–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: San Diego Zoological Society, San Diego, CA, PRT–793698

The applicant requests a permit to import 10 captive-born tuataras (*Sphenodon punctatus*) from the Victoria University of Wellington, Wellington, New Zealand, for breeding to enhance the survival of the species.

Applicant: Thomas L. Place, Janesville, IA, PRT–793633

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Ciskei Government, "Tsolwana Game Reserve", Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 19, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–20751 Filed 8–23–94; 8:45 am]

BILLING CODE 4310–55–P

Issuance of Permit for Marine Mammals

On May 25, 1994, a notice was published in the **Federal Register**, Vol. 59, No. 100, Page 27031, that an application had been filed with the U.S. Fish and Wildlife Service by the Marine Mammals Management Office for a permit (PRT–790174) to import polar bear teeth collected under the Marking and Tagging Program. The teeth are to be used for aging studies to assist in population assessments.

Notice is hereby given that on July 12, 1994, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the U.S. Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: August 19, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–20750 Filed 8–23–94; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

BHP Minerals International Exploration Inc.

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from BHP Minerals International Exploration, Inc. a contribution of $20,000 to support rhenium-osmium studies of ore deposits in areas such as the Viburnum and Carlin Trends as well as several massive sulfide examples from Finland and Sweden.

DATES: This notice is effective August 24, 1994.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Eastern Mineral Resources, 959 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Dr. Holly Stein of the U.S. Geological Survey, Branch of Eastern Mineral Resources, at the address given above; telephone 703/648–5326.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 94–20734 Filed 8–23–94; 8:45 am]

BILLING CODE 4310–31–M

U.S. Geological Survey

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the Land Processes DAAC Science Advisory Panel will meet at the U.S. Geological Survey Earth Resources Observation Systems (EROS) Data Center near Sioux Falls, South Dakota. The Panel, comprised of scientists from academic and government institutions, will provide Land Processes DAAC management with advice and consultation on a broad range of scientific and technical topics relevant to the development and operation of DAAC systems and capabilities.

Topics to be reviewed and discussed by the Panel include Land Processes DAAC FY 1994 accomplishments and FY 1995 planned activities; a DAAC Concept of Operations Plan; data product development and distribution issues; DAAC user services status; information management system (IMS) development status and performance; long-term DAAC priorities; and others.

DATES: September 7–9, 1994, commencing at 8:30 a.m. on September 7 and adjourning by 3:30 p.m. on September 9.

FOR FURTHER INFORMATION CONTACT: Dr. Bryan Bailey, Land Processes DAAC Project Scientist, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota 57198 at (605) 594–6001.

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: August 16, 1994.

Gordon P. Eaton,

Director, U.S. Geological Survey.

[FR Doc. 94–20733 Filed 8–23–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Gateway National Recreation Area: Revision of Park Boundary

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces a revision of the boundary of Gateway National Recreation Area. This action is being taken because Fort Wadsworth is being transferred to the National Park Service as a result of the closure of Naval Station New York. Areas of Fort Wadsworth are not suitable for inclusion in Gateway National Recreation Area as they are not consistent with park purposes.

FOR FURTHER INFORMATION CONTACT: Ruth Ann Storey, Office of the Solicitor, (202) 208–7957.

SUPPLEMENTARY INFORMATION: Naval Station New York, which includes Fort Wadsworth, is scheduled to close on August 31, 1994. Fort Wadsworth is within the boundaries of Gateway National Recreation Area.

The purpose of Gateway National Recreation Area, as stated in Public Law 92–592, 16 U.S.C. 460cc, is "to preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural and recreational features * * *." Further, the purpose of the National Park Service, as established by the Act of August 25, 1916, is "to conserve the scenery and the natural and historic objects and the wildlife therein in such a manner and by such means as shall leave them unimpaired for future generations."

In a period of severely limited resources, the National Park Service must focus on protecting resources directly related to the mission of the agency.

Consistent with these purposes, the National Park Service has concluded that inclusion of approximately two thirds of Fort Wadsworth within Gateway National Recreation Area would protect historic resources, preserve open space opportunities, and provide public access to the park.

Due to the construction of approximately 1,000,000 square feet of contemporary building space the nature and use of the area have changed significantly since the boundaries were drawn in Public Law 92–592, making areas no longer suitable for park purposes.

Public Law 92–592, dated October 27, 1972, 86 Stat. 1308, 16 U.S.C. 460cc(b) authorizes the Secretary of the Interior to make minor revisions of the boundaries of Gateway National

Recreation Area when necessary by publication of a revised drawing or other boundary description in the **Federal Register** after advising the Committee on Energy and Natural Resources, United States Senate and the Committee on Interior and Insular Affairs, United States House of Representatives.

The Committees were advised by letters of June 15, 1994 that the Secretary of the Interior intended to make a minor revision to the boundary of Gateway National Recreation Area.

Accordingly the boundaries of Gateway National Recreation Area are revised to delete from the Recreation Area all of that land known as Fort Wadsworth and under the jurisdiction of the Department of Navy, *except*, for the following described parcel which shall remain within the boundaries of the Recreation Area:

That parcel of land generally described as those properties lying east of the west line of New York Avenue (including The Gatehouse, Building 220) and including the sidewalk on the westerly side of New York Avenue; thence, proceeding south of the northern side of New York Avenue/ McLean Avenue and including the sidewalk on the northerly side of New York and McLean Avenues; thence, south along the east side of the Navy Lodge (Building 408) to the southeast corner thereof; thence, turning west, to the western boundary of the site; thence, southerly and southeasterly to include Building 400; thence, southeasterly and easterly to the south side of the Batteries Ayers and Richmond; thence easterly and Northeasterly, to the South side of the Command Post and Battery Barry; Thence, Southeasterly along the North side of Building 453; Thence, Southwesterly, along the Easterly side of Building 452 and 454, to a point on the existing fence line on the Northern side of USS North Carolina Road; Thence, Southwesterly along said existing fence line near the Northern side of USS Carolina Road, to the Western Boundary of the Site; together with (1) a right-of-way on all existing streets and sidewalks on all of that portion of the property within Fort Wadsworth, lying outside of the Recreation Area, as is required to provide ingress, egress, and regress, for vehicle and pedestrian access to the lands within the Recreation Area and (2) a right-of-way for all existing utilities on, over, and across all of that portion of the property within Fort Wadsworth, lying outside of the Recreation Area, as is necessary to provide for the proper maintenance, repair, replacement, and use of all utilities necessary to serve the buildings, structures, and property within the Recreation Area.

A revised boundary map bearing a date of June 1994 with a National Park Service Drawing Number 951/40,017A is available at the office of the General Superintendent, Gateway National Recreation Area, and from the Chief, Land Resources Division, Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, PA 19106. A large scale map showing the lands deleted from the Recreation Area and the lands retained within the Recreation Area and bearing Drawing Number GATE/NARO 646/80,005 may also be obtained from the National Park Service.

Dated: August 19, 1994.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 94–20770 Filed 8–23–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Land Management

[AZ–055–04–4210–03; AZA 25117]

Arizona; La Paz County Realty Action for the Lease of Public Land for Airport Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of segregative effect.

SUMMARY: The Bureau of Land Management received an airport lease application for the following described lands under section 302 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2763; 43 U.S.C. 1732).

Gila and Salt River Meridian, Arizona

T. 4 N., R. 18 W.,
sec. 19, all lands lying south of Interstate Highway 10;
sec. 30, all;
sec. 31, all.

The area described contains approximately 1,380 acres.

DATES: The intent of this publication is to extend the segregative effect until a lease is issued or August 19, 1995, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Resource Area Manager Joy Gilbert, Bureau of Land Management, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (602) 726–6300. Detailed information concerning this action is also available for review.

SUPPLEMENTARY INFORMATION: This action extends the segregation first published on August 19, 1993, 58 FR 44193. The town of Quartzsite has submitted, to the Bureau of Land Management, an airport lease application for the above described lands.

The town of Quartzsite application is consistent with the *Final Yuma District Resource Management Plan.*

Dated: August 19, 1994.

Judith I. Reed,

District Manager.

[FR Doc. 94–20994 Filed 8–22–94; 3:32 pm]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–344, *Economic Effects of Antidumping and Countervailing Duty Measures and Suspension Agreements*, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposal

(1) Number of forms submitted: two
(2) Title of form: Investigation No. 332–344, *Economic Effects of Antidumping and Countervailing Duty Measures and Suspension Agreements—Questionnaires for U.S. Producers and Purchasers/Importers*
(3) Type of request: new
(4) Frequency of use: Producer and Purchaser/Importer questionnaire, single data gathering, scheduled for 1994.
(5) Description of respondents: U.S. firms which produce, purchase, or import any of the case study products;
—Frozen concentrated orange juice
—Lamb meat
—EPROMS
—Color picture tubes
—Standard welded steel pipes and tubes
—Brass sheet and strip
—Certain bearings
—Solid urea
(6) Estimated number of respondents: 180 (Producer questionnaire); 300 (Purchaser/Importer questionnaire)
(7) Estimated total number of hours to complete the forms: 16,200

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the forms and supporting documents may be obtained from Arona Butcher (USITC, telephone no. (202) 205–2230). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

Issued: August 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–20838 Filed 8–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–677 (Final)]

Coumarin From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–677 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 of coumarin,[1] provided for in subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, 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 C (19 CFR part 207).

EFFECTIVE DATE: August 2, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), 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 as a result of an affirmative preliminary determination by the Department of Commerce that imports of coumarin from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 30, 1994, by Rhône-Poulenc Specialty Chemicals Co., Cranbury, NJ.

Participation in the investigation and Public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) 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 section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) 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.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on October 4, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 18, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 4, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 11, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is October 12, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 26, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or

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[1] For purposes of this investigation, coumarin is defined as an aroma chemical with the chemical formula $C_9H_6O_2$. All forms and variations of coumarin are included in the scope of the investigation, namely coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (i.e., prior to purification or crystallization). Excluded from the scope are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$).

before October 26, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 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 section 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–20837 Filed 8–23–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–718 (Preliminary)]

Glycine From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury [2] by reason of imports from the People's Republic of China of glycine, provided for in subheading 2922.49.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

Background

On July 1, 1994, a petition was filed with the Commission and the Department of Commerce by Hampshire Chemical Corporation, Lexington, MA, and Chattem, Inc., Chattanooga, TN, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of glycine from the People's Republic of China. Accordingly, effective July 1, 1994, the Commission instituted antidumping investigation No. 731–TA–718 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 1994 (59 FR 35137). The conference was held in Washington, DC, on July 22, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 15, 1994. The views of the Commission are contained in USITC Publication 2804 (August 1994), entitled "Glycine from the People's Republic of China: Investigation No. 731–TA–718 (Preliminary)."

Issued: August 16, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–20836 Filed 8–23–94; 8:45 am]

BILLING CODE 7020–02–P

Investigations Nos. 701-TA-363 and 364 (Preliminary) and Investigations Nos. 731-TA-711-717 (Preliminary)

Oil Country Tubular Goods From Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of oil country tubular goods (OCTG) [2] from Austria and Italy that are alleged to be subsidized by the Governments of Austria and Italy, and from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain that are alleged to be sold in the United States at less than fair value (LTFV). The subject merchandise is provided for in subheadings 7304.20, 7305.20, and 7306.20 of the Harmonized Tariff Schedule of the United States.

Background

On June 30, 1994, petitions were filed with the Commission and the Department of Commerce by Bellville, Bellville, TX; IPSCO, Camanche, IA; Koppel, Beaver Falls, PA; Maverick, Chesterfield, MO; North Star, Youngstown, OH; U.S. Steel, Pittsburgh, PA; and USS/KOBE, Lorain, OH,[3] alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of OCTG from Austria and Italy and by reason of LTFV imports of OCTG from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain. Accordingly, effective June 30, 1994, the Commission instituted countervailing duty investigations Nos. 701–TA–363 and 364 (Preliminary) and antidumping investigations Nos. 731–TA–711–717 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 1994 (59 F.R. 34864). The conference was held in Washington, DC, on July 22, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 15, 1994. The views of the Commission are contained in USITC Publication 2803 (August 1994), entitled "Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain: Investigations Nos. 701–TA–363 and 364 (Preliminary) and Investigations Nos. 731–TA–711–717 (Preliminary)."

By order of the Commission.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of glycine from the People's Republic of China that are allegedly sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported merchandise covered by Commerce's antidumping investigations is hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to API or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). These petitions do not cover casing, tubing, or drill pipe containing 10.5 percent or more by weight of chromium.

[3] Lone Star, Dallas, TX, and Newport, Newport, KY, joined as petitioners in these investigations subsequent to the filing of the petitions.

Issued: August 16, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–20839 Filed 8–23–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 521]

Railroad Revenue Adequacy—1993 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On August 23, 1994, the Commission served a decision announcing the 1993 revenue adequacy determinations for the Nation's class I railroads. Two carriers (Illinois Central Railroad Company [IC] and Kansas City Southern Railway Company [KCS]) are found to be revenue adequate. The remaining class I carriers are found to be revenue inadequate.

EFFECTIVE DATE: This decision shall be effective August 23, 1994.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 927–6171. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: This annual determination of railroad revenue adequacy is made in accordance with the standards developed in *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986), and *Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes*, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in *Railroad Revenue Adequacy—1988 Determination*, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1993.

A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1993, determined to be 11.4 percent in *Railroad Cost of Capital—1993*, 10 I.C.C.2d 93 (1994). In this proceeding, the Commission applied the revenue adequacy standards to each class I railroad, and it found that only IC and KCS were revenue adequate.

Additional information is contained in the Commission's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding by the Commission. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: August 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–20759 Filed 8–3–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Correction

In the **Federal Register** (FR Doc. 94–13398) Vol. 59, No. 105 at page 28566, dated June 2, 1994, the listing of controlled substances should not have included Heroin (9200) for Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720.

Dated: August 16, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–20772 Filed 8–23–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Correction

In the **Federal Register** (FR Doc. 94–13397) Vol. 59, No. 105 at page 28566, dated June 2, 1994, the listing of controlled substances should not have included Dihydromorphine (9245) for Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720.

Dated: August 16, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–20773 Filed 8–23–94; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated June 22, 1994, and published in the **Federal Register** on June 29, 1994, (59 FR 33544), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059) ...	II
Carfentanil (9743)	II

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 16, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–20771 Filed 8–23–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (U.S./Canada/Mexico International Fellowships and Residencies Section) to the National Council on the Arts will be held on September 20–23, 1994. The panel will meet from 9:30 a.m. to 5:00 p.m. on September 20–22 and from 9:30 a.m. to 3:30 p.m. on September 23 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington D.C. 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10:30

a.m. on September 20 for welcome, introductions and instructions.

The remaining portions of this meeting from 10:30 a.m. to 5:00 p.m. on September 20 and from 9:30 a.m. to 5:00 p.m. on September 21–22; and from 9:30 a.m. to 3:30 p.m. on September 23 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5439.

Dated: August 19, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–20788 Filed 8–23–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: Personal Qualification Statement—Licensee
3. The form number if applicable: NRC Form 398
4. How often the collection is required: On occasion and every six years (at renewal).
5. Who will be required or asked to report: Individuals requiring a license to operate the controls at a nuclear facility.
6. An estimate of the number of response: 1660 annually.
7. An estimate of the total number of hours needed to complete the requirement or request: 1730; approximately 1.04 hours per response.
8. An indication of whether Section 3504(h), Pub. Law 96–511 applies: Not applicable.
9. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing candidate when applying for a new or renewal license to operate the controls at a nuclear facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0090), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda, J. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 17th day of August, 1994.

For the Nuclear Regulatory Commission

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–20757 Filed 8–23–94; 8:45 am]

BILLING CODE 7590–01–M

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Licensing Support System Advisory Review Panel (LSSARP) will meet at 2:00 p.m. on Friday, September 9, 1994, at the Nuclear Regulatory Commission's Headquarters building, Room 1 F7–9, 11555 Rockville Pike, Rockville, Maryland. The entire meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development and operation of an electronic information management system known as the Licensing Support System (LSS). This system will contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the Panel consists of representatives of the State of Nevada, a coalition of effected units of local government in Nevada, the National Congress of American Indians, a coalition of organizations representing the nuclear industry, DOE, NRC and two other agencies of the Federal government which have experience with large electronic information management systems.

The primary purpose of the meeting is to provide status information to the Panel regarding current NRC and DOE activities with respect to the modified approach for the design and operation of the LSS which was proposed by the NRC and discussed by the Panel at its October 1993 and April 1994 meetings.

Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made.

For further information regarding this meeting contact John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–504–1968.

Dated: August 18, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–20760 Filed 8–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–2061]

Kerr-McGee West Chicago Facility Closing of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) is closing the local public document room (LPDR) for records pertaining to the Kerr-McGee Chemical Corporation's West Chicago Rare Earths Facility located at the West Chicago Public Library, West Chicago, Illinois, effective August 31, 1994.

There is no longer a need for the LPDR since the NRC approved an amendment to the Agreement with the State of Illinois under which the State will assume regulatory authority over uranium and thorium mills and mill tailings. The Illinois Department of Nuclear Safety will be the State agency responsible for administering the regulatory program. The transfer of the license from the NRC to the State of Illinois was effective November 1, 1990.

Dated at Rockville, Maryland, this 19th day of August, 1994.

For the Nuclear Regulatory Commission.

Walter E. Oliu,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–20755 Filed 8–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–313/368, 72–1007; License Nos. DPR–51/NPF–6]

Arkansas Nuclear One; Sierra Nuclear Corporation; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated July 5, 1994, Dennis Dums, on behalf of the Wisconsin Citizen's Utility Board (CUB or Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to Arkansas Nuclear One Units 1 and 2 (ANO). The Wisconsin CUB has previously corresponded with NRC concerning issues related to the NRC-certified VSC–24 dry storage cask due to Wisconsin Electric Power Company's planned use of the cask at its Point Beach nuclear power plant. Petitioner requests that: (1) The NRC determine the applicability of 10 CFR 72.48 to 10 CFR Subparts K and L and inform the public of this determination; (2) the NRC direct its legal counsel to determine whether Entergy Operations, Inc. (Entergy) is in violation of any NRC regulations regarding Entergy's use of 10 CFR 72.48 with respect to making modifications to the VSC–24 Cask Safety Analysis Report (SAR) for use at Arkansas Nuclear One (ANO) and inform the public of this determination; (3) the NRC determine whether Entergy's directions to Sierra Nuclear Corporation (SNC) to construct more casks than were approved was a violation of NRC regulations and order Entergy to cease its use of 10 CFR 72.48 until the NRC completes an investigation of the applicability of 10 CFR 72.48 to 10 CFR Part 72, Subparts K and L; and (4) the NRC determine whether SNC's construction of the casks for use at ANO was a violation of NRC regulations and order SNC to cease all construction of VSC–24 casks for use at ANO that are being constructed based on Entergy's 10 CFR 72.48 evaluation.

Petitioner asserts as bases for these requests that: ANO is currently pursuing spent fuel storage at ANO through use of 10 CFR Subparts K and L; ANO currently intends to utilize the VSC–24 constructed by vendor SNC under an SAR submitted in October, 1991 and safety evaluation report (SER), issued by the NRC in April, 1993; an NRC response, dated January 31, 1994, to an October 13, 1993, public request for information, stated that Subparts K and L of 10 CFR Part 72 are silent on cask SAR and certificate changes after the final rule; and ANO request for a rule exemption to 10 CFR 72.234(c) was granted by the NRC to allow for the fabrication of four VSC–24 casks to the longer length prior to NRC approval of SNC's June 14, 1993, submittal of Revision 1 to the 1991 VSC–24 Cask SAR; a February 14, 1994, memorandum to NRC Assistant General Counsel Treby requested a legal interpretation of the applicability of 10 CFR 72.48 to general licenses issued under 10 CFR 72.210; a May 19, 1994, meeting was held regarding SNC's revisions to VSC–24 SAR and the applicability of 10 CFR 72.48 to general license users, as well as a June 3, 1994, memorandum regarding this meeting which stated that "the license can make its own interpretation of the regulations;" and a letter, dated June 2, 1994, from Entergy to the NRC which stated that Entergy has directed SNC to fabricate all fourteen planned casks with the increased length and that Entergy plans to continue to conduct evaluations in accordance with 10 CFR 72.48.

The Petition has been referred to the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Mayland, this 16th day of August 1994.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–20756 Filed 8–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–02764; License No. 34–06903–05, EA 94–039]

University of Cincinnati, Cincinnati, Ohio; Order Imposing Civil Monetary Penalty

The University of Cincinnati (Licensee) is the holder of Byproduct Material License No. 34–06903–05 issued by the Nuclear Regulatory Commission (NRC or Commission) on March 28, 1958. The license authorizes the Licensee to use and possess, among other things, licensed material for the purposes described in 10 CFR 35.100, 10 CFR 35.200, 10 CFR 35.300, 10 CFR 35.400, and 10 CFR 35.500, and in accordance with the licensee conditions specified therein.

II

An inspection of the Licensee's activities was conducted from January 16 through February 11, 1994. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 25, 1994. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice by letter dated April 21, 1994. In its response, the Licensee admitted in part the violation which was assessed a civil penalty, but contested the issuance of the monetary penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated. The NRC staff has reevaluated the information and determined that the penalty proposed for the violation should not have been escalated based on the Licensee's performance. Therefore the

civil penalty proposed for the violation designated in the Notice should be mitigated by 50% based on reconsideration of application of the Licensee Performance factor in the Enforcement Policy and a civil penalty of $2,500 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violation, this Order should be sustained.

Dated at Rockville, Maryland this 17th day of August 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On March 25, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. The University of Cincinnati, Cincinnati, Ohio (Licensee) responded to the Notice on April 21, 1994. The Licensee admitted in part the violation assessed a civil penalty, but contested the issuance of the proposed civil monetary penalty and requested mitigation because of their recent improved performance. The NRC's evaluation and conclusion regarding the Licensee's request follows:

Restatement of Violation I

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the Licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the Licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, between June 22, 1993, and October 5, 1993, licensed material consisting of approximately 20 millicuries of strontium-90 stored in Room No. 4 of the Old Operating Pavilion, an unrestricted area, was not secured against unauthorized removal, and was not under constant surveillance and immediate control of the Licensee.

Summary of Licensee's Request for Mitigation

The Licensee admitted the violation in part, but contested the civil penalty because it asserted that: (1) The licensed material was stored in a restricted area; and (2) the NRC misapplied the civil penalty adjustment factors of licensee performance and prior opportunity to identify the violation.

The Licensee agreed that licensed material was lost or stolen; however, the Licensee disagreed that the room from which licensed material was removed was an unrestricted area. The Licensee contended that since Room No. 4 of the Old Operating Pavilion was locked and posted with a "Caution—Radioactive Material" sign, the area was a "restricted area." The Licensee stated that the security of the restricted area was compromised by unauthorized personnel.

The Licensee believes that the NRC improperly considered the Licensee's performance. The Licensee does not believe that the performance on July 21, 1991 (loss of three iridium-192 brachytherapy seeds) is related to this event because the two events had dissimilar root causes and the July 21, 1991 incident should not have been considered in the issue at hand. The Licensee also contested the application of this civil penalty adjustment factor because of the Licensee's good performance in the recent past. The Licensee further contested the civil penalty because it asserted that the NRC incorrectly applied the civil penalty adjustment factor for prior opportunity to identify the violation. The Licensee stated that it did not know or suspect that NRC licensed material was missing on either June 23 or August 3, 1993.

NRC Evaluation of Licensee's Request for Mitigation

As defined in 10 CFR 20.3(a)(14), a restricted area is any area access to which is controlled by the Licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. Conversely, as defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the Licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. While a "Caution—Radioactive Materials" sign fulfills the requirement of 10 CFR 20.203(e), the mere posting of precautionary signs on a door does not ensure that individuals will not enter the area and, therefore, does not define an area as either restricted or unrestricted. Positive access control can only be achieved by mechanical means such as locking the area or by the presence of Licensee personnel who have been instructed to control access. If the area is locked, the key to the lock must be limited to those individuals who are authorized to have access to the area.

The Licensee's report of the lost source, dated November 3, 1993, states that on June 22, 1993 Radiation Safety Office staff observed Hospital Housekeeping personnel in Room No. 4 of the Old Operating Pavilion and determined that they had gained access through a side door. The lock to that side door was accessible by a master key possessed by housekeeping personnel. The Licensee's report continues that on June 23, 1993, Radiation Safety Office staff again found housekeeping personnel in Room No. 4 with access having been gained through the same side door. The side door lock was rekeyed on June 23, 1993. The Licensee's report further states that housekeeping personnel were not authorized to be in that room. Nonetheless, the key in possession of the housekeeping staff allowed those employees unfettered access to the area.

Therefore, in the absence of positive access (key) control, Room No. 4 of the Old Operating Pavilion became an unrestricted area when the key was issued to the housekeeping staff.

In assessing the Licensee's performance, the NRC noted that on July 21, 1991, the Licensee lost accountability for three iridium-192 brachytheraphy sealed sources. The Licensee contends that the two events are dissimilar and the July 21, 1991 event should not be considered in assessing the current civil penalty. The July 21, 1991 incident related to failure to survey all items before they wee removed from a therapy patient's room and the recent event related to maintaining proper storage. However, both events have at their root the inadequate control of licensed material. The corrective action for the 1991 event included providing training and revising procedures for unusual circumstances involving the use of licensed material. Had those procedures been followed during the recent event, the strontium-90 source might have been located. Therefore, the July 21, 1991 event is relevant to this enforcement action.

The NRC Enforcement Policy states that when assessing licensee performance, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance and the previous enforcement history. Clearly, prior performance is not limited to related issues, but is intended to reflect the overall performance of a licensee over the last several years. Consequently, weight must be given to both the area of concern (i.e., loss of control of material) and the overall performance of the Licensee. While the NRC expected the corrective actions for the July 21, 1991 event would have prevented this occurrence, it also recognizes that the Licensee reported the violation and its performance has improved over the last few years. Subsequent to the 1991 event there have been two routine inspections and only five violations were identified for a program of this size. Therefore, these two aspects offset each other and neither mitigation nor escalation is appropriate for licensee performance. Accordingly, the amount of the civil penalty is reduced by $2,500.

Regarding the NRC's assessment of the civil penalty adjustment factor for prior opportunity to identify the violation, the Licensee had opportunities on at least June 23 and August 3, 1993 to perform inventories to account for all licensed material in the restricted area in question. On June 22, 1993, the Licensee's Radiation Safety Office staff found unauthorized personnel in he restricted area. The Licensee's Radiation Oncology staff performed an inventory of licensed materials in that area and accounted for all material. However, on June 23, 1993, the Licensee's Radiation Safety Office again found unauthorized personnel in the same restricted area, but the Licensee did not perform an inventory to account for licensed materials. Similarly, on August 3, 1993, the Licensee attempted to leak test the strontium-90 source. The Licensee could not find that source and did not make an attempt to locate it.

In the response to the Notice of Violation and Proposed Imposition of Civil Penalty the Licensee contended that Licensee personnel were performing leak tests, not inventories, on August 3, 1993; therefore, the NRC incorrectly applied the civil penalty adjustment factor for prior opportunity to identify the violation. In the Licensee's event report of November 3, 1993, the Licensee reported, "* * * Between August 3, 1993, and October 5, 1993, the Radiation Safety Office Staff member went 'a couple of times' to Old Op 4 to perform the leak test. Each time the source had not been returned. * * *" Therefore, it appears to NRC staff that the Licensee had many opportunities to locate the source. The Licensee's November 3, 1993, report went on to state, "* * * Radiation Safety personnel were reminded to question abnormal occurrences such as sealed sources not being in their storage location and to investigate immediately and to report missing sources immediately to their supervisor. Assumptions are not be made by Radiation Safety Staff members * * *."

The purpose of the civil penalty adjustment factor for prior opportunity to identify the violation is to encourage Licensees to take effective action in response to opportunities to identify violations. The Licensee's statement of November 3, 1993 clearly shows that the Licensee did not take effective action in response to multiple opportunities to identify the violation and supports the NRC's position that the Licensee did not avail itself of any of the opportunities.

NRC Conclusion

The NRC has concluded that this violation occurred as stated. However, the NRC staff has reevaluated the information and determined that the penalty proposed for the violation should not have been escalated based on the Licensee's performance and therefore is reducing the proposed civil penalty from $5,000 to $2,500. Consequently, a civil penalty in the amount of $2,500 should be imposed.

Enclosure 2—NRC Evaluation of Contested Violations not Assessed a Civil Penalty

On March 25, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Several of the cited violations were not assessed a civil monetary penalty. The University of Cincinnati, Cincinnati, Ohio (Licensee) responded to the Notice on April 21, 1994, and contested several of the violations for which a civil penalty was not proposed. The NRC's evaluation and conclusion regarding the Licensee's points about the violations not assessed a civil penalty follows:

License No. 34–06903–05. Restatement of Violation II.B.2

Condition 27 of License No. 34–06903–05, effective with the issuance of Amendment No. 70 on June 29, 1992, requires that the Licensee conduct its program in accordance with statements, representations and procedures contained in an application received September 20, 1990, a letter dated February 26, 1992, and other referenced documents.

Condition 20 of License No. 34–06903–05, effective at the time of issuance of Amendment No. 59 on March 16, 1989, required that the Licensee conduct its program in accordance with statements, representations and procedures contained in an application dated August 13, 1984 including attachments dated August 9, 1984, and other referenced documents.

10 CFR 35.50(b)(4) requires, in part, that a Licensee test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used.

Appendix 13.C., "Dose Calibrators," of the referenced application received September 20, 1990, requires, as of June 29, 1992 with the issuance of Amendment No. 70 to License No. 34–06903–05, that the Licensee perform dose calibrator geometry dependence testing in accordance with the model procedure for calibrating dose calibrators published in Appendix C to Regulatory Guide 10,8, Revision 2, August 1987. Items 6.b. through 6.f. of the model procedure require that geometry dependence testing be performed for the type of syringe that is normally used for injections.

Pages 24 and 25 of the referenced August 9, 1984 attachments to the

August 13, 1984 referenced application required that the Licensee conduct geometrical dependence testing on its dose calibrators in accordance with the procedure specified in Regulatory Guide 10.8, Revision 1, October 1980. Section 2, Item F, of Appendix D to Regulatory Guide 10.8, Revision 1, October 1980, requires that geometry dependence testing be determined for a syringe.

Contrary to the above, as of February 11, 1994, the Licensee did not conduct dose calibrator geometrical dependence testing on any of its dose calibrators for the type of syringe that is normally used for injections. Specifically, the Licensee did not perform syringe geometrical dependence testing on the dose calibrator installed on March 5, 1992 at the Radioisotope Laboratory, on the dose calibrator installed in July 1992 at the Children's Hospital and Medical Center, and on the dose calibrator installed on April 3, 1989 at the Medical Arts Building.

Summary of Licensee's Response to Violation II.B.2

The Licensee admitted the violation in part and acknowledged that personnel did not understand that the geometry test must be conducted on various volumes using a syringe shield. The Licensee contended that the requirement did not become effective until License Amendment No. 70 was issued on July 22, 1992.

NRC's Evaluation of the Licensee's Responses to Violations II.B.2

As described in the March 25, 1994, Notice of Violation, the Licensee's license application of August 9, 1984, made the commitment to conduct geometrical dependence testing on its dose calibrators in accordance with the procedure specified in Regulatory Guide 10,8, Revision 1, October 1980. Section 2, Item F of Appendix D to Regulatory Guide 10.8, Revision 1, October 1980, required that geometry testing be determined for a syringe. Therefore the Licensee was required to conduct geometrical dependence testing as of August 9, 1984, and not July 22, 1992, as the Licensee contended.

NRC Conclusion

The NRC has concluded that the violation occurred as stated and neither an adequate basis for a reduction of the severity level nor for recision of the violation was provided by the Licensee.

License No. 34–06903–13. Restatement Violations A–G

A. 10 CFR 36.23(b) requires, in part, that each entrance to a radiation room at a panoramic irradiator have an independent backup access control to detect personnel entry while the source is exposed. Detection of entry while the source is exposed must cause the source to return to its fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard.

Contrary to the above, as of February 11, 1994, the entrance to the radiation room at the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building did not have an independent backup access control to detect personnel entry while the source was exposed.

B. 10 CFR 36.23(d) requires, in part, that before the source moves from its shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the source will be moved from its shielded position.

Contrary to the above, as of February 11, 1994, the source control of the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building did not automatically activate conspicuous visible and audible alarms to alert people in the radiation room prior to source movement from its shielded position that the source will be moved from its shielded position.

C. 10 CFR 36.23(f) requires, in part, that each radiation room of a panoramic irradiator contain a control that prevents the source from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

Contrary to the above, as of February 11, 1994, the radiation room of the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building did not contain a control that prevents the source from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

D. 10 CFR 36.25(c) requires, in part, that the radiation dose at 5 centimeters from the shield of a dry-source-storage panoramic irradiator when the source is shielded not exceed 20 millirems per hour (0.2 millisievert per hour).

Contrary to the above, on February 9, 1994, the radiation dose at 5 centimeters from the shield of the Licensee's dry-source-storage panoramic irradiator located in Room E357 of the Medical Science Building were approximately 40 millirems per hour (0.4 millisievert per hour) when the source was shielded.

E. 10 CFR 36.27(a) requires, in part, that the radiation room at a panoramic irradiator have heat and smoke detectors.

Contrary to the above, as of February 11, 1994, the radiation room at the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building did not have heat and smoke detectors.

F. 10 CFR 36.31(a) requires, in part, that the key which actuates the source movement mechanism of a panoramic irradiator be attached to a portable radiation survey meter by a chain or cable.

Contrary to the above, as of February 11, 1994, the key which actuates the source movement mechanism of the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building was not attached to a portable radiation survey meter.

G. 10 CFR 36.31(b) requires, in part, that the console of a panoramic irradiator have a source position indicator that indicates when the source is in transit.

Contrary to the above, as of February 11, 1994, the console of the Licensee's panoramic irradiator located in Room E357 of the Medical Science Building did not have a source position indicator that indicated when the source was in transit.

Summary of Licensee's Responses to Violations A–G

The Licensee denies each of the violations issued for NRC Byproduct Material License No. 34–06903–13. The Licensee states that it did not understand that the requirements contained in 10 CFR Part 36, which became effective on July 1, 1993, applied to the teletherapy unit authorized under the license for non-human use. In November 1993, upon discovering that the requirements applied to its teletherapy unit, the Licensee filed an amendment application requesting that it be exempted from the requirements of 10 CFR Part 36. The Licensee provided additional information on February 24, 1994 and March 14, 1994, as requested by the NRC, regarding its exemption request. On March 28, 1994, the NRC granted the University of Cincinnati exemptions from the requirements cited in Violations A, C, E, and F. The Licensee's remaining exemption requests are still under review.

The Licensee claims that it identified each of the seven violations associated with its possession and use of the teletherapy unit and was in the process of implementing corrective actions at the time of the inspection through its

request for an exemption from 10 CFR Part 36 requirements. The Licensee states that a draft copy of its February 24, 1994 exemption request was provided during the inspection.

NRC's Evaluation of the Licensee's Responses to Violations A–G

Requests for amendments to modify or add commitments and procedures are not effective until they are approved and an amendment has been issued authorizing those changes. Until then, the current license conditions and regulatory requirements remain in effect. The NRC expects its licensees to be aware of current, revised and new NRC requirements that pertain to the NRC license, and to submit needed amendment applications prior to violations occurring.

In this case, 10 CFR Part 36 was published in the **Federal Register** on February 9, 1993, with an effective date of July 1, 1993. Therefore, the Licensee had approximately five months to develop and submit an amendment request for its proposed alternatives to the requirements of 10 CFR Part 36 as authorized on 10 CFR 36.17. While the Licensee may have identified the violations, the Licensee continued to operate the teletherapy-type irradiator in noncompliance. The NRC did not exercise enforcement discretion in this case because the Licensee did not immediately correct its noncompliance or adequately develop corrective action to prevent similar violations in the future. At the time of the inspection, none of the exemptions requested by the Licensee had been granted; consequently, each issue represented a violation of 10 CFR Part 36.

The NRC Staff disagrees with the Licensee's assertion that the Licensee identified all of the violations. The inspector identified two additional violations of 10 CFR Part 36 requirements for which alternative procedures were not included in the draft amendment application reviewed by the inspector. Those requirements are contained in 10 CFR 36.23(d), regarding visible and audible alarms to alert people in the radiation room that the source will be moved from its shielded position, and 10 CFR 36.31(b), regarding a source position indicator on the console that indicates when the source is in transit. The Licensee's failures to meet those two requirements are described in Violations B and G, respectively.

NRC Conclusion

The NRC has concluded that these violations occurred as stated and an adequate basis for a recision of the violations was not provided by the Licensee.

[FR Doc. 94–20758 Filed 8–23–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act Amendments of 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Turco (telephone: 202/395–6911), Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1994 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the Inspector General Act Amendments of 1988 (5 U.S.C. app. 3).

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The 31 Designated Federal Entities are as listed in the Inspector General Act Amendments of 1988. This is two less than the original 33 Designated Federal Entities because two were designated as Establishment Agencies in 1994.

Federal Entities are required to report annually to each House of the Congress and the OMB on audit and investigative activities in their organizations. Federal Entities are defined as "any Government controlled corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of the government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There is one addition and 12 deletions in the 1994 list from the 1993 list.

The List was prepared in consultation with the U.S. General Accounting Office.

John B. Arthur,

Assistant Director for Administration.

Herein follows the text of the 1994 List of Designated Federal Entities and Federal Entities:

1994 List of Designated Federal Entities and Federal Entities

Public Law 100–504. The Inspector General Act Amendments of 1988 require the Office of Management and Budget to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually, by October 31st, to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—Chairperson
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Board for International Broadcasting—Chairperson
5. Commodity Futures Trading Commission—Chairperson
6. Consumer Product Safety Commission—Chairperson
7. Corporation for Public Broadcasting—Board of Directors
8. Equal Employment Opportunity Commission—Chairperson
9. Farm Credit Administration—Chairperson
10. Federal Communications Commission—Chairperson
11. Federal Election Commission—Chairperson
12. Federal Housing Finance Board—Chairperson
13. Federal Labor Relations Authority—Chairperson
14. Federal Maritime Commission—Chairperson
15. Federal Trade Commission—Chairperson
16. Interstate Commerce Commission—Chairperson
17. Legal Services Corporation—Board of Directors
18. National Archives and Records Administration—Archivist of the United States
19. National Credit Union Administration—Board of Directors
20. National Endowment for the Arts—Chairperson
21. National Endowment for the Humanities—Chairperson

22. National Labor Relations Board—Chairperson
23. National Science Foundation—National Science Board
24. Panama Canal Commission—Chairperson
25. Peace Corps—Director
26. Pension Benefit Guaranty Corporation—Chairperson
27. Securities and Exchange Commission—Chairperson
28. Smithsonian Institution—Secretary
29. Tennessee Valley Authority—Board of Directors
30. United States International Trade Commission—Chairperson
31. United States Postal Service—Postmaster General

Federal Entities and Entity Heads

1. Administrative Conference of the United States—Chairperson
2. Advisory Commission on Intergovernmental Relations—Chairperson
3. Advisory Council on Historic Preservation—Chairperson
4. African Development Foundation—Chairperson
5. American Battle Monuments Commission—Chairperson
6. Architectural and Transportation Barriers Compliance Board—Chairperson
7. Armed Forces Retirement Home—Board of Directors
8. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
9. Chemical Safety and Hazard Investigation Board—Chairperson
10. Christopher Columbus Fellowship Foundation—Chairperson
11. Commission for the Preservation of America's Heritage Abroad—Chairperson
12. Commission of Fine Arts—Chairperson
13. Commission on Civil Rights—Chairperson
14. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delaware River Basin Commission—U.S. Commissioner
17. Export-Import Bank—President and Chairperson
18. Farm Credit System Insurance Corporation—Board of Directors
19. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
20. Federal Mediation and Conciliation Service—Director
21. Federal Mine Safety and Health Review Commission—Chairperson
22. Federal Retirement Thrift Investment Board—Chairperson
23. Franklin Delano Roosevelt Memorial Commission—Chairperson
24. Harry S. Truman Scholarship Foundation—Chairperson
25. Institute of American Indian and Alaska Native Culture and Arts Development— Chairperson
26. Institute of Museum Services—Board of Directors
27. Inter-American Foundation—Chairperson
28. Interstate Commission on the Potomac River Basin—Chairperson
29. James Madison Memorial Fellowship Foundation—Chairperson
30. Japan-U.S. Friendship Commission—Chairperson
31. Marine Mammal Commission—Chairperson
32. Martin Luther King, Jr. Federal Holiday Commission—Chairperson
33. Merit Systems Protection Board—Chairperson
34. National Capital Planning Commission—Chairperson
35. National Commission on Libraries and Information Science—Chairperson
36. National Council on Disability—Chairperson
37. National Endowment for Democracy—Chairperson
38. National Gallery of Art—Board of Trustees
39. National Mediation Board—Chairperson
40. National Transportation Safety Board—Chairperson
41. Neighborhood Reinvestment Corporation—Chairperson
42. Nuclear Waste Technical Review Board—Chairperson
43. Occupational Safety and Health Review Commission—Chairperson
44. Office of Government Ethics—Director
45. Office of Navajo and Hopi Indian Relocation—Chairperson
46. Office of Special Counsel—Special Counsel
47. Office of the Nuclear Waste Negotiator—Negotiator
48. Offices of Independent Counsel—Independent Counsels
49. Overseas Private Investment Corporation—Board of Directors
50. Pennsylvania Avenue Development Corporation—Chairperson
51. Postal Rate Commission—Chairperson
52. Selective Service System—Director
53. State Justice Institute—Director
54. Susquehanna River Basin Commission—U.S. Commissioner
55. Trade and Development Agency—Director
56. Thrift Depositor Protection Oversight Board—Chairperson
57. U.S. Enrichment Corporation—Chairperson
58. U.S. Holocaust Memorial Council—Chairperson
59. U.S. Institute of Peace—Chairperson
60. Woodrow Wilson International Center for Scholars—Board of Trustees

[FR Doc. 94–20736 Filed 8–23–94; 8:45 am]
BILLING CODE 3110–01–P

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Medical History and Examination Forms through July 30, 1997. All applicants for service in the Peace Corps must undergo physical and dental examinations prior to service. The results of these examinations are used to ensure that the applicants will, with reasonable accommodation, be able to serve in Peace Corps without jeopardizing their health. The Peace Corps Office of Medical Services (VS/MS) is responsible for the collections and review of applicant medical information.

Information About the Forms

Agency Address: Peace Corps, 1990 K Street, NW., Washington, DC 20526.

Title: Medical History and Examination Forms.

Type of Request: Approval of Use.

Frequency of Collection: One time per respondent.

Description of Respondent: All individuals who are nominated and/or invited for Peace Corps Service and their physicians.

Estimated Number of Hours for Respondents to Furnish Information: 22.5 minutes each (average of 30 minutes for Medical Examination Section and 15 minutes for Medical History Section).

Respondent's Obligation to Reply: Required for entrance into the Peace Corps.

Comments: Telephone comments on this proposal should be directed to Jeff Hill, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. Mr. Hill may be called at (202) 395–7340. A copy of the form may be obtained from David Gootnick, M.D.,

Office of Medical Services, Peace Corps, 1990 K Street, NW, Washington, DC 20526. Dr. Gootnick may be called at (202) 606–3512.

This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC, on August 18, 1994.

Carol Lemon,

Acting Director, Office of Administrative Services.

[FR Doc. 94–20732 Filed 8–23–94; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

Presort Accuracy Validation and Evaluation (PAVE)

AGENCY: Postal Service.

ACTION: Notice of establishment of program.

SUMMARY: This notice adopts standards for the Presort Accuracy Validation and Evaluation (PAVE) Program.

EFFECTIVE DATE: August 24, 1994.

FOR FURTHER INFORMATION CONTACT: George T. Hurst, (202) 268–5232, or Lynn Martin, (202) 268–5176.

SUPPLEMENTARY INFORMATION: On May 23, 1994, the Postal Service published in the **Federal Register** proposed standards for the Presort Accuracy Validation and Evaluation (PAVE) Program (59 FR 26609–26614). PAVE was proposed as a voluntary program in which the Postal Service would, upon request, provide testing for certain categories of presort software and hardware products to determine their accuracy in sorting address information according to the mailing standards of the Domestic Mail Manual (DMM). This program would assure those using presort software packages that a PAVE-certified product, if used properly, would have the capability of performing its intended function according to the current mailing standards of the Postal Service.

The deadline for submitting comments on the proposed program was June 15, 1994. All comments received or mailed by that date have been considered.

The Postal Service received comments on the proposed program from five different commenters. On the basis of the comments received, the Postal Service has decided to adopt the PAVE Program as proposed.

Evaluation of Comments Received

One commenter commented that optical character readers (OCRs) should be tested by electronic media rather than the proposed physical test deck because manufacturers of OCR equipment and software cannot control the additional manual preparation that must accompany their process to prepare actual mailings.

Most OCR software has parameter settings allowing users to assign certain groupings of mail to specific sort or stacker bins on the machine. Once mail is processed through the OCR, operators must manually remove the groupings from these bins and further arrange them into a properly packaged and/or trayed mailing. An electronic test file could be used to evaluate an OCR's software logic for sorting addresses to bin-type designations. However, this test would not be a true test of the ability of the presort software to follow accurately all the presort standards of a specific category; moreover, the test would not indicate whether the hardware could follow the sortation logic being tested. For these reasons, the Postal Service has determined that the use of a physical test deck of actual mailpieces for PAVE testing of OCRs is a more relevant measurement of an OCR's overall capabilities. Although such a test will require additional manual intervention to complete, this too is a useful indicator of the software/hardware developer's understanding of presort standards.

One commenter stated that there should be mailer or user PAVE certification in addition to certification at the developer or manufacturer level.

The Postal Service has determined that too many users of presort software and hardware products exist to attempt to certify them all under this type of program. Although it is understood that individuals can misuse even the best of software or hardware, the resources needed to evaluate the volume of potential end users of such products would not be cost effective. Because misuse of a PAVE-certified presort product could result in presort errors, the Postal Service does not propose to grant unique rate eligibility to users of PAVE-certified products. The Postal Service will continue to verify presort rate eligibility as it is done today and to pursue other options for evaluation of presort product end users.

Referring to the physical OCR test deck, one commenter inquired about the availability of labels and tray tags. In addition, this commenter inquired about the information that would be required on packages and tray labels.

PAVE Program standards will require that an OCR examinee presort, package (if appropriate), tray, and return the physical test deck to the Postal Service National Customer Support Center as though the examinee were submitting an actual mailing. Thus the information printed on packages and tray labels must conform to the information required by the DMM standards for the specific presort category being evaluated. PAVE Program participants will be able to obtain the same labels, tray tags, and other mail preparation supplies as all mailers are authorized from post offices.

Two commenters stated that PAVE participants would likely have difficulty determining when a change to a presort product was significant enough to warrant recertification. The commenters stated that the proposed guidelines do not cover the variety of relatively insignificant changes that might be made to presort products in any specific year. One commenter stated that the use of a toll-free telephone number to determine the significance of presort product changes would be a good idea.

PAVE Program standards note that a change significant enough to necessitate recertification would be a key alteration of the basic sortation logic of a presort product; a major change in the content, layout, format, or availability of computer-generated documentation or facsimiles; or a modification that caused significant differences in software operator use. Changes of less significance would not require recertification. The significance of some changes may require additional evaluation to determine whether recertification is warranted. The Postal Service will establish a toll-free telephone number to share information with presort product developers about the types of changes that would require a product to be recertified under PAVE. In addition, the Postal Service will begin to assemble and maintain a list of presort product alterations previously ruled on for their significance toward requiring recertification. Once developed, this list will be made available to customers on request.

Two commenters requested that tests be included for first- and third-class flat-size barcoded categories, and one commenter inquired about a physical test deck for flats-processing OCRs.

The Postal Service has decided initially to test the categories noted in the original proposal as follows:

(1) Presorted first-class letter-size;

(2) First- and third-class barcoded letter-size;

(3) Second-class presort flat-size (carrier route, 3/5 digit, and basic);

(4) Third-class presort letter-size (3/5 digit and basic); and

(5) Third-class carrier route presort flat-size.

The Postal Service has determined that these categories provide a wide yet manageable range of presort categories most often used for the initial test cycle. Though not able to test all presort categories every year, the Postal Service intends to include new testing categories in future years. The inclusion of more testing categories of flats will be examined at a later date. The future selection of a physical test deck category for flats barcoding OCRs will also be deferred to a later date and will then be evaluated based on the number of such machines in use by the mailing industry at that time.

Also inquiring about the physical test deck, one commenter wanted to know where the barcode would be printed on the test piece to determine whether equipment adjustments would be necessary. In addition, this same commenter wanted to know how equipment that could not read barcodes would be certified.

The physical test deck for OCRs used in the initial test cycle will have addresses and barcodes printed on inserts to appear through window envelopes in the lower right corner. The characters of the recipient's address will be of Gothic Text font in 10-point type; the same Helvetica-type, OCR-readable font used in the physical test deck for Postal Service Multiline Accuracy Support System (MASS) certification. Barcodes will be printed below the address on the insert in the lower right barcode clear zone as noted in Domestic Mail Manual C840.2.7. The addresses and barcodes will use black ink on a white background to establish the best readability conditions practicable. Participants will be notified if any change to this format is adopted for subsequent test cycles.

One commenter stated that advance knowledge of ZIP Code ranges used in the physical test deck would be beneficial for individual users of OCRs. The commenter also stated that many OCR users develop local sort schemes to perform finer sortations of local mail in fewer passes on their equipment. These sort schemes are based on mail volume for specific geographical areas and cannot efficiently handle a wide variety of ZIP Codes. The commenter stated that advanced knowledge of ZIP Code ranges used in the physical test deck would allow such users time to reprogram their sort schemes to handle the ZIP Codes contained in the test.

As noted, the Postal Service does not plan to offer PAVE testing to the end users of presort products. However, manufacturers of presort products may share this same concern. Because the PAVE test cycle is relatively lengthy, running from August to the end of December, participants can obtain information on ZIP Code ranges essentially 5 months in advance of the certification deadline by ordering the tests as soon as they become available. The Postal Service has determined that this is sufficient advance notice of testing information to accommodate all participants.

One commenter wanted to know how the Postal Service will grade physical test decks. This same commenter wanted to know what would be considered a passing grade.

Physical test decks will be graded the same as electronic test files except that proper tray preparation will also be evaluated. Examinees will be responsible for ensuring the accuracy of the presort, the accuracy of the supporting documentation required to accompany the mailing statement, and the accuracy of hard copy documentation to support the accurate sortation and rate application of the mailpieces in the test deck. The entire test deck must be presorted, trayed, labeled, and appropriately documented, without error, according to the standards of the DMM, to obtain PAVE certification.

One commenter wanted to know whether PAVE certification obtained on one model of OCR equipment would be transferable to similar OCR models offered by the same developer or manufacturer.

Just as different versions of presort software will have to be individually PAVE-certified, the Postal Service has determined that different models of hardware will also require individual certification. Although different hardware models from a single manufacturer may share the same software and similar hardware sorting mechanisms, if the manufacturer of a piece of equipment determines that enough difference exists between it and another product to assign the equipment a unique model number or name, the Postal Service will treat the product as a different piece of equipment requiring its own PAVE certification. This is consistent with Postal Service certification programs for address matching accuracy and barcode quality.

One commenter inquired whether postal personnel will be required to observe the processing of the physical test deck.

The Postal Service has no plans at this time to conduct on-site observation of the processing of the test decks but may re-evaluate its position on this issue in the future if it appears that on-site observation is needed to ensure the integrity of the test.

One commenter stated that OCR equipment cannot document overflow trays because the operator must decide how much mail will flow to the final tray and physically place that mail in the tray. This undocumented overflow makes some of the PAVE tests irrelevant.

As previously noted, the Postal Service recognizes that some manual intervention will be required to complete the PAVE test deck for OCRs. Thus, individuals, rather than the specific equipment or software being tested, may in some instances determine the final placement of mailpieces in trays including overflow trays. Although non-OCR presort software can adhere to tray volume parameters established in the electronic PAVE test files and develop overflow trays of predictable volume, OCRs have difficulty determining exact tray volume because the operator makes this decision independent of the equipment. For this reason, the PAVE certification process does not require that OCR examinees provide computer-generated volume reports for such trays. However, manual documentation of overflow trays will be required to meet the DMM documentation requirements.

One commenter stated that because the address matching process of the MLOCR is supposed to be turned off for PAVE processing of the physical test deck, further clarification is needed to understand how to report 5-digit, 9-digit, and delivery point barcodes and numeric ZIP Codes in the results. In addition, this commenter wanted to know why the test will require the reporting of 9-digit barcodes, which are not acceptable except for barcode rates for flats.

Electronic test files for PAVE will contain some addresses with 5-digit ZIP Codes and some addresses with 11-digit numeric ZIP Code information (5-digit ZIP Code, 4-digit add-on, and 2-digit delivery point code). Address matching mechanisms are not required to process these files and should not be used to determine the completeness of the address information. Examinees should treat the 5-digit addresses as noncodable and sort them as pieces that do not qualify for barcode rates, while treating the 11-digit addresses as correctly coded qualifying pieces. Similarly, the physical test decks for PAVE testing of OCRs contain pieces that have 5-digit barcodes and pieces that have complete delivery point barcodes. The 5-digit barcoded pieces in the OCR test decks have corresponding 5-digit ZIP Codes in the address. The delivery point barcoded pieces in these test decks have corresponding 11-digit numerics printed

in the address (5-digit ZIP Code, 4-digit add-on, and the 2-digit delivery point code—the correction character is not given numerically, but is included in the actual barcode on the piece). The 5-digit numeric/barcoded pieces are to be treated as nonqualifying, whereas the 11-digit (delivery point barcoded) pieces are to be treated as qualifying for the barcode rate. Although addresses in the PAVE test files have been selected so that matching or "cleansing" processes should not corrupt test results, it is recommended that they not be used. PAVE certification does not require the identification and reporting of 9-digit barcodes.

Two commenters expressed concern about the time frame established for returning test results, stating that more time may be required to reprocess PAVE tests if the first test failed.

Even though the Postal Service has established November 15 through December 15 as the period for official evaluation and response of PAVE test results, it will strive to evaluate tests on receipt and provide results as quickly as possible to participants. The Postal Service will pay particular attention to examinees whose tests cannot be certified so that those examinees can be provided as much time as possible for retesting.

Two commenters suggested that the timing of the PAVE cycle may conflict with a relatively busy season in the mailing industry. Both commenters recommended that the Postal Service adhere to the current suggested time frames but remain flexible to re-examine this issue in the future.

The Postal Service has determined that for 1994, the PAVE cycle will begin immediately, and end with the December 31 retesting deadline. However, the Postal Service will remain open to future recommendations to shift the PAVE cycle to meet industry needs.

After considering these comments, the Postal Service has determined to implement the PAVE Program, effective immediately, as described in the **Federal Register** notice published on May 23, 1994 (59 FR 26609–26614). To obtain detailed information on participation in PAVE, presort product developers may request the PAVE Program Technical Guide from the Postal Service National Customer Support Center by calling 1–800–331–5746, extension 651 or 454. Participants may use the PAVE order form, included in that guide, to order PAVE tests.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–20781 Filed 8–23–94; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34538; File No. SR–CHX–94–07]

August 17, 1994.

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Utilization of Exempt Credit by Market Makers.

On March 15, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to 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 Interpretation and Policy .01 to Article XXXIV, Rule 17, which governs utilization of exempt credit[3] by market makers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34256 (June 24, 1994), 59 FR 33805 (June 30, 1994). No comments were received on the proposal. This order approves the proposed rule change.

Under Article XXXIV, Rule 17, Exchange members registered as equity market makers[4] are deemed to be specialists for purposes of the Act and thus may obtain exempt credit to finance their market maker transactions.[6] To qualify for exempt credit financing, Interpretation and Policy .01 to Rule 17 imposes a minimum participation requirement. Specifically, 50% of the quarterly share volume which creates or increases a position in a market maker account must result from transactions consummated on the Exchange ("50% volume test"). Market makers who satisfy the 50% volume test are entitled to good faith margin only for transactions initiated on the floor[7] where the position was established as the direct result of bona fide equity market maker activity.[8]

The Exchange proposes to amend this interpretation to revise the means by which market makers can satisfy their minimum participation requirement. under the proposed rule change, orders that are initiated on the Exchange floor but are sent to another market for execution through the Intermarket Trading System ("ITS")[9] will count, along with transactions consummated on the CHX, towards the 50% volume test. As under current rules, a market maker must "clear the post"[10] before routing an ITS commitment to another market. The CHX proposal will not affect the existing restrictions on those transactions by a market maker which may qualify for exempt credit treatment.[11]

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] As used herein, exempt credit means good faith margin, as defined under Regulation T of the Board of Governors of the Federal Reserve System. *See infra*, note 5.

[4] Registered market makers must engage in a course of dealings reasonably calculated to contribute to the maintenance of fair and orderly market, and shall not enter into transactions or make bids or offers inconsistent with such a course of dealings. *See* Article XXXIV, Rule 1. After approval of their registration, market makers are assigned particular securities; 50% of their quarterly share volume must be in issues to which they are assigned. *See* Interpretation and Policy .01 to Article XXXIV, Rule 3. At the request of a floor broker, a registered market maker must make a bid or offer in an assigned security or must accept and guarantee execution of an agency order for 100 shares. *See* Article XXXIV, Rule 2 and Interpretation and Policy .02 to Rule 17.

[5] Under Regulation T, a creditor may extend good faith margin for any long or short position in a security in which a specialist makes a market. *See* 12 CFR 220.12(b)(3). Regulation T defines "good faith margin" as the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions. *See* 12 CFR 220.2(k). *See also* Article X, Rule 3(c)(6)(A) of the CHX Rules. Good faith margin does not mean, however, that no margin deposit is required. *See, e.g.*, letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, to Mary L. Bender, First Vice President, Division of Regulatory Services, Chicago Board Options Exchange, dated June 2, 1992.

[6] For further discussion of restrictions on market maker transactions, *see infra* notes 7–8 and accompanying text. Market makers receive "customer" margin treatment for all other transactions. *See* Article X, Rule 3 of the CHX Rules.

[7] Interpretation and Policy .01 prohibits the use of exempt credit where market maker orders are routed to the floor from locations off the floor.

[8] Pursuant to the CHX rules, positions resulting from options exercises and assignments do not qualify for exempt credit treatment.

[9] The CHX has clarified that orders initiated on the Exchange floor that are sent to another market for execution through any means other than ITS (*e.g.*, through terminals with direct access to such other market's systems) will not count toward the 50% volume test. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on August 2, 1994.

[10] Specifically, before sending an order initiated on the Exchange floor to another market, the market maker must (1) request the specialist's quote and (2) make a bid or offer at the post for the price and size of his or her intended interest. Failure to clear the post properly may result in violation of just and equitable principles of trade and in subsequent disciplinary action. *See* Securities Exchange Act Release No. 28638 (November 21, 1990), 55 FR 4973 (November 30, 1990) (File No. SR–MSE–90–07).

[11] *See supra*, notes 7–8 and accompanying text.

of trade, 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 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 Sections 6(b) and 11(b).[12] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission also believes that the proposed rule change is consistent with the requirement of Section 11(b) and Rule 11b–1 thereunder[13] that specialist (*i.e.*, market maker) transactions must contribute to the maintenance of fair and orderly markets.

The Commission believes that registered market makers on the Exchange can serve an important function to the extent that they add supplemental depth and liquidity to the equity market. Under the CHX rules, market makers are subject to both affirmative and negative obligations[14] and, in return, are accorded certain privileges, including exempt credit financing. For that reason, it is critical that only those members who are engaged in bona fide equity market maker activity qualify for favorable margin treatment under the Act. The Exchange's 50% volume test represents an adequate means to ensure that the margin rules are not circumvented and that CHX market maker activity is consistent with the maintenance of fair and orderly markets.

After careful review, the Commission has concluded that the proposed rule change, if appropriately utilized,[15] should continue to ensure that the purposes behind the Exchange's minimum participation requirement are met while, at the same time, potentially improving the quality of the CHX's markets. The Commission agrees with the Exchange that a market maker who initiates an order on the floor and clears the post[16] should not be penalized if there is no interest in the crowd or on the limit order book against which the market maker's order can be executed and if the specialist does not accept that order for placement in the book.[17] The Commission finds that it is reasonable for the CHX to assume that a member who makes a good faith effort to participate as dealer on the Exchange floor, as described above, is engaged in bona fide equity market maker activity, although the transaction ultimately can be consummated only by exposing the member's order to all interest in the national market system.

Moreover, to the extent that the Exchange's current interpretation of its 50% volume test may represent a disincentive for members to register as market makers, particularly in less liquid issues, the proposed rule change should encourage more dealer participation. This, in turn, could add depth and liquidity to the market for CHX traded securities.

For the above reasons, the Commission believes that the proposed rule change will help to ensure that market maker transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, facilitating dealer participation. In reaching that conclusion, the Commission has relied on the Exchange's representation that it has the capability to determine whether market makers clear the post before routing an order to another market, and to distinguish ITS orders from other orders initiated on the floor.[18] The Commission requests that the Exchange monitor how market makers satisfy their minimum participation requirement and, in particular, what percentage of the relevant transactions are consummated on the CHX. If the Exchange finds that ITS orders constitute a substantial portion of the orders counted towards satisfying the 50% volume test, the Commission would question whether those members actually are engaged in bona fide equity market maker activity entitled to exempt credit and would expect the Exchange to take appropriate action to respond to the Commission's concerns.[19]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Federal Reserve Board") has raised no objection to the Commission's approval of the proposal based on the Commission's belief that, pursuant to the 50% volume test, as amended, CHX market maker transactions will continue to contribute to the maintenance of a fair and orderly market and are consistent with the obligations of a specialist under Section 11 of the Act.[20]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CHX–94–07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20719 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34541; File No. SR–MSRB–94–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Establishment of Three Business Day Settlement Time Frame

August 17, 1994.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 9, 1994, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed proposed amendments to rule G–12 on Uniform

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[12] 15 U.S.C. 78f(b) and 78k(b) (1988).

[13] 17 CFR 240.11b-1 (1991).

[14] *See supra*, note 4.

[15] *See infra*, note 19 and accompanying text.

[16] *See supra*, note 10 and accompanying text.

[17] The CHX rules require the specialist to accept and guarantee execution of agency orders for up to 2,099 shares. *See* Article XX, Rule 37. According to the Exchange, however, specialists are not required to accept a professional order that does not better their market. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on August 2, 1994. *See also* Article XXX, Rule 2 (defining the term "professional order").

[18] Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulations, SEC, on August 2, 1994.

[19] The CHX plans to issue a notice to its membership describing the rule change, including the Commission's concerns about the appropriate use of ITS orders to satisfy the 50% volume test for the extension of exempt credit. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on August 16, 1994.

[20] Telephone conversation between Scott Holz, Senior Attorney, Division of Banking Supervision and Regulation, Federal Reserve Board, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on June 23, 1994.

[21] 15 U.S.C. § 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. § 78s(b)(1)(1988).

Practice and rule G–15 on Confirmation, Clearance and Settlement of Transactions with Customers to establish three business days as the standard settlement time frame for regular-way transactions in municipal securities.[2] The MSRB requests that the Commission delay effectiveness of the proposed rule change until the effective date for Rule 15c6–1 to allow the municipal securities market to convert to three-day settlement simultaneously with the corporate securities market.[3]

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 15c6–1, adopted under the Act, institutes a national goal of shortening the standard settlement time frame for most securities transactions to three business days ("T+3 settlement"). The Commission concluded that a three-day settlement cycle, compared to the current five-day settlement cycle, would reduce credit and liquidity risks and increase efficiency in broker-dealer and clearing agency operations.[4] Recognizing the differences between the corporate and municipal securities markets and the unique role the MSRB has in overseeing the municipal securities market, the Commission did not include municipal securities within the scope of Rule 15c6–1.[5] The Commission, however, did formally request that the MSRB undertake a commitment to T+3 settlement for municipal securities to ensure consistency in settlement cycles in the corporate and municipal markets.[6]

The Commission also asked that the MSRB provide a plan for implementing T+3 settlement in the municipal securities market. In March 1994, the MSRB provided to the Commission such a plan, the *Report of the Municipal Securities Rulemaking Board on T+3 Settlement for the Municipal Securities Market (March 17, 1994) ("T+3 Report").* The *T+3 Report* discussed various MSRB actions and industry initiatives that the MSRB concluded were necessary for a successful conversion to T+3 settlement in the municipal securities market.[7] The Board is continuing to work to ensure that these preparations for T+3 settlement are being made in the municipal securities market.

Currently, "regular-way" settlement is defined as five business days in rules G–12 on Uniform Practice and G–15 on Confirmation, Clearance and Settlement of Transactions with Customers. The proposed rule change will redefine regular-way settlement as three business days rather than five. Tracking the language of Rule 15c6–1(a), the proposed rule change will allow alternate settlement timeframes in the secondary market by agreement of the parties on a case by case basis. However, these agreements must be reached on each individual transaction at the time of trade; dealers will not be able to retain T+5 settlement as a standard practice. The proposed rule change also will amend rule G–15(d)(i) relating to institutional customer delivery instructions on DVP/RVP settlements to reflect a three-day rather than five-day settlement cycle. The proposed rule change exempts "when, as and if issued" transactions from the requirements of T+3 settlement. Currently, when, as and if issued transactions are not settled in five business days, and given the various actions necessary to accomplish settlement (or "closing") with the issuer of municipal securities, the MSRB does not believe that it would be possible to institute a three-day settlement cycle for these transactions.[8]

As set forth in Section 15B(b)(2)(C) of the Act,[9] the MSRB has the authority to adopt rules to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities; to remove impediments to and perfect the mechanism of a free and open market in municipal securities; and in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change will facilitate clearance and settlement of municipal securities and, therefore, is consistent with the provisions of the Act. One of the MSRB's top priorities for the municipal securities market is the improvement of clearance and settlement systems consistent with national goals.[10] The Commission also has indicated its belief that efficient clearance and settlement of municipal securities requires that municipal securities have the same settlement cycle as other securities. In the Rule 15c6–1 Adopting Release, the Commission made several observations relating to T+3 settlement for municipal securities. The release noted:

> Over fifty commentators favored including municipal securities within the scope of the Rule. Those commentators believe that maintaining separate settlement cycles for corporate and municipal securities is unnecessary and would impose significant cost and operational difficulties on industry participants. * * * Although commentators have raised concerns about the differences between municipal and other debt securities, the Commission believes that these differences can be overcome. * * * In summary, the Commission is confident that municipal securities dealers and market participants, under the guidance of the MSRB, can accomplish the goal of shortening the settlement timeframe by two business days and that regular-way settlement for municipal securities can be subject to the same timetable as other securities.[11]

The MSRB concurs with the Commission's finding that maintaining a separate settlement cycle for corporate and municipal securities is unnecessary and would impose significant cost and operational difficulties on industry

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[2] On October 6, 1993, the Commission adopted Rule 15c6–1 which establishes three business days instead of five business days as the standard settlement cycle for most broker-dealer transactions. The rule becomes effective June 1, 1995. Although municipal securities were not included in the scope of Rule 15c6–1, the Commission has called upon the MSRB to take all steps necessary to shorten the routine settlement cycle for municipal securities transactions by the effective date of SEC Rule 15c6–1. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 ("Rule 15c6–1 Adopting Release").

[3] At a July 25, 1994, meeting hosted by SEC staff, representatives of the various self-regulatory organizations and SEC staff discussed the possibility of a short transition period during June 1995. The MSRB will file additional rule changes if necessary to obtain consistency with the final transition plans of the SEC for Rule 15c6–1.

[4] Rule 15c6–1 Adopting Release at 53.

[5] Rule 15c6–1 Adopting Release at 35.

[6] Letter from Arthur Levitt, Chairman, SEC, to David Clapp, Chairman, MSRB (October 7, 1993).

[7] Specifically, the report identified the need for improvement in: (i) comparison rates for inter-dealer transactions; (ii) confirmation/acknowledgement rates for delivery *vs.* payment and receipt *vs.*payment transactions; and (iii) the use of book-entry settlement.

[8] A dealer cannot settle with a customer or another dealer prior to the final settlement (or "closing") of the issue with the issuer. The closing date with an issuer is dependent upon many factors and the preparation of a number of closing documents and cannot necessarily be scheduled within three days after trading begins in an issue.

[9] 15 U.S.C. § 78o–2(b)(2)(C)(1988).

[10] "Letter to the SEC on Its Proposed Rule on T+3 Settlement," *MSRB Reports* Vol. 13, No. 3 (June 1993) at 11 and "Automated Clearance and Settlement: Rules G–12 and G–15," *MSRB Reports* Vol. 11, No. 3 (September 1991) at 3.

[11] Rule 15c6–1 Adopting Release at 36–38.

participants. The proposed rule change will ensure that corporate and municipal securities settlement cycles are consistent, which will help ensure efficiency in the clearance and settlement of municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

As noted below, the MSRB has received six letters commenting on T+3 settlement for municipal securities. Several of these letters expressed a concern that small, retail-oriented dealers might be adversely affected by a three-day settlement cycle. In the Rule 15c6–1 Adopting Release, the Commission discussed arguments that the three-day settlement cycle generally would produce a burden on competition in the securities market. The Commission noted:

> Several commentators, primarily small retail broker-dealers, raised concerns that Rule 15c6–1 would increase their costs, thereby making it more difficult to compete with larger broker-dealers. The Commission notes that Rule 15c6–1 does not distinguish between categories of broker-dealers, and believes that the costs created would be imposed evenly upon larger and smaller broker-dealer firms. The costs may be higher for certain firms, regardless of their size, that have not invested in necessary infrastructure and technology.[12]

The MSRB believes that this same assessment would apply to brokers, dealers, and municipal securities dealers with respect to municipal securities transactions. Therefore, the MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB has not solicited comments on the proposed rule change; however, the Commission solicited comment with regard to establishing three business days instead of five business days as the standard settlement time frame and discussed those comments in the Rule 15c6–1 Adopting Release. Since the date of that release, the MSRB announced its plan for the implementation of T+3 settlement in the *T+3 Report* and has received six letters essentially disagreeing with the implementation of a T+3 settlement cycle. These letters cite various practical difficulties in moving to T+3 settlement based primarily upon the desire of retail customers to hold certificates and upon the payment mechanisms used by retail customers. Similar comments were considered and addressed by the Commission in its Rule 15c6–1 Adopting Release, which notes that the Commission believes that with sufficient notice the securities industry can identify and address these concerns with customer education and changes in industry practices.

The MSRB also discussed the need for changes in certain industry practices with respect to retail customer transactions in its *T+3* Report. While the MSRB understands that there may be difficulties associated with changing industry practice to accommodate T+3 settlement, it agrees with the Commission's assessment that the appropriate changes can be made with the proper attention by dealers. The MSRB also believes that the municipal securities industry must move forward in compressing the settlement cycle to three business days quickly because of the potential negative effects that would be created if municipal securities remained on a different settlement cycle than corporate securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB requests that the Commission delay effectiveness of the proposed rule change until the effectiveness of Rule 15c6–1 to allow the municipal securities market to convert to three-day settlement simultaneously with the corporate securities market.

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, N.W., Washington, D.C. 20549.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–94–10 and should be submitted by September 14, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20775 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–M

[12] Rule 15c6–1 Adopting Release at 52.

[13] 17 CFR 200.30–3(a)(12).

[Release No. 34–34539; File No. SR–NYSE–94–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Audit Trail Account Identification Codes

August 17, 1994.

On April 20, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 introduce new account identification codes to indicate transactions that are exempt form the short sale rules for audit trail reporting purposes.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34269 (June 28, 1994), 59 FR 34461 (July 5, 1994). No comments were received on the proposal. This order approves the proposed rule change.

NYSE Rule 132 currently requires that clearing member firms submitting a transaction to comparison must include certain audit trail data elements, including a specification of the account type for which the transaction was effected according to defined account categories.[3] Under NYSE Rule 132, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] NYSE Rule 132, Supp. Material .30(1) to (9) (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency), specify the trade elements that must be submitted. Paragraph (10) provides the Exchange with the authority to require additional information as well.

NYSE has established account identification codes which differentiate trades executed for customers from trades executed for the proprietary account of a member/member organization,[4] trades executed by a member/member organization as agent for another member/member organization,[5] and trades effected for the account of a competing dealer.[6]

The new indicators being approved herein will identify transactions effected for "short exempt" trades.[7] New indicators E, F, H, and B denote "short exempt" trades. The identifier "E" denotes a "short exempt" transaction for the proprietary account of a clearing member organization or an affiliated member/member organization. The identifier "F" denotes a "short exempt" transaction for the proprietary account of an unaffiliated member/member organization. The identifier "H" denotes a "short exempt" transaction for the account of an individual customer account. The identifier "B" denotes a "short exempt" transaction for other agency customer accounts.[8] In addition, new indicators of L, X, and Z will denote "short exempt" trades of competing dealers.[9] The identifier "L" denotes a "short exempt" transaction for the account of a competing dealer that is a member or member organization trading for its own account. The identifier "X" denotes a "short exempt" transaction where one member is acting as agent for another member's competing dealer account. The identifier "Z" denotes a "short exempt" transaction for the account of a non-member competing dealer.

In addition, the rule change replaces the existing definition for a competing dealer with a new definition for competing market-maker, and changes the term "competing dealer" to "competing market-maker." The term "competing market-maker," as amended, is defined as any person acting as a market-maker, as defined in Section 3(a)(3)[10] of the Act, in a NYSE traded security. A person acting solely in the capacity of a block positioner would not be considered to be a competing market-maker.

The Exchange states that the new account categories for order identification will enhance the efficiency and accuracy of audit trail information. Furthermore, the NYSE believes that the identifiers will improve the Exchange's ability to identify violations of SEC Rule 10a–1 and Exchange Rule 440B, which prohibit short selling under specified circumstances.

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) of the Act.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission also believes that the adopted "short exempt" account identifiers are consistent with SEC Rule 10a–1, which requires that orders be marked "long" or "short," and Exchange Rule 440B, which provides, in effect, that orders relying on an exception to Rule 10a–1 should be marked "short exempt." In this regard, the new, more precise identifier codes should facilitate surveillance investigations and will allow the NYSE to ensure compliance with the exemptive provisions of Rule 10a–1(e) and NYSE Rule 440B.

Finally, the Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information used for surveillance purposes. In particular, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity. In summary, the Commission believes that the proposed identifier codes should permit the NYSE to perform its surveillance responsibilities under the Act more thoroughly and therefore, for this reason, finds the proposal consistent with Section 6(b)(5) of the Act.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–94–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20777 Filed 8–23–94; 8:45 am]

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[4] The Exchange uses indicators D (Program Trade Index Arbitrage), C (Program Trade Non-Index Arbitrage), and P (All Other Orders) for transactions effected for a member/member organization's proprietary account.

[5] The Exchange uses indicators M (Program Trade Index Arbitrage), N (Program Trade non-Index Arbitrage), and W (All Other Orders) for transactions effected by a member/member organization as agent for another member/member organization.

[6] Indicators O, T, and R denote that a transaction was effected for the account of a competing dealer. The identifier "O" denotes a proprietary order for the account of a competing dealer. The identifier "T" denotes an order where one member is acting as an agent for another member's competing dealer account. Finally, the identifier "R" denotes an order for the account of a non-member competing dealer.

[7] NYSE Rule 440B contemplates that trades relying on exceptions to SEC Rule 10a–1 will be marked "short exempt." SEC Rule 10a–1 states, in part, that no person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1, and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information, (A) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan. *See* 27 CFR 240.10a–1 (1994). SEC Rule 10a–1(e) provides exemptions for certain orders from the prohibitions against short selling. These are limited to types of trades that are believed to be beneficial to the market or that carry little risk of the kind of manipulative or destabilizing trading that Rule 10a–1 was designed to address. *See* 17 CFR 2450.10a–1(e) (1994).

[8] Member firms will be given a reasonable period of time (approximately six months) to make their own system enhancements so that they may be in compliance with the new account type identification requirements.

[9] A competing dealer is defined as a registered specialist on another stock exchange or a market-maker bidding and offering over-the-counter in a NYSE traded security.

[10] Section 3(a)(38) of the Act defines market maker as any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

[11] 15 U.S.C. § 78f(b) (1988).

[12] In the order approving the NYSE's account identification codes of competing dealers, the Commission noted that the proposal was limited solely to establishing competing dealer identification codes for audit trail and surveillance purposes and that the addition of such codes did not affect the activity of competing dealers or their access to the NYSE. *See* Securities Exchange Act Release No. 33662 (February 23, 1994), 59 FR 10027 (March 2, 1994) (order approving File No. SR–NYSE–91–46). Similarly, in the instant order, the Commission notes that the proposal merely extends the use of account identification codes for "short exempt" trades pursuant to SEC Rule 10a–1(e) and extends the use of such codes to all categories of market participants currently identified through the NYSE's audit trail.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–34540; File No. SR–Philadep–94–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of Proposed Rule Change Modifying Philadep Rule 2, Section 1 To Require Execution of a Participant's Agreement by Participants and Pledgees

August 17, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on August 8, 1994, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to modify Philadep Rule 2, Section 1 to require participants and pledgees to sign a Participant's Agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep 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. Philadep has prepared summaries set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Philadep Rule 2, Section 1 with respect to participants' and pledges' obligations to Philadep. The proposed rule change will add language requiring participants to execute a Participant's Agreement and language stating that Philadep's by-laws, rules, and procedures shall supersede any conflicting provision[s] of the Participant's Agreement. The proposed rule change also will delete language requiring participants to execute and deliver a written instrument specifying their adherence to certain obligations set forth in Philadep Rule 2. This second written agreement will be unnecessary because once a Participant's Agreement is signed, the participant has agreed to abide by all of the rules and obligations of Philadep, including those set forth in Philadep Rule 2. Accordingly, all provisions of Rule 2 will be directly enforceable against participants without the necessity of executing a written agreement specifying selected provisions of Philadep's Rule 2.

The proposed rule change will codify Philadep's existing but unwritten policy and practice of requiring all participants to execute a Participant's Agreement. The proposed rule change is consistent with Section 17A of the Act and, in particular, with Section 17A(b)(3) (A) and (F) in that Philadep is organized and its rules are designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 Philadep consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File No. SR–Philadep–94–04 and should be submitted within September 14, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20776 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[Investment Company Act Rel. No. 20489; 812–8912]

Alex. Brown Cash Reserve Fund, Inc., et al.; Notice of Application

August 18, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Investment Company Capital Corp. ("ICC"); and Alex. Brown Cash Reserve Fund, Inc.; Flag Investors Telephone Income Fund, Inc.; Flag Investors International Fund, Inc.; Flag Investors Emerging Growth Fund, Inc.; Total Return U.S. Treasury Fund, Inc.; Flag Investors Quality Growth Fund, Inc.; Managed Municipal Fund, Inc.; Flag Investors Intermediate-Term Income Fund, Inc.; Flag Investors Value Builder Fund, Inc.; North American Government Bond Fund, Inc.; and Flag Investors Maryland Intermediate Tax-Free Income Fund, Inc. (the "Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, and under section 17(d) and rule 17d–1 thereunder.

[2] 17 CFR 200.30–3(a)(12) (1993).

SUMMARY OF APPLICATION: Applicants request an order to permit the Funds to enter into deferred compensation arrangements with their independent directors.

FILING DATE: The application was filed on March 25, 1994, and amended on May 20, 1994 and August 3, 1994. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 12, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942–0565, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies organized as Maryland corporations. ICC is registered as an investment adviser under the Investment Advisers Act of 1940. ICC currently serves as the investment adviser for each of the Funds other than Total Return U.S. Treasury Fund, Inc., Managed Municipal Fund, Inc., and North American Government Bond Fund, Inc., for which it serves as administrator. Applicants request that the relief granted hereby also apply to all subsequently registered investment companies that in the future are advised by ICC or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with ICC.[1]

2. Each of the Funds has a board of directors (a "Board"), the majority of which are not "interested persons" of the Fund within the meaning of section 2(a)(19) of the Act. Each of the directors who is not an interested person of the Funds receives annual fees from one or more of the Funds. Directors who are interested persons of any of the Funds do not receive any remuneration from the Funds.

3. Under the deferred fee arrangement (the "Deferred Fee Arrangement"), the directors who receive directors' fees from one or more of the Funds (the "Eligible Directors") will be entitled to defer the receipt of 50% or more of such fees. The Deferred Fee Arrangement will be implemented by means of an agreement entered into between an Eligible Director and the appropriate Fund (the "Agreement"). The purpose of the Agreement would be to permit an Eligible Director to elect to defer receipt of his or her director's fees, in order to enable him or her to defer payment of income taxes on such fees, or for other reasons. Applicants believe that the availability of the Deferred Fee Arrangement will enhance the ability of the Funds to attract and retain directors of the same high caliber as those who now serve on their Boards.

4. Under each Agreement, the deferred fees payable by a Fund with respect to an Eligible Director will be credited to a book reserve account established by such Fund (the "Deferred Fee Account"). Each Eligible Director may elect to have his or her deferred fees treated as if they had been invested and reinvested in shares of one or more of the Funds or in a selection of the Funds as may be determined by the Boards of the Funds (such shares are referred to as the "Underlying Securities").

5. Any money market series of the Funds that values its assets using the amortized cost method will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Account to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability. Furthermore, as a matter of prudent risk management, applicants intend that the participating Funds will purchase and hold shares of the Underlying Securities in amounts equal to the deemed investment in the Deferred Fee Accounts of its Eligible Directors. The balance sheet for each Fund will show either liability and asset entries for deferred fees or include a footnote explaining the offset of the liability for deferred fees with an equal amount of assets.

6. Each Agreement provides that the obligations of each Fund to make payments from the Deferred Fee Account will be general obligations of each such Fund and payments made pursuant to the Agreement will be made from such Fund's general assets and property. With respect to the obligations created under an Agreement, the relationship of the Eligible Directors to the applicable Funds will be only that of general unsecured creditors. Each Agreement also provides that the Funds will be under no obligation to purchase, hold, or dispose of any investments under the Agreement, but, if one or more of the Funds choose to purchase investments to cover their obligations under such Agreement, then any and all such investments will continue to be a part of the general assets and property of the Funds.

7. Under each Agreement, deferred fees (including accrued interest) will become payable in cash upon an Eligible Director's retirement or disability in generally equal, quarterly installments over a period of five years (unless the participating Fund has agreed to a longer payment period) beginning on the date payment of retirement benefits commence to such Eligible Director under the "Flag Investors/ISI Funds Retirement Plan for Eligible Directors." In the event of an Eligible Director's death, remaining amounts payable to him or her under the Agreement will be paid to his or her designated beneficiary. In all other events, the right to receive payments will be nontransferable.

8. An Agreement will not obligate any Fund to retain a director, nor will it obligate any Fund to pay any (or any particular level of) director's fees to any director.

Applicants' Legal Analysis

1. In connection with the adoption and implementation of the Deferred Fee Arrangement, applicants request an order under section 6(c) of the Act exempting them from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder, and under section 17(d) of the Act and rule 17d–1 thereunder. Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or

[1] Although certain investment companies currently advised by ICC do not presently intent to rely on the requested order, any such company would be covered by the order if it enters into deferred compensation arrangements with its Eligible Directors, as described in the application.

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the Deferred Fee Arrangement meets the appropriate statutory standards.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Applicants contend that the Agreement possesses none of the characteristics of senior securities that led Congress to enact these sections. The Funds will not be "borrowing" from their Eligible Directors in the sense that concerned Congress. All liabilities created by credits to the Deferred Fee Account under an Agreement would be offset by essentially equal amounts of assets. The Agreements will not induce speculative investments by any Fund or provide opportunity for manipulative allocation of the expenses and profits of any Fund; control of each Fund will not be affected; and, given the common existence of similar deferred compensation agreements, the Agreements will not confuse investors or convey a false impression of safety.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by a registered open-end investment company. The restrictions on transferability of the Eligible Directors' benefits under the Agreements would be clearly set forth in the Agreements.

4. Sections 22(g) prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities. Section 22(g) is primarily concerned with the dilutive effective on the equity and voting power that can result when securities are issued for consideration that is not readily valued. Amounts payable under the Agreements are based on the deferral of compensation otherwise due to be paid to the Eligible Directors. The Agreements merely provide for the deferral of such fees and thus should be viewed as being "issued" not in return for services, but in return for the Funds not being required to pay such fees on a current basis.

5. Section 13(a)(3) prohibits a registered investment company from, among other things, deviating without a shareholder vote from any investment policy that is changeable only if authorized by shareholder vote. Several of the Funds have investment policies prohibiting the purchase of investment company shares without shareholder approval. This policy would prevent these Funds from purchasing shares of any other of the Funds without shareholder approval. Applicants believe that it is appropriate to grant an exemption from section 13(a)(3) to enable the Funds to invest in Underlying Securities without a shareholder vote. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the Funds, and will at all times equal the value of the corresponding Fund's obligations to pay deferred fees. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments in the Funds. Thus, permitting the Funds to invest in Underlying Securities without obtaining shareholder approval required by section 13(a)(3) would result in no harm to the Funds or their shareholders.

6. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification as a condition to adopting the term "money market" as part of its name or holding itself out to investors as a money market fund. Rule 2a–7 also contains a number of conditions designed to reduce the likelihood that the net asset value of a money market fund as determined by the amortized cost method will deviate materially from its net asset value as determined by the mark-to-market method. Applicants request an exemption from rule 2a–7 to the extent necessary to permit the Funds that are money market funds to invest in Underlying Securities and to exclude Underlying Securities in calculating their dollar-weighted average maturities. Applicants believe that, under these circumstances, the underlying concerns that led the SEC strictly to prescribe the permissible characteristics of a money market fund's portfolio securities are not present.

7. Section 17(a)(1) prohibits, except in limited circumstances, the sale of any security by an affiliated person of a registered investment company to such company. The Funds that are advised by the same entity may be "affiliated persons" under section 2(a)(3)(C) of the Act. Applicants believe that the sale of securities issued by the Funds pursuant to the Agreements does not implicate the concerns of Congress in enacting this section, but would merely facilitate the matching of each Fund's liability for deferred fees with the Underlying Securities that would determine the amount of such liability.

8. Section 17(d) and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of an order of the SEC. Deferral of an Eligible Director's fees in accordance with an Agreement essentially will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Fund will vote shares of any affiliated Fund held pursuant to the Deferred Fee Arrangement in proportion to the votes of all other holders of shares of such affiliated Fund.

2. Any money market series of the Funds that values its assets in accordance with a method prescribed in rule 2a–7 will buy and hold the Underlying Securities that determine the performance of the Deferred Fee Account to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–20774 Filed 8–23–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 23, 1994. If you intend to comment but cannot prepare comments promptly, please advise the

OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other document submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Customer Satisfaction Survey, Business Information Centers.

Form No.: SBA Form 1916.

Frequency: On Occasion.

Description of Respondents: Small business clients.

Annual Responses: 3000.

Annual Burden: 800.

Dated: August 19, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–20828 Filed 8–23–94; 8:45am]

BILLING CODE 8025–01–M

[License No. 04/04–0021]

Lowcountry Investment Corporation; Surrender of License

Notice is hereby given that Lowcountry Investment Corporation (Lowcountry), 4401 Piggy Wiggly Drive, Charleston, South Carolina 29423 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958. Lowcountry was licensed by the Small Business Administration on July 28, 1960.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on August 8, 1994, and accordingly, all rights, privileges, and franchises, derived therefrom, have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 17, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–20829 Filed 8–23–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Transportation System Initiative: Supplementary Information on Process and Criteria

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: The Department of Transportation seeks comments on the process and criteria discussion papers for developing a National Transportation System (NTS). The information will be used to develop the Department's proposed criteria and process for identifying the National Transportation System.

DATES: Comments must be received on or before September 30, 1994, to be fully considered in reviewing the proposed approach for conducting the Department's NTS initiative.

ADDRESSES: Three copies of comments for the public docket on the NTS should be sent to: Office of the Secretary, Documentary Services Division C–55, Attn: NTS Public Docket #49617, Room 4107, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Questions on the NTS initiative can also be directed to the Departmental Offices designated as leads for the NTS outreach and planning initiatives:

Mr. Michael P. Huerta, Associate Deputy Secretary, Room 10200, 400 Seventh Street SW., Washington, D.C. 20590, Ph: (202) 366–5781

Mr. Stephen Palmer, Assistant Secretary for Governmental Affairs, Room 10408, 400 Seventh Street SW., Washington, D.C. 20590, Ph: (202) 366–4573

Mr. Frank Kruesi, Assistant Secretary for Transportation Policy, Room 10228, 400 Seventh Street SW., Washington, D.C. 20590, Ph: (202) 366–4450.

SUPPLEMENTARY INFORMATION: Transportation programs and administrative structures, combined with current shortcomings of information and analytic tools, can result in transportation decisions being made that do not meet national transportation needs effectively and efficiently.

The NTS will delineate the most important elements of the transportation system in terms of their collective contribution to those national objectives in which transportation plays an important role—economic strength, environmental and resource conservation, community vitality and social welfare. It will include components from aviation, highways (initially, the National Highway System, as defined by Congress), railroads, ports and waterways, pipelines, and public transportation.

The NTS outreach program seeks to involve private citizens, the business community, Congress, State and local officials, and interest groups to discuss all aspects of the NTS. These outreach activities will seek feedback on the process and criteria through which the initial NTS can be identified.

Notice laying out the basic concept and framework for the NTS was published in the **Federal Register** on June 23, 1994. The following text builds upon and supplements that Notice with respect to the procedures to be followed and criteria to be used to identify the initial NTS. The August 22 deadline for docket comments on the NTS preliminary concept paper has been extended to September 30 to enable the Department to consider interrelated comments arising from the preliminary criteria and process papers.

Part I. Process of System Identification

Introduction

The development of the National Transportation System is intended to be a cooperative effort of the U.S. Department of Transportation, State and local agencies, and the private sector. This paper outlines the Department's preliminary thinking about the process to be used for identifying the elements of the National Transportation System. Its purpose is to provide an early indication of the roles and responsibilities of the various groups and to solicit comments about the process. A related brochure, "The National Transportation System: A Framework for Strategic Transportation Development," describes the concept of the National Transportation System, its purpose and use.

Development of Criteria

The U.S. Department of Transportation is exploring various possible criteria for the selection of elements to be included in the National Transportation System. Based on the comments of outreach participants, the U.S. Department of Transportation will refine the process and develop a preliminary set of criteria. Comments responding to the preliminary criteria, as published, will be considered in the development of final criteria.

The criteria will be a set of measures and guidelines for identifying whether a facility or other transportation element

should be included in the National Transportation System. All modes of passenger and freight transportation will be covered in the criteria. Criteria will also include any other applicable requirements, such as inclusion in State and/or metropolitan transportation plans and improvement programs.

Preliminary Identification of the National Transportation System

The U.S. Department of Transportation will use the final criteria to make a preliminary selection of the transportation elements to be included in the National Transportation System. This will generally be accomplished using information the Department already has available. In some cases, such as urban transit, the preliminary identification of facilities and/or services to be included in the National Transportation System may need to be made in consultation with State and local agencies.

The criteria and results of this preliminary identification process will be distributed in January 1995 to State and local agencies, private service providers, and trade associations. Information to be provided will include a physical description of each element and the travel activity associated with that element.

Private providers, the States, and local agencies working through the States, will be asked to comment on the elements selected and whether any additions or deletions should be made. Of particular interest will be additions to the initial system which address criteria such as connectivity, national coverage, and international trade. In addition, agencies will be requested to correct any inaccuracies and provide additional data on the physical features of the transportation elements, travel activity, and the conditions and performance of the element. The comment period will be 90 days.

Final Identification of the National Transportation System

The U.S. Department of Transportation will analyze and evaluate the information that is submitted by State and local agencies and private providers. Based on this analysis, modifications will be made to the preliminary National Transportation System selections, in consultation with the States, local agencies and private sector. In addition, the data will be used to build a more complete and accurate database describing the system, its use and performance. The Department will undertake discussions to try to resolve any differences between the transportation elements identified by the Department and the submissions.

Preparation of Maps and Final Report

The initial National Transportation System will be illustrated in a series of maps that will display all elements of the system. The maps will be prepared from a database developed by the U.S. Department of Transportation and supplemented by the submissions of the State and local agencies and private providers. The database will be made available in digital format for use in conjunction with geographic information systems (GIS) software. The maps will be published in both paper form and on CD-ROM.

The maps and the report accompanying them will be completed by September 1995 and will contain information on the physical description, usage, and, to the extent possible, condition and performance of the system. It will also contain recommendations on Federal policies and action related to the system.

In addition, the National Transportation System process will provide the basis for the development of legislative proposals designed to promote and implement an integrated, intermodal transportation system.

Updating the National Transportation System

The initial National Transportation System process is to be completed towards the end of 1995. This will be the first step in a continuing effort. The National Transportation System is intended to serve as a tool to develop national transportation policy and legislation and, therefore, it is essential that it be kept current and relevant. Thus, the initial National Transportation System will evolve to reflect changes in demographics, economic conditions, system performance, technology, and social and environmental impacts. In later stages, the system will be updated, additional information on conditions and performance will be included, and new analytical capabilities will be developed.

Part II. Criteria for Identifying the NTS

This paper sets forth potential methodologies for the identification and selection of facilities to constitute the National Transportation System (NTS). With that objective, we are examining various approaches to measuring systematically the impact of airports, highways, rail lines, transit systems, waterways, ports, and pipelines.

This paper should not be construed to represent decisions on criteria for identifying the NTS. Rather, it is intended to generate discussion on what the criteria should be. We expect to refine and revise the NTS inclusion criteria based on the information and insight we gain from NTS public meetings, written comments, and the on-going multimodal planning process established by ISTEA. We welcome comments and suggestions from State and local officials, the transportation industry, and the public at large on every aspect.

The NTS is intended to allow the development of transportation planning, program management and investment strategies which will enhance our transportation system to move people and goods more effectively and efficiently, thereby advancing our economic, environmental and social goals. We believe that the NTS will provide us with an integrated system perspective that identifies the most strategic and effective uses of the resources available for transportation investment. Because we are always working with scarce resources, it is particularly important that we employ the kind of careful targeting of investments which the NTS can help us accomplish. Since some familiarity with the broader context of the NTS is presumed, this paper should be read and considered in concert with the more general brochure describing the NTS.

The identification process will take place in at least two phases. The first step will be to identify physical facilities for inclusion in the initial NTS. In this phase, we will focus in large part on service-level information. Service measures provide direct evidence, though by no means the only evidence, of whether particular facilities play a special national role. One of the major purposes of the NTS is to develop better information about how various transportation components function as part of the total system. Having initially identified the NTS, we plan to build upon that structure by collecting better information on how the system functions. That information will be used to analyze and modify the initial NTS.

General Framework

Workable selection criteria for the NTS are needed for two reasons. One is purely practical. It just isn't feasible to catalogue and include every transportation facility nationwide in the data bases and system models which will become part of the NTS. If we include too much, the NTS will be expensive to map and unwieldy to use; if we include too little, we may miss significant interconnections and lose sight of important information. In

attempting to achieve the right balance, we are seeking the advice of the transportation community and its users. Second, such criteria are required to ensure that the NTS is truly national in nature. The focus should be on which transportation facilities and outputs are most essential to achieving national objectives. Transportation facilities at once function as components of multiple "systems"—local, regional and national. State and local planning entities are engaged in identifying transportation facilities which are essential at the State and local levels. These facilities, central to achieving economic, social and mobility goals, will require continued investment by all levels of government and the private sector. Some of these will be a part of the NTS, but others may not be included in the NTS because they are not of sufficient national significance.

Selecting Criteria

Activity Measures

There are several ways to approach the task of defining nationally significant facilities. One option would be to designate transportation facilities as part of the NTS primarily on the basis of the volume of traffic they handle—for example, passengers or freight tonnage carried on a transit or rail system, vehicles using a highway, or barrels of crude oil transported by a given pipeline. Such "activity level" criteria have some advantages:

- *availability:* information on traffic volume is widely available.
- *measurability:* given data and modeling limitations, usage is at least a uniform yardstick.
- *significance:* the volume of use is a reasonably accurate indicator of the direct economic impact of a given facility—again, given data limitations.

Functional Factors

Activity measures don't tell the whole story, however. Some transportation facilities may provide critical links between modes or regions, essential services in terms of defense or emergency readiness, or other important economic, environmental, safety or social benefits that are not reflected in a simple traffic count. Clearly, these considerations need to be taken into account in identifying the NTS. What is the best way to incorporate these various factors?

The social role of transportation facilities might properly be reflected in a variety of criteria for inclusion. One such approach would be to give special consideration to facilities and routes serving areas where the population has comparatively limited access to automobiles, is relatively immobile, or includes a higher proportion of seniors or the disabled. Safety and environmental considerations might weigh in favor of modes or facilities whose use results in fewer accidents or which yield less pollution—which both have attendant social and economic costs.

In addition to traffic volume, which as indicated above, is an important measure of economic impact and, generally, of a facility's environmental effects, we suggest that defense and emergency preparedness, and system linkage across modes or across regions are factors which can be identified and should be weighed. We may find workable proxies for meeting social objectives such as safety, mobility and accessibility as well. There may be ways to approximate the connectivity function, for example, by identifying the percentage of population or economic activity within a given distance or travel time to a facility.

Some non-volume criteria will affect the composition of the initial NTS: for example, border crossings and important ports of entry may be included on the basis of their role in international trade. This process will accelerate as the NTS grows. With experience and additional data, we hope to be able to incorporate measures of more complex and subtle factors reflecting social and community viability. We welcome suggestions on ways to assess these factors, and on ways to quantify any other factors that commenters believe should be taken into consideration in defining the elements of the NTS.

Temporal Considerations

There is at least one other difficult aspect of the criteria question: how should the NTS deal with the future, i.e., with anticipated or planned facilities or actions? The NTS is intended to be forward-looking: that is, it should help us determine what actions need to be taken to make transportation function better. Thus, the NTS needs to be able to accommodate prospectively new additions to the system. In some instances these may involve technologies—for example, high speed rail and intelligent vehicle highway systems—that are not yet operational.

The process needs to be realistic, however. The NTS cannot incorporate every idea for a transportation improvement, regardless of the likelihood that it would ever be built or implemented. In light of this, how do we select system additions that are "real," in the sense of having an acceptable likelihood of implementation? Would it be useful to specify a planning horizon for the NTS? Should existing and planned facilities be treated as separable parts of the NTS?

There may be legislative, planning or funding milestones or thresholds that will help address these questions. For example, we are considering a requirement that an unbuilt facility be a part of a State Transportation Improvement Program to be eligible for inclusion in the NTS. How would anticipated private sector improvements be treated?

Setting Intermodal NTS Criteria

One of the major goals of the NTS is to promote efficient and effective intermodal transportation. At present, however, it is difficult to use identical criteria to evaluate facilities across modes.

In large part, this is attributable to data limitations. Ideally, the criteria would measure transportation impacts on a variety of important objectives without regard to mode. Realistically, we do not have good measures of the direct regional or national impact of transportation on many economic, environmental and social goals, and those that we do have are modally-based.

Under the leadership of the Bureau of Transportation Statistics, the Department has begun to plan and to implement improved data collection. Efforts are under way to collect multimodal national and interregional freight and passenger data. The NTS will help spur and guide continued efforts in this direction and the data will be helpful in refining the NTS.

Notwithstanding these constraints, NTS criteria need to have some internal consistency if the NTS is to become a productive analytical tool and not just an inventory of unrelated parts. All components of the NTS, urban or rural, public or private, should have a clear, systematic relationship to the overall national transportation network and make a significant contribution to meeting the nation's transportation needs. In the examples that follow, we have attempted to achieve some rough comparability in terms of activity data, but these need to be further refined to reflect economic impact. To do this, it would be useful to have the passenger and freight flow data from the planned surveys mentioned earlier. With this data, we could assess the distribution and value of passenger and freight flows, but the survey data will not be available in time for the initial identification of the NTS. In the interim,

we plan to examine the feasibility of using available transportation expenditure, commodity and activity data to approximate better the impact on the economy of various transportation facilities. Are there other data which could be used to achieve more meaningful intermodal consistency?

In light of data limitations and unresolved questions about methodologies for recognizing non-volume social factors, our initial approach to criteria focuses on volume measures. But how can we best select a volume threshold for inclusion in the NTS?

Analysts seeking to select proper thresholds often look for natural, real-world "break-points" in the data, for example, the point along the traffic activity curve where traffic begins to drop off more sharply. Applying that kind of general rule across the modes facilitates identification of the most heavily used facilities in each mode, notwithstanding the differences among their traffic patterns. (Some modes have more concentrated traffic patterns, while others are more dispersed; no two are identical.) Sometimes there are several possible break-points, and we will need to decide how much of each system to include in the NTS.

In some cases, workable selection guidelines may already exist. For example, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) states that "the National Intermodal Transportation System shall include a National Highway System . . ." Thus, the National Highway System, now before Congress for final approval, would properly comprise the highway portion of the initial NTS network.

It may also be useful to consider a staged selection process. For example, the NTS could be defined to include, first, transportation systems Congress has designated as having national importance; second, the major facilities that handle a substantial proportion of the traffic in each mode, as measured by a variety of pertinent activity statistics; and third, other facilities that can be shown to have significant, measurable social or economic impacts—e.g., on environmental quality, safety, defense and emergency readiness, national system linkage, or other important national objectives.

Potential Criteria

The following examples of criteria and threshold levels for identifying facilities for the initial NTS are offered to illustrate how criteria might be applied. They do not represent specific options or ranges for these values. The criteria and threshold levels applied may be entirely different from those illustrated in the examples, depending on the comments we receive and on further analysis.

Highways

Pending Congressional approval, the National Highway System (NHS) will incorporate the strategic highway network, ISTEA high priority corridors, selected principal arterials, and intermodal connectors: approximately 159,000 miles of highway designated by Congress as having national importance. This is about four percent of the four million miles of public roads in the U.S. and about one-sixth of the 953,000 miles eligible for Federal aid under ISTEA. This network carries over 40 percent of the passenger vehicle miles traveled in the United States, and 70 percent of the commercial truck miles. It includes not only the high activity routes, but highways that are essential for national defense and emergency preparedness, as well as connecting routes that link the national system together, thus reflecting several of the non-volume factors discussed above. The last phase of the designation of the NHS will be to identify intermodal connectors. This activity will be undertaken in concert with the NTS identification process since the objectives of these activities are closely related. The character of the NHS—which encompasses a relatively small number of facilities which service a very large proportion of the traffic (especially freight traffic), while also providing connectivity and emergency readiness—supplies one model for consideration in the criteria development process.

Aviation

Federal Airways

Aviation's primary system niche is in long distance and international transportation. Navigation aids, including the air route traffic control centers and principal navigation aids, form an "airways" system which is essential to the operation of aviation service. The rationale for inclusion is underscored by the fact that the air route traffic control centers and navigation aids which together comprise the airways system are already Federally-operated.

Airports

This component of the aviation system presents a bigger challenge because there are substantial variations in the amount and character of airports' use. Air travel is highly concentrated. The top 50 airports handle more than 80 percent of all passenger enplanements in the U.S.; and the top 150 airports account for more than 95 percent of total traffic. Adding airports that handle a large volume of cargo operations, or those with a high level of unscheduled general aviation operations, might provide a more complete picture of the air system as a whole. How inclusive should the NTS be? Two illustrative possibilities are:

(1) Commercial airports with more than 2.5 million passenger enplanements per year, and cargo airports with more than 500,000 tons of landed cargo aircraft weight: 56 airports in total. These facilities represent less than one percent of the number of airports open to the public in the country and about 10 percent of commercial service airports. Together, however, they serve 81 percent of enplaned passengers, 87 percent of landed cargo aircraft weight, and 14 percent of general aviation itinerant operations at FAA-towered airports.

(2) Commercial airports with more than 250,000 passenger enplanements per year (including all U.S. airports with scheduled international service), cargo airports with more than 50,000 tons of landed cargo aircraft weight, and FAA-towered airports with more than 100,000 general aviation itinerant operations per year: 187 airports in total. Together, these airports account for 97 percent of total enplaned passengers, 99 percent of landed aircraft weight at cargo airports and 56 percent of itinerant general aviation operations at FAA-towered airports. The 187 facilities represent 3.3 percent of airports open to the public in the nation and about 34 percent of commercial service airports. But all U.S. airports with scheduled international service are included.

Intercity Bus

While the intercity bus industry provides mobility for residents of rural and small urban areas, criteria development for this element of the national system is complicated by the absence of detailed ridership data. Given the circumstances, one possible approach would be to focus on population served by bus facilities. For example, the NTS might include all intercity bus terminals in urbanized areas of 100,000 or more. Based on a ten-year old, joint DOT/ICC study of intercity bus terminals, that would amount to about 500 terminals serving about 60 percent of all intercity bus users, including riders traveling to metropolitan areas from isolated rural communities. Of course, it may be worthwhile to consider other

population thresholds or criteria. Is this a workable way to identify intercity bus terminals, or are data available which would allow a better approach?

Transit

Transit systems play an important role in meeting a variety of national objectives. They are essential to the economic, social, and cultural roles of our urban areas. They serve economic and systemic functions by contributing to reduced highway congestion and air pollution, and increased highway safety and energy savings. Transit systems also serve a social function by providing basic mobility, particularly to those without access to an automobile. The types of transit facilities included in the NTS should reflect all of these multiple objectives and roles.

Passenger volume-based criteria can serve to reflect transit's economic importance. For example, the NTS could reasonably include all urban rail transit lines (commuter rail, rapid rail, and light rail), including supporting facilities, as well as those transit bus routes (and related supporting facilities) serving substantial ridership—such as, more than 5,000 passengers per day. This test would result in the inclusion in the NTS of approximately 6,500 rail route miles and 11,000 bus route miles (representing 7 percent of total bus route miles). These routes and facilities carry a total of 5.1 billion passengers per year (67 percent of total transit passengers) and 27 billion passenger miles per year (72 percent of total transit passenger miles). Does the proposed threshold reach those lines and systems which are most important from an economic perspective?

While passenger volumes reflect transit's economic and urban linkage functions, they are probably an inadequate measure of the social role which transit plays, e.g., transportation for the disadvantaged. But, as indicated above, determining the extent to which specific transit facilities and routes serve significant social functions is fairly difficult, at present.

Railroads

Freight Rail Systems

Freight rail systems play critical roles in the nation's transportation system. The privately-owned and operated rail freight system carries nearly 40 percent of total U.S. freight traffic, measured in ton-miles; many rail lines are also important for purposes of national defense and emergency readiness. It may be useful to apply a combination of several criteria, using national defense, system linkage, and other factors as well as traffic volume to determine the freight line component. Two examples are:

(1) Rail lines with freight activity in excess of 5 million gross tons per year, rail lines in the defense-related strategic corridor network, and connecting lines for national system linkage. This package would account for 49 percent of total route miles in the U.S., and 95 percent of the nation's total freight revenue ton-miles.

(2) Rail lines with freight activity in excess of 20 million gross tons per year, rail lines in the defense-related strategic corridor network, and connecting lines for national system linkage. This option would represent 34 percent of total route miles in the U.S., and 86 percent of the nation's total railroad revenue ton-miles.

Passenger Rail System

Amtrak, the country's rail passenger network, provides transportation links between major cities and to all regions of the country, including rural areas that may have no other form of public transportation. The current system consists of 24,000 route miles and 540 stations. What is the appropriate threshold for the NTS in this case? Certain routes on the east and west coasts and in the upper midwest have passenger volumes that are much heavier than many other routes on which usage is lighter and/or more seasonal. Do current or future usage patterns provide a structure for identifying the Amtrak routes and facilities most important to the country? For example, routes which carry 70–80% of Amtrak's annual ridership might be included in a national system.

Amtrak Stations

Data on station usage—examples of which appear below—provide information that would appear to be useful in identifying the appropriate stations for inclusion in the initial NTS. What level of passenger activity would be most appropriate for selecting stations for inclusion in the NTS? Are there other data that would be useful in this regard?

- 48 of Amtrak's 540 stations serve two-thirds of the passengers;
- 75 percent of Amtrak traffic is handled at 86 stations; and
- 63 stations (handling at least 100,000 passengers annually) account for more than 70 percent of the total traffic;

Water Transport

Water transport is significant for economic and defense reasons. The marine transport industry carries over 1.9 billion metric tons of materials, parts and consumer items in domestic and foreign commerce. Further, a number of the facilities used by this industry play a role in strategic defense.

Ports and Harbors

U.S. deep draft ports are critical links, not only in support of our foreign commerce (amounting to about 950 million metric tons annually), but also in support of trade to the non-contiguous States and Territories (over 250 million metric tons annually), as well as intracoastal and coastwise traffic. The 1,205 miles of Congressionally-designated channels and canals created by dredging, widening and canalization form an extensive network that provides deep draft shipping lanes. A tax on the value of goods moving through these channels and ports is paid into the Harbor Maintenance Trust Fund, which the Corps of Engineers uses for maintenance dredging.

There are 355 ports in the United States handling cargo at some 4,000 terminals within these ports. As in airports, traffic is concentrated. One hundred and fifty of those ports—42 percent of the total—account for 99 percent of the cargo tonnage. And like rail lines, some ports also have strategic defense significance, which should also be considered in defining the maritime port components of the NTS. Finally, the Louisiana Off Shore Oil Port ("LOOP") may be nationally significant for reasons of energy production and economic impact.

How many ports—including the improved channel and canals needed to connect those ports to the deep draft sea lanes—should the NTS encompass? Two examples emphasizing traffic measures might be:

(1) Twenty-nine ports handling at least eighteen million metric tons of cargo per year account for nearly 70 percent of total waterborne cargo.

(2) At an alternative level of concentration, 80 percent of total waterborne cargo is handled at 45 ports. Adding two ports to this number provides 80 percent coverage for foreign cargo handled, as well.

Inland and Intracoastal Waterways

There are 25,000 miles of navigable waterways within the United States. Congress has declared 10,600 miles—about 40 percent of the total—to be major inland waterways subject to fuel taxes and maintained by the Army Corps of Engineers. This Congressionally-defined system consists of 168 lock sites, as well as dams and other improvements. Its chief role is

providing low-cost shipping of commodities (563 million metric tons of coal, grain, etc.). The arterial segments—accounting for more than 90 percent of U.S. domestic waterborne traffic ton-miles—are commonly known as "fuel tax" waterways because barge operators and other users pay fuel taxes under the Inland Waterways Revenue Act of 1978 and the Water Resources Development Act of 1986.

In addition, the Great Lakes and connecting channels and locks total 2,000 miles of interstate and foreign commerce routes. Dedicated Great Lakes vessels haul 97.4 million metric tons of goods basic to midwest industry and provide ports as far west as Chicago with access to global markets through the St. Lawrence Seaway. In 1992, 2,642 vessel transits were made of the St. Lawrence Seaway, moving, a total of 32.7 million metric tons of cargo.

While Congress has designated a 10,600 mile inland waterway system to be subject to the waterways fuel tax, some other set of waterways may be appropriate for the NTS. One approach is suggested by the fact that just over one-half of the Congressionally-designated system handles about 97 percent of the total ton-mile freight volume on the system. The major facilities on the Great Lakes and St. Lawrence Seaway, together with some set of inland waterways, would constitute the waterway component of the NTS.

Pipelines

Petroleum pipelines account for 53 percent of all the crude oil and petroleum products carried in the domestic U.S. transportation system—about 17.5 million barrels per day. Natural gas pipelines deliver approximately 46.1 billion cubic feet of natural gas per day, serving more than 55 million customers. While it is not feasible to include all of the field, gathering, and distribution pipelines, the major interstate and long-distance oil and gas pipelines clearly are a critical part of our national transportation system by virtue of their significance in energy transportation. One possibility is as follows:

Petroleum Pipelines

- Interstate crude pipelines—58,000 miles
- Interstate product pipelines—88,000 miles

Interstate crude trunk lines (12 inches in diameter, on average) represent about 29 percent of total mileage. Interstate product trunk lines (of widely varying diameter) account for about 43 percent of total mileage.

Natural Gas Pipelines

- Transmission—interstate—275,000 miles

Long distance transmission lines between 24 to 36 inches in diameter represent approximately 29 percent of total gas pipeline mileage.

Intermodal Connections

The NTS will specifically include intermodal hubs—facilities that serve as collection points and as transfer points between modes and transportation services. While data on these hubs will be collected from a variety of sources, mode by mode, we hope the NTS will enable us to analyze the intermodal effectiveness of all major hubs—airports, train stations, freight terminals, ports, bus and transit depots, etc. It is at intermodal collection and transfer points that travel delays and inefficiencies often occur. It is our intent that the NTS be useful to planners, other public officials and private transportation firms across the nation as an analytical tool to identify and begin to solve such bottlenecks.

Most, if not all of these will be identified for inclusion in the NTS through the Congressionally-mandated NHS intermodal facility identification process or will fall under one or more of the categories described above. Still, we will need to be alert to circumstances where the importance of the connection facility stems from its collective role, rather than its importance to any one modal system.

Cross-Cutting Criteria

In addition to the volume-based considerations outlined above, there may be other categories of criteria that will help identify the appropriate facilities for NTS purposes. A number of these are described below. In some instances, State and local planning authorities will help apply these criteria. Presumably, the use of multiple criteria does not require that all of the individual criteria be satisfied to qualify; rather, meeting one or more of the criteria finally used could qualify a facility or route for inclusion on the initial NTS.

Connectivity

The modal systems within the NTS must connect internally and with each other. This will mean that certain segments or facilities might be included because they make the system continuous or provide an essential connection among modes.

Population Clusters

It may be useful to favor facilities serving large metropolitan areas—for example, in areas exceeding some level of population (e.g., 250,000, 500,000). This is a way of ensuring that the NTS incorporates facilities providing existing or potential service to the major population clusters of the country. (At first blush, this would seem to be a more fitting criteria for passenger service than for freight service.)

National Coverage

In order to ensure that the NTS ties the nation together it might be appropriate to designate at least one facility in each (applicable) modal category (i.e. airport, freight rail, etc.) within every State or region.

International Trade

Facilities and routes serving important border crossings or ports of entry would be identified on the initial NTS to ensure that the NTS supports the country's international economic competitiveness objectives.

Defense and Emergency Readiness

Facilities necessary for defense purposes will be a part of the NTS. They will be defined by the appropriate Federal agencies.

Special National or Regional Functions

As indicated above, it may be possible and useful to identify populations with special mobility needs or economic activities that have an impact on national objectives, but which are not captured by other criteria. (Examples of the latter may be important recreational or tourist locations (e.g., national parks) or coal producing regions in West Virginia or Wyoming.) Since it is possible to make these arguments for many groups and activities, such criteria must stress the importance of these impacts at the regional or national level. State and local impacts are no less important, but are better addressed by the transportation planning processes at these levels.

Summary

In an era of increasing international competition, we cannot afford to let an inefficient, piecemeal transportation network waste the Nation's time and energy resources and hold our economy back. The NTS will help us overcome the fragmented history of transportation development by providing us with a framework for analysis and decisionmaking that will lead to a more integrated and effective system. With your help, decisions on the criteria for the NTS can be made, and we can begin building the analytical framework that will produce an efficient intermodal transportation system, ready to serve the

traveling and shipping public in the 21st Century.

As indicated at the outset, this document is intended to stimulate substantive discussion about how to begin building that analytical framework and identifying the strategic components of the nation's total transportation system. We invite your active participation. Determining the criteria for including transportation facilities in the NTS is an important procedural step in the larger NTS process. In seeking consensus on the NTS criteria, we hope to foster a frank and wide-ranging evaluation of the ways our national transportation system is now working and—more specifically—to engage in a practical, focused examination of the kinds of information, data, and analysis we will all need in order to make that system as efficient, accessible, and productive as possible.

Questions for Discussion

1. Which of the criteria suggested in the Working Paper most accurately capture the essential elements of the national transportation network, across all modes?

2. What multimodal transportation performance data are available that might be helpful in the identification of the initial NTS?

3. Are there measurable criteria currently available which will better capture the national impacts of transportation on economic, environmental and social objectives?

4. How can criteria be developed or adjusted to reflect economic and other objectives more directly and accurately?

5. Do these criteria establish comparable and appropriate levels of inclusion across the various transportation modes? Are any elements over-represented or under-represented? In what way?

6. What factors have we failed to consider in this initial effort to define the NTS? How would one measure them?

7. What are the best ways to reflect social and environmental objectives in the identification of the NTS?

8. How should the NTS deal with the future, i.e., with anticipated or planned facilities or actions? Would it be useful to adopt a planning horizon, and, if so, what should it be? How do we select system additions that are "real," in the sense of having an acceptable likelihood of implementation?

9. What kinds of criteria can be used to identify significant intermodal facilities, and do they identify terminals that will not qualify by other measures?

10. Are there criteria that would reflect, on a national or regional scale, the mobility requirements for such groups as rural residents or the disabled?

Issued this 18th day of August 1994, in Washington, DC.

Michael P. Huerta,

Associate Deputy Secretary and Director, Office of Intermodalism.

[FR Doc. 94–20723 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 94–062]

Differential Global Positioning System, Lake Superior Corridor Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Lake Superior Corridor Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before September 23, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council. U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES**. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register**.

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the Lake Superior Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected two sites along the Lake Superior Corridor for the DGPS equipment. The sites are in the vicinity of the Upper Keweenaw Radiobeacon, MI and Wisconsin Point, WI. The sites are used already for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to install a 90 foot guyed antenna at the Upper Keweenaw Radiobeacon. Radiobeacon service had been previously discontinued and the existing 120 foot radiobeacon antenna removed. The existing ground plane will be adapted to the new antenna. At the Wisconsin Point site a 75 foot whip antenna with an accompanying ground plane will be installed. A ground plane for this antenna consists of approximately 120 copper radials (6 gauge cooper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is between 200–300 feet, but this length may be shortened to fit within property

boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures.

(c) Equipment shelter—A 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment at the Wisconsin Point site while the existing equipment hut will be used at the Upper Keweenaw site.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. A telephone line will be required at each site for remote monitoring and operation.

Description of Each Site

The Upper Keweenaw radiobeacon site is located on the Michigan upper peninsula approximately 5 miles north of Hancock, MI and is an existing marine radiobeacon site. The site will require installation of a 90 foot guyed antenna.

The Wisconsin Point site is located on U.S. Army Corps of Engineers property at the Superior entry to Lake Superior Harbor. The site will require the installation of a 75 foot whip antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

Implementation of a DGPS service in the Lake Superior Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: August 18, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–20787 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–061]

Differential Global Positioning System, Lake Michigan Corridor Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Lake Michigan Corridor Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before September 23, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES**. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register**.

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the Lake Michigan Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected two sites along the Lake Michigan Corridor for the DGPS equipment. The sites are in the vicinity of Sturgeon Bay Canal, WI and U.S. Coast Guard Base Milwaukee, WI. The sites are used already for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to install a 90 foot guyed antenna with an accompanying ground plane at the Sturgeon Bay site and a 60 ft guyed antenna with an accompanying ground plane at the Milwaukee site. A ground plane for these antennas consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is between 200–300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures.

(c) Equipment shelter—A 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment at each site.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. A telephone line will be required at each site for remote monitoring and operation.

Description of Each Site

The Sturgeon Bay Canal site is located within U.S. Army Corps of Engineers property adjacent to Coast Guard Station Sturgeon Bay. The site will require installation of a 90 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Coast Guard Base Milwaukee site is located on South Lincoln Memorial Drive in southeast Milwaukee, WI. The site will require the installation of a 60 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

Implementation of a DGPS service in the Lake Michigan Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: August 18, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–20786 Filed 8–23–94; 8:45 am]

BILLING CODE 4910–14–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 163
Wednesday, August 24, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 29, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 19, 1994

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–20907 Filed 8–22–94; 10:04 am]

BILLING CODE 6210–01–P

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

MEETING STATUS: Open.

DATE AND TIME:

September 21, 1994, 10:00 a.m.—4:00 p.m.
September 22, 1994, 10:00 a.m.—4:00 p.m.

PLACE:

September 21, 1994: Dirksen Senate Office Building, Room 406, First Street and Constitution Avenue, NE., Washington, DC 20510

September 22, 1994: Dirksen Senate Office Building, Room 106.

MATTERS CONSIDERED:

September 21, 1994: Statewide Library Networks. A briefing for the NCLIS with representatives of selected state and local libraries.

September 22, 1994. Discussion on Libraries and the National Information Infrastructure. What do we know and what do we need to know about libraries and information services to plan for and to support their full participation in the National Information Infrastructure?

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: August 18, 1994.

Peter R. Young,

NCLIS Executive Director, Billing Code: 7527–01–M

[FR Doc. 94–20936 Filed 8–22–94; 12:57 pm]

BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 59, No. 163
Wednesday, August 24, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

Correction

In proposed rule document 94-17880 beginning on page 37446, in the issue of Friday, July 22, 1994, make the following correction:

On page 37447, in the third column, in the last line, in footnote 17, following the word "of", the words "ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.'" The effect of this statement is" should be added.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Assumption and Methodology Document for the Spent Nuclear Fuel Managment Cost Evaluation

Correction

In notice document 94-20206 beginning on page 42216 in the issue of Wednesday, August 17, 1994, make the following correction:

On page 42216, in the third column, in the last paragraph, the first sentence, beginning with "To define...", should correctly read "Because of the very broad scope associated with complex-wide spent nuclear fuel management and the uncertain nature of some future actions, it is not possible to develop "best estimate" costs at this time. Instead, upper- and lower-range estimates will be provided to define the possible spread of costs for each alternative."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34477; International Series Release No. 695]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

Correction

In notice document 94-19249 beginning on page 40382 in the issue of Monday, August 8, 1994, in the first column, the Release Number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80, 82, 84, 87, 88, and 90

[CGD 94-011]

RIN 2115-AE71

Inland Navigation Rules; Lighting Provisions

Correction

In proposed rule document 94-17532 beginning on page 37003 in the issue of Wednesday, July 20, 1994, make the following corrections:

1. On page 37003, in the third column, In the heading, the RIN Number should read as set forth above.

2. On page 37008, in the first column, in the 20th line from the top, the word "barge" should read "group".

BILLING CODE 1505-01-D

federal register

Wednesday
August 24, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905 et al.

Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 913, 964 and 990

[Docket No. R-94-1707; FR-3568-F-03]

RIN 2577-AB36

Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations on tenant participation in public and Indian housing to provide a comprehensive framework for tenant opportunities programs which includes new policies, procedures and guidelines for tenant participation; revision of the Resident Management Program to the Tenant Opportunities Program; and the addition of regulations to govern the Family Investment Centers (FIC) Program. These changes are being made to provide for new resident programs, as well as to address several weaknesses in the existing regulations which have interfered with successful program implementation.

EFFECTIVE DATE: September 23, 1994.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Public Housing rule contact Dorothy Walker or Marcia Martin, Office of Resident Initiatives, Room 4112, telephone (202) 708-3611, or 708-0850. For Indian Housing, contact Ed Fagan, Office of Native American Programs, Room 4144, telephone (202) 708-2980 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 (not a toll free number) for information on the program. (The telephone numbers listed above are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been approved and assigned OMB number 2577-0127.

II. Background

Section 20 of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437r) (the "1937 Act") was enacted to encourage increased resident management of public housing projects * * * "to promote formation and development of resident management entities." The Department implemented section 20 by regulations (24 CFR 964 for Public Housing, and 24 CFR Part 905, subpart O for Indian Housing), that governed tenant participation and resident management in public/Indian housing under Section 20 of the 1937 Act.

Section 20 also authorizes funds for technical assistance and training to resident councils (RCs)/resident management corporations (RMCs) to promote increased resident management of public housing. HUD's experience in providing grants to RCs/RMCs under the Public Housing Resident Management Program has revealed that major changes were needed in the provisions of the program. RCs/RMCs and PHAs/IHAs (hereinafter referred to as "HAs") across the country overwhelmingly requested revamping of the program to assist in meeting their residents' need for economic development, education, job training and development, social services, and opportunities for other self-help initiatives.

III. Overview of Public and Indian Housing Changes

Several weaknesses in the regulations have interfered with successful program implementation. The current regulations fail to establish clear and detailed policy on resident participation and guidance on the structure for public housing resident organizations. Additionally, the current regulations fail to establish specific requirements for resident involvement in public/Indian housing management, and to encourage a strong partnership between HAs and resident councils. [Note that references to resident councils in this overview affect resident organizations in IHAs.]

Internal conflicts between competing resident councils in a development pose serious problems to HUD with respect to program eligibility and participation, as well as with respect to HA recognition. The Department is concerned about the need to provide more details on how resident councils/resident management corporations should be structured and how to broaden tenant involvement in public housing.

The Department recognizes the need to increase the amount of cash contributions for resident council activities (presently limited at three (3) dollars per unit per year) and to compensate resident council officers who are serving as volunteers in the public housing community.

The Secretary established an Interim Resident Advisory Committee consisting of representatives of regional and state resident public housing organizations who developed a Policy Paper on resident involvement in public housing. Public Housing Advocacy Groups [Public Housing Authorities Directors Association (PHADA), Council of Large Public Housing Authorities (CLPHA) and National Association of Housing and Redevelopment Officials (NAHRO)] were given an opportunity to review and comment on the Policy Paper.

Recommendations from the Interim Resident Advisory Committee on Tenant Involvement in Public Housing and requests for changes in the Resident Management Technical Assistance Program are the basis for the comprehensive revision of 24 CFR Part 964.

The major changes in this rule allow for broader, more flexible programs aimed at increasing the capacity of resident entities to participate significantly in all aspects of public housing operations while simultaneously permitting further economic uplift opportunities, to the extent permitted under section 20 of the 1937 Act. Section 20 requires that all activities funded under it be related to improved living conditions and public housing operations. (See §§ 905.967 and 964.205.) The Department has proposed amendments to section 20, as a part of HUD's legislative proposal, to permit funding of a broader range of resident initiative activities to include activities that are not necessarily related to resident management or housing authority operations.

The current regulation on the Tenant Participation and Resident Management Program (24 CFR Part 964) is renamed by this final rule as the "Tenant Participation and Tenant Opportunities in the Public Housing Program" for public housing. This final rule replaces the Resident Management Program under subpart C with the Tenant Opportunities Program (TOP). For Indian housing, the program is named "Resident Participation and Opportunities for Indian Housing." (24 CFR part 905, subpart O).

The revised program (TOP) is designed to (1) Prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, and to move toward financial independence; (2) enable them to choose where they want to live; and

(3) assure meaningful participation in the management of their housing developments. The authority for the TOP program comes from Section 20 of the 1937 Act. Also under Section 20, technical assistance grants are available for "the development of resident-managed entities (including the formation of such entities), the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support." "TOP technical assistance grants" can enable residents to manage their developments or portions of their developments. The results are significant and multifaceted. For example, resident managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (e.g., child care and other youth programs).

The Resident Management Program will continue to be an option to resident councils/resident management corporations who are interested in performing management functions in one or more projects of a HA. None of the requirements for the resident management program will be changed. However, some of the provisions are being moved to other HUD regulations or issuances. For example, the requirements under subpart C (§ 964.39) governing the operating subsidy, budget, operating reserves, etc. are being moved to 24 CFR Part 990—Annual Contributions for Operating Subsidy. The Department believes these provisions of § 964.39 are more appropriately placed in that regulation. Also, the requirements for the RMC management contract contents are being removed from subpart C and are contained in HUD Notice PIH 93–56 (HA), which also includes the model management contract.

Subpart A of part 964 is being expanded to add policies on partnerships between HAs and residents. For example, HAs are required to provide office space and meeting facilities to a duly elected resident council, free of charge, for the purposes of conducting resident activities.

Also, the section on definitions (§ 964.7) is being amended by removing terms such as "resident council", "project", and "tenant participation". The eligibility requirements for a voting member of a resident council have been expanded and clarified. The frequency of elections for resident management corporations has been established.

Subpart B of part 964 is being expanded substantially to establish policies and procedures for HAs with respect to resident participation activities. For example, HAs shall provide any funds they receive for resident participation activities to the duly elected resident council. Parts 990 and 905, subpart J, are being amended to require an addition of $25 per unit per year to the HA's operating subsidy calculation for units represented by a duly elected resident council, which will be paid to the HA only if appropriations are available for that purpose. Fifteen dollars of the $25 will fund the duly elected resident councils, the jurisdiction-wide councils and stipends, as discussed further in this preamble. The remaining ten dollars is for the HAs to cover resident-related responsibilities, including but not limited to third party supervision of elections, recalls and arbitrations. The HUD Circular HM 7475.9, dated February 10, 1972, authorized cash contributions for resident council activities for three ($3) dollars per unit per year. The Department believes that an increase of $12 per unit per year is reasonable and, if available, will provide more resources necessary to create a bona fide partnership among the duly elected resident council and the HA. Therefore, this rule replaces any existing guidance or authority including HM 7475.9. Strong partnerships are critical for achieving mutual goals contained in this subpart.

Also, HUD is encouraging HAs to provide stipends in an amount up to $200 per month/per officer to resident council officers who serve as volunteers in the public housing development to carry out these duties and functions as officers of the resident council. The Department believes that such a stipend will enable these volunteers to defray the costs associated with volunteer efforts, such as child care, transportation, special equipment, clothing, etc.

The current Part 964 regulations lack specificity regarding resident elections and organizational policies, and have made it difficult to determine what is a "duly elected resident council," and that has caused conflicts among the residents.

This final rule adds new policies and procedures for resident councils by (1) Defining what is a "duly elected resident council," (2) detailing minimum standards for elections of resident councils, and (3) specifying the relationship between the resident councils and resident management corporations. Resident councils are required to meet HUD's election standards in order to receive official recognition from the HA and HUD and to receive funds in conjunction with the conduct of resident council business. The role of the jurisdiction-wide resident council is established under this rule. The rule also contains provisions that expand the resident participation requirements to strongly support resident participation in all aspects of a HA's management operations, and these requirements give rights to residents to freely organize and represent their interests.

The rule adds a new subpart D to part 964 to establish the Family Investment Center (FIC) Program, as provided for under section 22 of the 1937 Act (42 U.S.C. 1437t) (added by section 515 of the National Affordable Housing Act, Pub. L. 101–625). The Indian Housing FIC Program is found in 24 CFR 905.980. The FIC program provides families living in public housing with better access to educational and employment opportunities. This new subpart is being added to Part 964 to include FIC because it complements the Department's resident participation and self-sufficiency initiatives. The program was proposed by a national association on behalf of numerous housing authorities. Representatives from public/Indian housing authorities, resident councils/resident management corporations and nonprofit housing agencies were convened at the Department to discuss program provisions and provide policy recommendations during the initial program planning stage. Some HAs will combine their FIC and Family Self-Sufficiency (FSS) programs. This final rule provides that Section 8 FSS Program participants are eligible to participate in the FIC program when it is combined with FSS, but that income exclusions that are provided to public housing residents participating in employment training and supportive service programs do not apply to Section 8 FSS families. If a public housing family under FSS is currently putting their funds in an escrow account, they cannot also be eligible for the income exclusion.

Sections 905.985 and 964.320 provide HUD policy on training, employment and contracting of public/Indian housing residents under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). Section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) made significant changes to Section 3. HUD published an interim rule implementing those changes on June 30, 1994. Section 3, as amended, requires that HAs make their best

efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development, operation and modernization assistance provided pursuant to Sections 5, 9 and 14 of the U.S. Housing Act of 1937, to business concerns which provide economic opportunities to low income persons. As amended, Section 3 establishes an order of priority to which the HA's efforts must be directed. Thus, the first level of priority is to residents of the housing development for which the assistance is provided. This rule includes provisions consistent with the interim Section 3 rule.

The reader should note that combination terms such as "tenant and resident," "tenant council" and "resident council," and "tenant management corporation" and "resident management corporation" are similar terms and may be used interchangeably. Hereafter, for ease of discussion, the rule will use the terms resident, resident council and resident management corporation, as appropriate.

IV. Public Comments

On April 19, 1994, at 59 FR 18666, the Department published a proposed rule and allowed 30 days for the public to comment. The Department received 31 comments in response to the proposed regulation: 20 from housing authorities, two from housing authority advocacy groups, six from resident councils/resident organizations, two from residents, one from a HUD field office, and three from private organizations. Following the general comments discussed below, there is a listing of the specific issues raised in the comments and the Department's responses to the issues.

While this final rule applies both to public and Indian housing communities, there are separate regulations for each: Part 964 for Public Housing and Part 905, subpart O for Indian Housing. General and specific comments and responses are grouped by the source of the comment (public housing commenters or Indian housing commenters). In many cases, the comments and responses below are applicable to both.

General Public Housing Comments

Overall, there was widespread support for the concept of resident participation as well as for the new Tenant Opportunities Program (TOP) and the Family Investment Centers (FIC) Programs contained in the proposed rule. Seven commenters stated that the 30-day comment period was too short. However, because consultation took place while the policy was being developed, and comments were submitted by various interested parties, the Department believes that a longer period was unnecessary.

There was also at least one comment on the proliferation on new specialized programs. Because of the rapid growth of new programs, this comprehensive regulation provides a common policy and definition for administering these programs.

There were several comments from housing authorities on the rationale for HUD requiring resident participation with duly-elected resident groups rather than any residents in the public housing community. The Department believes that a clear-cut policy of accountability through the elected resident leaders will assure adequate representation and mitigate criticism of housing authority favoritism. In order to provide time for the public housing community to implement elections, etc. to comply with this duly elected resident council requirement, the Department has determined the date for compliance with this regulation will be April 3, 1995.

There were also concerns that the Department may be providing prescriptive policies on resident participation. The Department has developed policies for the basic resident participation requirements to minimize ambiguity—on resident membership, election frequency and the residents' partnership with the housing authority. However, the regulation provides significant flexibility for the method of implementation. For example, with respect to election standards, the regulation discusses standards but leaves it up to the public housing community regarding the specifics.

Specific Public Housing Comments

Comment. Funding Issues: (§§ 964.115, 964.105, 964.150) One commenter requested more clarity between the Resident Council and the Jurisdiction-Wide Resident Council with respect to which organization would be eligible to receive the $15.00 per unit/per year for resident services. Concern was raised that the operating subsidy funding for resident council activities may be required to provide the funds for resident activities. One commenter requested that "subject to appropriations" be added to § 990.108. Two PHAs expressed concern that the provision of stipends to resident council officers should also be an add-on to the PFS. One tenant organization expressed concern about the impact of withholding for Social Security and income tax on the residents receiving the stipends. One PHA requested clarification on the demand for HAs to provide tenant services funding regardless of the HA financial status.

Response. Section 964.150 has been revised to clarify for whom the funding is intended. The duly elected Resident Councils at each development and/or jurisdiction-wide councils are eligible to receive the resident portion of the Tenant Services Account, i.e., $15 per unit per year. Where both organizations exist, the distribution will be agreed upon by the HA and the respective organizations. Dispute resolution procedures are added at § 964.150(c). The resident officer stipends (up to $200 per month/per officer to be determined jointly by the resident council and HA) are also included in the $15 per unit per year funding. The $15 per unit per year is a 500% increase from the current guideline of $3 per unit per year. In addition, the $10 per unit per year—as a new policy—is for the housing authority to cover resident-related responsibilities, including but not limited to third party supervision of elections, recalls and use of mediation/arbitration services.

With respect to funding for resident services, section 964.150 states that 24 CFR part 990 would provide an addition to the operating subsidy eligibility in the amount of $25 per unit per year for units represented by a duly elected resident council and the provision of these funds is subject to availability of appropriations. The HA and resident council should collaborate on the appropriate use of these funds. The Department is aware that even with this increase, there may be insufficient funds for resident council expenses plus stipends. The provision of stipends is not a requirement and will be decided by the local resident council officers and the HA. If Congress does not appropriate funds, the HA and duly-elected resident council may negotiate funds for tenant services based on the availability of funds.

With respect to how stipends are counted for income tax purposes, the stipends are not a salary but reimbursement for expenses incurred. Under this definition, stipends will not be treated as income by HUD in its programs. The treatment of stipends as income for social security and income tax purposes cannot be addressed by HUD; this issue must be discussed with Social Security Administration and IRS. However, HUD can assure that stipends shall not be treated as income for rent purposes.

Comment. Funding Issue: (§ 964.150) Five HA comments agreed with

proposed increase of funding for resident participation. Four HA comments and two housing advocacy organizations expressed concern that funding for resident activities may not be sufficient for required activities under the regulation. However, three PHAs oppose an increase in funding for resident participation from $3.00 per unit/per year to $25.00 per unit/per year because resident councils are already receiving substantial funding under the Tenant Opportunities Program/ Technical Assistance Grant, and the Comprehensive Grant Program. One commenter recommended an increase in the $10 per unit/per month for housing authority activities.

Response. The Department believes that an increase in support for resident participation activities from $3.00 per unit/per year to $25.00 per unit/per year (of this amount $15.00 will be provided to the duly elected resident council) is reasonable and long overdue to support the increasing activities and community involvement of these organizations. While TOP funds are available for such activities, those funds can only be obtained on a competitive basis, and the availability of CGP Management Improvement Program funds is contingent upon the Public Housing Authorities' priorities to improve management operations. The Department believes that the portion for the PHAs is equitable in light of the functions to be provided under each and the funding available to PHAs.

Comment. Audit Issue: (§§ 905.972(a) and 964.230(a)(2)) One commenter requested change to a reference in § 905.972(a) from "audit of books and records" to "audits of financial statements;" and change to a reference in § 964.230(a)(2) from "* * * activities and expenditures * * *" to "* * * financial statements * * *."

Response. The above-mentioned provisions will be changed to state review of financial statements. Such a review of the financial statements would include scrutiny of expenditures related to the workplan as well as compliance with the HUD grant agreement.

Comment. Conflict of Interest Issue: (§ 964.145) Three tenant organizations objected to the Conflict of Interest policy because it would deplete the executive board of the Resident Council/Advisory Board. It was also noted that over 50 percent of resident leaders are employed by HAs. Two HAs observed that resident employment encourages participation in resident governance and should be encouraged when residents are not employed in supervisory capacities.

Response. The conflict of interest policy has been revised to state that "Resident council officers cannot serve as employees in a policy making position at the HA or as a contractor to the HA. However, seasonal, part time or non-supervisory positions at the HA or their contractors which are not involved in policy making work are exempt from the conflict of interest policy."

Comment. FIC Issue: (§ 964.305) One PHA objected to the small amount of 15 percent allowed for supportive services and recommends an increase to 25 percent.

Response. The cap on supportive services (15 percent) is stipulated in the law. The Department agrees that the current statutory policy is too restrictive and has included in its legislative proposal raising the limit to 30 percent.

Comment. Threshold Issue: (§ 964.18) Two HAs suggested that the threshold for applicability of this regulation—i.e., HAs of 100 units—was too low and should be increased to HAs of 250 or even 1250 units.

Response. The Department agrees with the commenter that the threshold should be increased to 250 units. This would make the threshold comparable with that of the Comprehensive Grant Program. HAs with fewer than 250 units cannot deny residents the opportunity to organize. This regulation is intended to provide all resident groups with the opportunities available under this regulation.

Comment. Office Space Issue: (§ 964.18) One HA objected to the provision of office space for the duly elected resident council especially at smaller complexes and said it should only be required at public housing developments of 250 units and over. Two other commenters felt that there would not be space for resident councils—even at larger authorities—especially when there was a long waiting list. Commenters felt that office space should be covered by operating subsidy.

One housing advocacy organization recommended that flexibility should be granted to the HA and that assistance with alternative locations might be sufficient for small HAs. Another housing advocacy organization suggested that office space be required only in projects above 250 units.

Response. The Department agrees with the first commenter that providing office space to resident councils may not be feasible in small HAs without any community space options and few units. In such cases, the HA should make every effort to assist RCs in obtaining space when units are not available. If there is no community or rental space available, a request to approve a vacant rental unit for this non-dwelling use will be considered on a case-by-case basis. Subject to appropriations, these units will be eligible for operating subsidy.

Comment. Elections Issue: (§ 964.130) One HA objected to a third party supervision for resident council elections especially in cases where the HA and resident organization are in agreement. Opposition was expressed to three (3) year terms, with two HAs suggesting that shorter terms will solve problems of effective resident representation and the filling of vacancies. Four commenters expressed concern about the requirement in § 964.115 for approval of 51 percent of "voting membership" instead of ⅔ of voters to recall a resident board.

Response. A third party supervision, even in cases where the HA and resident organization are in agreement, provides for a neutral monitor to oversee elections and recall procedures. Holding elections at least every three (3) years provides for continuity and allows time for each resident council board to plan and implement any new activities. Resident Council By-Laws must include provisions for recall elections of representatives, including officers. These provisions shall allow for a petition or other means of expression of the voting membership for such a recall vote to be taken. The local resident council voting membership shall determine the threshold for recall. This threshold shall not be less than 10 percent of the voting membership.

Comment. HA Operations Issue: (§ 964.135) Two HAs opposed resident participation in all issues and facets of a PHA's operations.

Response. Resident participation in all issues and facets provides support to the HA for improved living conditions and resident satisfaction in public housing communities. Residents can provide valuable input regarding the conditions of the property and the performance of employees and contractors.

Comment. Policy Issue: (§ 964.12) One interest group opposed changing Resident Management to TOP; however, one commenter supported the new TOP. One RMC objected to the requirement imposed by the regulation for adopting the model contract for RMCs entering into a contract with a HA, and the removal of sections governing the operating subsidy and comprehensive improvement assistance program.

Response. Resident councils, resident management corporations, and HAs across the country requested that HUD revamp the Resident Management

Technical Assistant Grant Program (RM TAG) to meet the residents' needs for economic development, education, job training and development, social services and other self-help opportunities. The residents still have the option to undertake property management, if they desire. The expanded range of activities provided by TOP will meet the residents needs. The language in the proposed rule stated that the model contract in HUD Notice PIH 93–56 must be followed unless HUD approves a requested change. It should be noted that there are minimum statutory and regulatory requirements in the model contract which must be used and any other provisions would be considered voluntary or advisory. The section on operating subsidy is being moved to Part 990 so that all procedures covering operating subsidy are contained in the same regulation. Information on CIAP/CGP has been inserted in the resident management requirements section of this final regulation in § 964.225.

Comment. Voting Issue: (§ 964.115(c)) Two HAs requested clarification on the voting membership.

Response. The voting membership is limited to designated heads of households (any age) and other members of a household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

Comment. RC/RMC Clarification Issue: (§ 964.120(f)) One HA requested clarification on RMC recognition in the instance where a resident organization (RO) is formed after an RMC is established. For example, must the new RO and the voting membership or all of the residents approve the establishment of such an organization.

Response. The newly formed duly elected resident council and the RMC should work together to establish a method of documenting, i.e., through a resident council board resolution, the approval of the duly elected representative body for resident management.

Comment. Resident Training Issue: (§ 964.140) One resident organization, one advocacy organization, and one HA each expressed concern that there is insufficient funding to adequately train interested residents in overall policy development and direction of HA operations.

Response. The Department is requesting $85 million for the TOP Program for FY 1995, which represents a three-fold increase from FY 1994 funding to provide additional training for residents. The option also exists to use several other resources available to train the residents, such as: (1) the HA staff, (2) CGP/CIAP, (3) operating subsidies, (4) TOP TAG and (5) Section 8 administrative fees. In addition, the RC/RMC together with the HA could form a partnership with other local and community organizations to provide the support for training.

Comment. Partnerships Issue: (§ 964.14) One HA supports partnerships but is concerned that outside partnerships may become the governing entity. The commenter believes that the primary partnerships should be fostered between RCs and HAs.

Response. HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. However, strong partnerships with other organizations are also critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community. However, these outside partners cannot be recognized or assume the role of the duly-elected governing entity.

Comment. Expanding Resident Council Issue: (§ 964.105) One HA comment requested clarification about whether an HA with an existing jurisdiction-wide resident council can help establish new resident councils in scattered sites or separate groups of buildings.

Response. The Department encourages the development of new resident councils, or revival of inactive resident councils, at all housing developments including scattered sites.

General Indian Housing Comments

The Department received 18 comments specifically related to 24 CFR Part 905, Subpart O—Resident Participation and Opportunities for Indian housing. Eleven were from Field Offices of Native American Programs, four from an Indian housing authority, one from a public housing authority, one from an advocacy group and one from a private organization.

Comment. Replace the term "tenant" with "resident" since it can be applied appropriately to all program participants, rental and homeownership. In Indian housing, resident implies a sense of ownership and permanence which are important attitudes to convey in order to accomplish the mission of the Office of Native American Programs (ONAP).

Response. The Department agrees with the comment for the Indian housing program. The only reference to tenant will remain in the title of the Tenant Opportunities Program. This new title reflects the revised program created to provide more program flexibility to address the needs in communities to improve living conditions and housing operations.

Specific Indian Housing Comments

Section 905.102(2)(viii)(D) Stipends

Comment: One commenter stated: Currently there is no limit to the number of officers of a resident organization or the number of organizations. Some large IHAs have over 50 resident organizations. The cost involved for stipends could be substantial if each RO has 5 officers who receive $200 per month, with 50 ROs the cost equals $600,000. It could be very difficult to determine who should receive funding and IHAs could be forced to use operating reserves. For instance, an IHA with 14,000 units will receive $140,000 although stipends amount to $600,000. The inability to pay stipends could cause potential problems between the IHA and RO.

Several commenters requested clarification on how the stipend is to be paid. Is it paid from the $25 per unit per year? Is it from the IHA $10 per unit per year or the RO $15 per unit per year?

Another commenter recommended that the words "excluding training costs" should be added to the end of the eligible activities for stipend use. The commenter felt that the maximum stipend amount should not limit training that ONAP and the IHA determine is important for resident leaders to attend.

One commenter supported the stipend stating it was extremely important because it recognizes the economic position of many resident leaders and the need to avoid out of pocket expenses from resident leaders.

Response: It is intended that the $15 per unit per year for resident participation activities of the resident organization will be used to fund stipends. Section 905.965 is revised to clarify questions raised regarding the funding for stipends. Also, the Department is aware that even with this increase, there may be insufficient funds for resident organization expenses plus stipends. The provision of stipends is not a requirement and will be decided by the local resident organization and the IHA. If there is no appropriation for this additional cost item under the operating subsidy, the IHA and resident organizations must determine how to use existing funds to accomplish priority resident activities.

Regarding the third comment, the stipend is intended to cover costs related to officer volunteer efforts. It does not limit funding to resident organizations for training. These costs can be covered under 905.965 which would provide $15 per unit per year for resident participation activities of the RO. IHAs may use other resources for resident participation activities.

Section 905.720 Other Costs

Comment: A commenter expressed concerns about the cost of stipends to the IHA. Also, will stipends be eligible even if there are no appropriations to fund the cost? Another commenter suggested that consideration must be given for higher cost areas, especially in Alaska where village travel is by airplane.

Response: If there are no appropriations to fund resident participation, stipends will still be an eligible cost; however, the IHA and RO must determine if resources are available. The issue of higher travel costs in Alaska can be resolved by waiver requests since the provision is regulatory, not statutory.

Section 905.962 Definition of RO

Comment: One commenter recommended that HUD require each IHA to adopt a policy and procedure to formally recognize resident organizations based on the referenced definition.

Response: Only one comment was received requesting that recognition of an RO be mandatory. The Department does not believe this is sufficient to change the current regulatory requirements which provide for local decision making between the IHA and RO.

Section 905.963 HUD's Role in Activities Under This Subpart

Comment: The form and extent of resident participation or resident management are local decisions to be made jointly by ROs and IHAs. The regulation discusses the duty to bargain, but if either party does not, there is no consequence for not doing so. If an RO isn't organized, it is not eligible for the $15 per unit funding. Therefore, control of whatever negotiation there might be is in the hands of the IHA. This is an unfair advantage for the IHA.

Response: A resident organization can organize without IHA involvement and can also be eligible for funding if it meets the requirements in accordance with § 905.962. However, HUD strongly recommends a partnership between the resident organization and the IHA. The IHA and the duly elected resident organization shall collaborate on how funds will be distributed. A mechanism to address disputes on funding decisions is provided for in the rule. The payment of stipends to resident organization officers will be funded from the $15 per unit per year for resident participation activities.

Section 905.964 Resident Participation Requirements

Comment: Section 905.964 (a)(1) should be revised to state that an IHA must provide residents with current information concerning the IHA's policies on resident participation in management, "development and modernization" in order to cover all aspects of the IHA's programs.

Response: Subpart O only deals with resident participation in management. Both the subparts on development and modernization contain specific regulatory requirements regarding resident participation. This language is consistent with subpart O and, therefore, we are keeping the language as currently stated.

Section 905.969 Resident Management Requirements

Comment: Several resident organizations in the State of Alaska have questioned whether or not a recognized Tribal government in the community may act in the capacity of the resident organization. In most of the Alaskan Native communities, the tribal government represents the Native residents. Most tribal organizations already have mechanisms in place that would allow greater resident participation, which could lead to expedience in communities becoming self-sufficient. Where the majority of residents in a community request that the Tribal Government act in the capacity as the RO with the IHA, a Memorandum of Agreement might be executed to establish such a relationship.

Response: If a tribal government wishes to assume the responsibilities of an RO or RMC, an entity must be created that meets the requirements of 24 CFR 905.962. The tribal government may not act as an RO or RMC without complying with those requirements. This does not prevent the tribal government from authorizing or creating such an entity under tribal law.

Section 905.972(b) TOP Audit

Comment: The references to "audit of books and records" in the title of proposed sections 905.972(a) and 905.972(b) should be changed to "audit of financial statements" because independent auditors audit financial statements, not "books and records."

The proposed rule should specify the basis of accounting to be used in preparing the financial statements. We recommend that the financial statements be prepared in accordance with generally accepted accounting principles (GAAP).

The final rule should state that an audit conducted in accordance with the Single Audit Act or OMB Circular A–133, if applicable, would satisfy the audit requirement.

Response: The sections have been changed to reflect the comment on review of financial statements. Such a review of the financial statements would include scrutiny of expenditures related to the workplan as well as compliance with the HUD grant agreement.

Section 905.980 FIC General

Comment: Remove the following language from the responsibilities of a FIC Coordinator, "mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding."

Response: This language is statutory (Section 515 of National Affordable Housing Act) and therefore cannot be removed without legislative change.

Comment: There is no reference to determine eligibility for program participants.

Response: The only eligible applicants are IHAs based on the statute. Eligibility is documented in 905.982. IHA is defined in 905.102 of 24 CFR part 905.

Section 905.982 FIC Eligibility

Comment: Under this program and any other programs that are created to directly associate with residents, eligible applicants should be extended to include the Tribal governments. Recommend using the word "improved" in place of "Better" since "improved" is used in other parts of this document. Also, add the word "support" in reference to services being provided.

Response: The provision that eligible applicants are public or Indian housing authorities is statutory and cannot be changed without legislation.

Section 905.983 FIC Activities

Comment: The new activities such as new construction or acquisition have not been added yet as indicated in the NOFA.

Response: The Public and Indian Housing regulation is changed to reflect

eligibility for new construction and acquisition.

V. Section-By-Section Changes Made By This Final Rule

A. Public Housing Changes—Part 964

1. Subpart A is amended as follows:

a. Section 964.1 *Purpose* is streamlined.

b. Section 964.3 *Applicability and scope* remains unchanged.

c. Section 964.7 *Definitions* is amended by removing several definitions such as project and tenant participation; by moving terms such as Resident Council and Resident Management Corporation to a more appropriate section under subpart B, and by expanding definitions; and by adding new terms which relate to the FIC program.

d. Section 964.11 *HUD policy on tenant participation* is amended to strongly support tenant participation in all the functions of an HA's management operations and give rights to residents to freely organize and represent their interests.

e. Section 964.12 *HUD policy on Tenant Opportunities Program (TOP)* provides HUD's policy on the Tenant Opportunities Program. Subpart C of the current regulation is changed from "Resident Management Program" to "Tenant Opportunities Program" (TOP). The name is being changed to TOP because it reflects the evolution of the program over time, to enhance resident capacity in a variety of ways, including job training, economic development, and self-sufficiency activities carried out by resident councils/resident management corporations in public housing. Resident management is a component of TOP and resident councils/resident management corporations may continue to engage in activities relative to public housing management. Tenant opportunities programs are proven to be effective in facilitating economic uplift as well as in improving the overall conditions in public housing.

f. Section 964.14 *HUD policy on partnerships* is added to provide HUD policy on partnerships between HAs and residents. Strong partnerships between HAs and resident councils/resident management corporations are key to the success of program objectives, and critical for achieving specific and mutual goals and creating positive change for residents in public housing.

g. Section 964.15 *HUD policy on resident management* remains unchanged. This section states HUD's support for resident councils/resident management corporations who are interested in managing various businesses in the public housing community; e.g., lawn service maintenance or day care.

h. Section 964.16 *HUD role in activities under this part—Monitoring* is added to describe HUD's proactive responsibility for promoting tenant participation and tenant opportunities in public housing. It provides that HUD will monitor program progress to ensure efficient and effective operations pursuant to this rule.

i. Section 964.18 *HA role in activities under subparts B&C* establishes a stronger HA role under this subpart. HAs shall, upon request, provide office space to a duly elected resident council and shall negotiate in good faith usage of community space for meetings and other activities for residents. HAs have a responsibility to negotiate such usage of space with the duly elected resident council.

j. Section 964.24 *HUD policy on FIC program* provides HUD's policy and support for the FIC program.

k. Section 964.30 *Other program requirements* provides Civil Rights compliance requirements and all other Federal laws, executive orders, regulations and policies for programs conducted and administered under this rule.

2. Subpart B is amended as follows:

a. Section 964.100 *Role of resident council* which establishes the role of a resident council and § 964.105 *Role of the jurisdiction-wide resident council* which establishes the role of a jurisdiction-wide resident council are added to the rule.

b. Section 964.110 *Resident membership on HA Board of Commissioners* encourages resident membership on HA Board of Commissioners.

c. Section 964.115 *Resident council requirements* describes the provisions necessary for the Resident Council to receive official recognition from the HA and HUD. In the previous rule, this provision was included in the definitions section, and in this rule it becomes a separate section.

d. Section 964.117 *Resident council partnerships* is added to encourage and promote partnerships between the resident councils and public/private organizations. While the Department encourages partnerships to complement council activities, such organizations must not become the governing entity of the resident council.

e. Section 964.120 *Resident management corporation requirements* establishes characteristics in order to receive formal recognition by the HA and HUD. In the previous rule, this was included in the definitions section and in this rule, it becomes a separate section.

f. Section 964.125 *Eligibility for resident council membership* is added to provide guidance on eligibility for council membership. This section establishes that any member of a household, whose name is on the lease, may be a member of a resident council. However, in order to be a voting member of the resident council, a person's name must appear on the lease of a unit in the public housing development, and he/she must be: (1) a legal head of household (means the member of the family who is the head of the household for purposes of determining income eligibility and rent), or (2) 18 years of age or older.

g. Section 964.130 *Election procedures and standards* is added to provide minimum standards for resident council elections including the requirement for supervision by an independent third party. HAs shall monitor the resident council's elections to ensure compliance with HUD's minimum standards.

h. Section 964.135 *Resident involvement in HA management* is added to provide policy on resident involvement in HA management operations. Residents shall participate fully in the overall policy development, as well as in operations of an HA.

i. Section 964.140 *Resident training* is added to encourage HAs to take the lead in providing training opportunities for public housing residents. If residents are willing, they may receive training from the HA and become involved in implementing various Federal programs.

j. Section 964.145 *Conflict of interest* is added to provide policy on resident council officers serving as contractors or as employees of an HA.

k. Section 964.150 *Funding tenant participation* is added to establish policy on funding duly elected resident councils. Subject to appropriations, HAs shall provide funds to the duly elected resident council for tenant participation activities. This rule also makes an amendment to 24 CFR Part 990 for tenant services to include up to $25 per unit per year, subject to the availability of appropriations, as an add-on to the Performance Funding System (PFS).

3. Subpart C is amended as follows:

a. Section 964.200 *General* is added to provide information on the provisions of the TOP.

b. Section 964.205 *Eligibility* is added to define who is eligible to apply and receive a technical assistance grant, and to outline eligible activities under TOP.

c. Section 964.210 *Announcement of funding availability* is added to describe notification of funding availability for obtaining funds to participate in TOP.

d. Section 964.215 *Grant agreement* provides the terms of the grant agreement for the proposed activities under the TOP program.

e. Section 964.220 *Technical assistance* describes HUD's commitment to fund TOP activities.

f. Section 964.225 *Resident management requirements* provides minimal guidelines for HAs and residents for the performance of management functions.

g. Section 964.230 *Audit and administrative requirements* provides audit and administrative guidelines for recipients of TOP grant funds and resident management corporations contracting with an HA for management responsibilities.

4. Subpart D is added to the Part 964 as follows:

a. Section 964.300 *General* provides the purpose and program provisions of the FIC program. FIC provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

b. Section 964.305 *Eligibility for FIC* provides eligible activities and requirements under the FIC program.

c. Section 964.308 *Supportive services requirements for FIC* provides supportive services requirements essential for families living with children in public housing.

d. Section 964.310 *Audit/ Compliance Requirements for FIC* provides audit and compliance requirements governing the program.

e. Section 964.315 *HAs role in FIC activities under this part* provides the process required to assure that HA residents are informed about FIC.

f. Section 964.320 *HUD policy on training, employment, contracting and subcontracting of public/Indian housing residents under FIC* states HUD's policy on resident training, employment and contracting under FIC.

g. Section 964.325 *Announcement of funding availability for FIC* indicates that the Notice of Funding Availability (NOFA) will be published periodically and contain specific information regarding eligibility, funding criteria, etc.

h. Section 964.330 *Grant set-aside assistance for FIC* states HUD's policy of permitting up to five percent (5%) of amounts available in any fiscal year to augment grants previously awarded under this program.

i. Section 964.335 *Grant agreement for FIC* provides the grant agreement term.

j. Section 964.340 *Resident compensation for FIC* provides guidelines governing employment compensation under this program.

k. Section 964.45 *Treatment of income* provides provisions for income exclusions for any resident participating in the FIC program.

l. Section 964.350 *Administrative Requirements for FIC* provides administrative and reporting requirements governing the FIC program.

B. Indian Housing Changes—Part 905

The rule also revises 24 CFR 905, subpart O, "Resident Participation and Opportunities." The Indian housing section is similar to its public housing counterpart, but does not contain some of the provisions in 24 CFR Part 964 in an effort to tailor them specifically to the generally smaller size of most Indian Housing Authorities (IHA). However, all activities, functions and benefits permitted under any public housing resident programs will remain eligible activities, functions and benefits for Indian housing resident programs.

The major changes in the rule allow for broader, more flexible programs aimed at increasing the capacity of Indian housing resident organizations and resident management corporations to carry out their organizational functions in a more structured manner while simultaneously permitting further economic uplift opportunities.

Within the subpart there is a general section; a Tenant Opportunities Program (TOP) section; and a Family Investment Centers Program section. The current Indian Housing Resident Management Program under existing regulations is viable and remains an option under TOP. None of the requirements for the resident management program are changed; however, some sections are being moved to other sections of the 905 regulations or HUD handbooks.

C. Miscellaneous Conforming Changes

Changes that have been made to other parts are (1) the exclusion from income of stipends to RC officers and of training grants under the FIC program that are added to 905 and 913; (2) the provision for payments to duly elected resident organization officers, and the inclusion of requirements governing the RMC Operating subsidy, budget, operating reserves, etc., that are made to 990; and 3) changes for the resident participation subpart that are made in part 905 to parallel changes in part 964.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides substantial revisions to the regulations concerning Tenant Participation and Management in Public Housing under which resident councils/ resident management corporations receive funding on a competitive basis. HUD does not anticipate a significant economic impact on small entities since resident councils/resident management corporations will continue to obtain by contract technical assistance to carry out program activities.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The revised rule is consistent with federalism principles since it reduces unnecessary burdens on resident organizations. Since participation by resident organizations is discretionary, this rule lacks the direct and substantial effects on resident

organizations required for a policy with federalism implications under the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has a beneficial effect on the family, and thus, does not require further review. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item No. 1685 in the Department's Semiannual Agenda of Regulations published on April 25, 1994, (59 FR 20424, 20469) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 905, 913, 964, and 990 of title 24 of the Code of Federal Regulations are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 is revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee and 3535(d).

2. In § 905.102, the definition of *Annual income* is amended by:

a. Removing the word "or" at the end of paragraph (2)(viii)(B);

b. Adding the word "or" at the end of paragraph (2)(viii)(C);

c. Adding a new paragraph (2)(viii)(D);

d. Removing the word "or" at the end of paragraph (2)(x);

e. Redesignating paragraph (2)(xi) as paragraph (2)(xii); and

f. Adding a new paragraph (2)(xi), to read as follows:

§ 905.102. Definitions.

* * * * *

Annual income.

* * * * *

(2) * * *

(viii) * * *

(D) A resident stipend, but only if the resident stipend does not exceed $200 per month per officer to resident organization officers. Stipends are intended to cover costs related to officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment and special clothing.

* * * * *

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xi), the following definitions apply:

(A) *Comparable Federal, State, Tribal or Local law* means a program providing employment training and supportive services that—

(*1*) Is authorized by a Federal, State, Tribal or local law;

(*2*) Is funded by Federal, State, Tribal or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job; or

* * * * *

3. In § 905.434, a new paragraph (b)(7) is added, to read as follows:

§ 905.434 Operating subsidy.

* * * * *

(b) * * *

(7) Subject to appropriations, in accordance with the provisions of subpart O of this part and procedures determined by HUD, each IHA shall receive $25 per unit per year for units represented by a duly elected resident organization for resident participation activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected ROs including but not limited to stipends. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

* * * * *

4. In § 905.720, a new paragraph (g) is added, to read as follows:

§ 905.720 Other costs.

* * * * *

(g) *Funding for resident organization expenses.* In accordance with the provisions of 24 CFR Part 905, subpart O and procedures determined by HUD, each IHA with a duly elected resident organization shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly-elected resident organization in support of the duly elected resident organization's activities.

* * * * *

5. Subpart O of Part 905 is revised to read as follows:

Subpart O—Resident Participation and Opportunities General Provisions

Sec.

905.960 Purpose.
905.961 Applicability and scope.
905.962 Definitions.
905.963 HUD's role in activities under this subpart.
905.964 Resident participation requirements.
905.965 Funding Resident Participation.

Tenant Opportunities Program

905.966 General.
905.967 Eligible TOP Activities.
905.968 Technical assistance.
905.969 Resident management requirements.
905.970 Management specialist.
905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

905.972 TOP Audit and administrative requirements.

Family Investment Centers (FIC) Program

905.980 General.
905.982 Eligibility.
905.983 FIC Activities.
905.984 IHA role in activities under this part.
905.985 HUD Policy on training, employment, contracting and subcontracting of Indian housing residents.
905.986 Grant Set-Aside Assistance.
905.987 Resident compensation.
905.988 Administrative requirements.

Subpart O—Resident Participation and Opportunities General Provisions

§ 905.960 Purpose.

The purpose of this subpart is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

§ 905.961 Applicability and scope.

(a) This subpart applies to any Indian housing authority (IHA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the U.S. Housing Act of 1937.

(b) This subpart contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

(c) This subpart is designed to encourage increased resident participation in Indian housing.

(d) This subpart is not intended to negate any pre-existing arrangements for resident management in Indian housing between an IHA and a resident management corporation.

(e) This subpart includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the National Affordable Housing Act, which created a new Section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

§ 905.962 Definitions.

Family Investment Center. A facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

Management. All activities for which the IHA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and an IHA, as provided by § 905.969.

Project. For purposes of this subpart, any of the following could be the subject of a management contract:

(1) One or more contiguous buildings.
(2) An area of contiguous row houses.
(3) Scattered site buildings.
(4) Scattered site single-family units.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the IHA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It must be approved by the resident organization. If there is no organization, a majority of the households of the project or projects must approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It must consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it must fairly represent residents from each development that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis.

(4) It must have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

Resident participation. A process of consultation between residents and the IHA concerning matters affecting the management of Indian housing.

§ 905.963 HUD's role in activities under this subpart.

(a) *General.* Subject to the requirements of this part and other requirements imposed on IHAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the IHAs.

(b) *Duty to bargain in good faith.* If an IHA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the IHA to respond with a report stating the IHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

§ 905.964 Resident participation requirements.

(a) *IHA responsibilities.* (1) An IHA must provide the residents or any resident organization with current

information concerning the IHA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) An IHA must consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the IHA and the residents.

(3) When requested by residents, an IHA must provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities.

(c) *Written understanding.* At a minimum, the IHA and the RO shall put in writing their understanding concerning the elements of their relationship.

(d) *Conflict of interest.* Resident council officers cannot serve as contractors or employees if they are in policy making or supervisory positions at the IHA.

§ 905.965 Funding resident participation.

Funding will be provided under subpart J of this part, for the following:

(a) *Resident Organizations.* (1) Subject to appropriations, the IHA shall provide funds to ROs for resident participation activities. Eligibility to receive operating subsidy for duly elected RO activities at $25 per unit per year is an additional category of subsidy eligibility for units represented by a duly elected resident organization under the Performance Funding System. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected ROs. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(2) The IHA and the duly elected resident organization at each development shall collaborate on how the funds will be distributed for resident participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the HUD Headquarters for intervention. HUD Headquarters may require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of renegotiation, Headquarters shall take appropriate actions to settle the dispute in a fair and equitable manner.

(b) *Stipends.* (1) IHAs may provide stipends to officers of the duly elected RO. The stipend, which may be up to $200 per month per officer, shall be decided locally by the ROs and the IHA. Subject to appropriations, the stipends will be funded from the portion of the operating subsidy funding for RO expenses ($15.00 per unit per year). (See definition of annual income in § 905.102 for exclusion for these stipends.)

(2) Funding provided by an IHA to a duly elected RO may be made only under a written agreement between the IHA and a RO, which includes a RO budget and assurance that all RO expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement must require the local RO to account to the IHA for the use of the funds and permit the IHA to inspect and audit the resident council's financial records related to the agreement.

Tenant Opportunities Program

§ 905.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/RMCs to improve living conditions and resident satisfaction in Indian housing communities.

§ 905.967 Eligible TOP activities.

Activities to be funded and carried out by an eligible RO or resident management corporation, as defined in subpart B of this part, must improve the living conditions and Indian housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of a RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of a RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.* (1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

(i) Feasibility and market studies;

(ii) Development of business plans;

(iii) Outreach activities; and

(iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing a resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).* (1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs; and

(6) Training programs on health, nutrition and safety.

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident organizations on youth initiatives and program activities.

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas; and

(e) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(f) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing including contracting/procurement regulations, financial

management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts.

RO/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the IHA, or other sources knowledgeable about the program.

§ 905.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart.

§ 905.969 Resident management requirements.

The following requirements apply when an IHA and its residents are interested in providing for resident performance of management functions in one or more projects under this subpart.

(a) *Resident management corporation.* Residents interested in contracting with an IHA must establish a RMC that meets the requirements for such a corporation, as specified in this subpart.

(b) *Management Contract.* (1) A management contract between the IHA and a RMC is required for resident management. The IHA and the corporation may agree to the performance by the corporation of any or all management functions for which the IHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract must be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation must meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the IHA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the IHA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of an IHA to contract with a RMC.

(c) *Prohibited activities.* An IHA may not contract for assumption by the RMC of the IHA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the IHA) to protect HUD and the IHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

§ 905.970 Management specialist.

The RO must select, in consultation with the IHA, a qualified Indian housing management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the IHA or a consultant.

§ 905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the IHA in accordance with subpart J of this part, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized IHA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget. No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by an IHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the IHA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the IHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will

reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the IHA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host IHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the IHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the IHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the IHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA; or

(ii) Any change in the total income of an IHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to an IHA under subpart J of this part; and

(2) The funds provided by the IHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

§ 905.972 TOP audit and administrative requirements.

(a) *Annual audit of financial statements.* The financial statements of a RMC managing a project under this subpart must be audited annually by a licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the IHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of financial statements of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

Family Investment Centers (FIC) Program

§ 905.980 General.

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) Developing facilities in or near Indian housing for training and support services;

(2) Mobilizing public and private resources to expand and improve the delivery of such services;

(3) Providing funding for such essential training and support services that cannot otherwise be funded; and

(4) Improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. IHAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) Monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program.

(6) Coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

§ 905.982 Eligibility.

An IHA may apply to establish one or more FICs for more than one Indian housing development. An IHA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

§ 905.983 FIC activities.

Activities that may be funded and carried out by an eligible IHA may include:

(a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The acquisition, construction, or renovation of facilities located near the premises of one or more IHA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the IHA or by contract or lease through other appropriate agencies or providers), but only if the IHA demonstrates that:

(1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(2) The IHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

§ 905.984 IHA role in activities under this part.

An IHA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The IHA shall give full and fair consideration to the comments and concerns of the residents.

§ 905.985 HUD policy on training, employment, contracting and subcontracting of Indian housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors shall use best efforts, consistent with existing Federal, State, Tribal and local laws and regulations (including Section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

§ 905.986 Grant Set-Aside Assistance.

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to IHAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

§ 905.987 Resident compensation.

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

(b) The State, local or Tribal minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 905.988 Administrative requirements.

Each IHA receiving a grant shall submit to the HUD Field Office an annual progress report describing and evaluating the use of grant amounts received under this program.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

6. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

7. In § 913.106, paragraph (c) is amended by:

a. Removing the word "or" from the end of paragraph (c)(8)(ii);

b. Adding the word "or" at the end of paragraph (c)(8)(iii);

c. Adding a new paragraph (c)(8)(iv);

d. Removing the word "or" from the end of paragraph (c)(10);

e. Redesignating paragraph (c)(11) as paragraph (c)(12); and

f. Adding a new paragraph (c)(11), to read as follows:

§ 913.106 Annual income.

* * * * *

(c) * * *

(8) * * *

(iv) A resident service stipend, but only if the resident service stipend does not exceed $200 per month/per officer to resident council officers. Stipends are intended to cover costs related to officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment and special clothing.

* * * * *

(11) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937, or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or Local law* means a program providing employment training and supportive services that—

(A) Is authorized by a federal, state or local law;

(B) Is funded by federal, state or local government;

(C) Is operated or administered by a public agency; and

(D) Has as its objective to assist participants in acquiring job skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job.

(This provision does not apply to residents participating in the Family Self-Sufficiency Program who are utilizing the escrow account.)

* * * * *

8. Part 964, consisting of §§ 964.1 through 964.350, is revised in its entirety, to read as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

Subpart A—General Provisions

Sec.
964.1 Purpose.
964.3 Applicability and scope.
964.7 Definitions.
964.11 HUD policy on tenant participation.
964.12 HUD policy on the Tenant Opportunities Program (TOP).
964.14 HUD policy on partnerships.
964.15 HUD policy on resident management.
964.16 HUD role in activities under this part.
964.18 HA role in activities under subparts B & C.
964.24 HUD policy on FIC Program.
964.30 Other Program requirements.

Subpart B—Tenant Participation

964.100 Role of resident council.
964.105 Role of the Jurisdiction-Wide Resident Council.
964.110 Resident membership on HA Board of Commissioners.
964.115 Resident council requirements.
964.117 Resident council partnerships.
964.120 Resident management corporation requirements.
964.125 Eligibility for resident council membership.
964.130 Election procedures and standards.
964.135 Resident involvement in HA management operations.
964.140 Resident training.
964.145 Conflict of interest.
964.150 Funding tenant participation.

Subpart C—Tenant Opportunities Program

964.200 General.
964.205 Eligibility.
964.210 Notice of funding availability.
964.215 Grant agreement.
964.220 Technical assistance.
964.225 Resident management requirements.
964.230 Audit and administrative requirements.

Subpart D—Family Investment Centers (FIC) Program

964.300 General.
964.305 Eligibility.
964.308 Supportive services requirements.
964.310 Audit/compliance requirements.
964.315 HAs role in activities under this part.
964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.
964.325 Notice of funding availability.
964.330 Grant set-aside assistance.
964.335 Grant agreement.
964.340 Resident compensation.
964.345 Treatment of income.
964.350 Administrative requirements.

Authority: 42 U.S.C. 1437d, 1437g, 1437l, 1437r, 1437t, 3535(d).

Subpart A—General Provisions

§ 964.1 Purpose.

The purpose of this part is to recognize the importance of resident involvement in creating a positive living environment and in actively participating in the overall mission of public housing.

§ 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any HA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

(b) Subpart B of this part contains HUD policies, procedures, and requirements for the participation of residents in public housing operations. These policies, procedures, and requirements apply to all residents participating under this part.

(c)(1) Subpart C of this part contains HUD policies, procedures, and requirements for residents participating in the Tenant Opportunities Program (TOP) (replaces the Resident Management Program under Section 20 of the United States Housing Act of 1937). Resident management in public housing is viable and remains an option under TOP.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements for resident management in public housing between a PHA and a resident management corporation. On or after September 23, 1994, any new, renewed or renegotiated contracts must meet the requirements of this part, the ACC and all applicable laws and regulations.

(d) Subpart D of this part includes requirements for the Family Investment Centers (FIC) Program which was established by Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) to provide families living in public housing and Indian housing with better access to educational and employment opportunities.

(e) The term "resident," as used throughout this part, is interchangeable with the term "tenant," to reflect the fact that local resident organizations have differing preferences for the terms. Terms such as "resident council" and "tenant council" and "resident management" and "tenant management" are interchangeable. Hereafter, for ease of discussion, the rule will use the terms resident, resident council and resident management corporation, as appropriate.

§ 964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which HUD agrees to provide financial assistance, and the HA agrees to comply with HUD requirements for the development and operation of the public housing project.

Eligible residents for FIC. A participating resident of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program. Although Section 8 FSS families are eligible residents for FIC, they do not qualify for income exclusions that are provided for public housing residents participating in employment and supportive service programs.

Family Investment Centers (FIC). A facility on or near public housing which provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

FIC service coordinator. Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding.

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs, and other education and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Management. All activities for which the HA is responsible to HUD under the ACC, within the definition of

"operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and a HA, as provided by subpart C.

Public Housing Agency (HA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing.

Public housing development (Development). The term "development" has the same meaning as that provided for "low-income housing project" as that term is defined Section 3(b)(1) of the Act.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident management corporation. An entity that proposes to enter into, or enters into, a contract to manage one or more management activities of a HA.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

Supportive services for FIC. New or significantly expanded services that are essential to providing families living with children in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

Tenant Opportunities Program (TOP). The TOP program is designed to prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, to move toward financial independence, and to enable them to choose where they want to live and engage in meaningful participation in the management of housing developments in which they live. Financial assistance in the form of technical assistance grants is available to RCs/RMCs to prepare to manage activities in their public housing developments.

Vacant unit under FIC. A dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total resident payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

§ 964.11 HUD policy on tenant participation.

HUD promotes resident participation and the active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA. HUD encourages HAs and residents to work together to determine the most appropriate ways to foster constructive relationships, particularly through duly-elected resident councils.

§ 964.12 HUD policy on the Tenant Opportunities Program (TOP).

HUD promotes TOP programs to support activities that enable residents to improve the quality of life and resident satisfaction, and obtain other social and economic benefits for residents and their families. Tenant opportunity programs are proven to be effective in facilitating economic uplift, as well as in improving the overall conditions of the public housing communities.

§ 964.14 HUD policy on partnerships.

HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. Strong partnerships are critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community.

§ 964.15 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages HAs, resident councils and resident management corporations to explore the various functions involved in management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident-managed entities include improved quality of life, experiencing the dignity of meaningful work, enabling residents to choose where they want to live, and meaningful participation in the management of the housing development.

§ 964.16 HUD role in activities under this part.

(a) *General.* Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation including resident management are local decisions to be made jointly by resident councils/resident management corporations and their HAs. HUD will promote tenant participation and tenant opportunities programs, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with these initiatives.

(b) *Monitoring.* HUD shall ensure that the requirements under this part are operating efficiently and effectively.

§ 964.18 HA role in activities under subparts B & C.

(a) *HAs with 250 units or more.*

(1) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(2) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(3) A HA may consult with residents, or resident councils (if they exist), to determine the extent to which residents desire to participate in activities involving their community, including the management of specific functions of a public housing development that may be mutually agreeable to the HA and the resident council/resident management corporation.

(4) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(5) If requested, a HA should provide a duly recognized resident council office space and meeting facilities, free of charge, preferably within the development it represents. If there is no community or rental space available, a request to approve a vacant unit for this non-dwelling use will be considered on a case-by-case basis.

(6) If requested, a HA shall negotiate with the duly elected resident council on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the HA and the resident council. If a HA fails to negotiate with a resident council in good faith or, after negotiations,

refuses to permit such usage of community space, the resident council may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the resident council's efforts to negotiate a written agreement. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the request or for refusing to negotiate. HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on an agreement. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(7) In no event shall HUD or a HA recognize a competing resident council once a duly elected resident council has been established. Any funding of resident activities and resident input into decisions concerning public housing operations shall be made only through the officially recognized resident council.

(8) The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident committees to work on issues and planning.

(9) The resident council shall hold frequent meetings with the residents to ensure that residents have input, and are aware and actively involved in HA management-resident council decisions and activities.

(10) The HA and resident council shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

(11) The HA, in collaboration with the resident councils, shall assume the lead role for assuring maximum opportunities for skills training for public housing residents. To the extent possible, the training resources should be local to ensure maximum benefit and on-going access.

(b) *HAs with fewer than 250 units.* (1) HAs with fewer than 250 units of public housing have the option of participating in programs under this part.

(2) HAs shall not deny residents the opportunity to organize. If the residents decide to organize and form a resident council, the HA shall comply with the following:

(i) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(ii) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(iii) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(iv) In no event shall HUD or a HA officially recognize a competing resident council once a duly elected resident council has been established. If a duly elected resident council has been formed, any input into changes concerning public housing operations shall be made only through the officially recognized resident council.

§ 964.24 HUD policy on FIC Program.

HUD promotes Family Investment Centers which provide better access to educational and employment opportunities for residents living in public housing. HUD encourages resident involvement in the FIC Program and promotes resident-HA partnerships to achieve mutual goals.

§ 964.30 Other Program requirements.

All programs under this part must be conducted and administered in accordance with the Civil Rights requirements cited below and comply with all other Federal laws, executive orders, regulations and policies.

(a) *Fair Housing Requirements.* The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and regulations pursuant thereto (24 CFR Part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR Part 107); the fair housing poster regulations (24 CFR Part 110) and the advertising guidelines (24 CFR Part 109).

(b) *Nondiscrimination in Housing.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR Part 1).

(c) *Discrimination on the Basis of Age or Handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR Part 146), and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8).

(d) *Employment Opportunities.* The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects).

(e) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11246, 11625 12432, and 12138. Consistent with HUD's responsibilities under these orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(f) *Affirmative Outreach.* The Affirmative Fair Housing Marketing Program requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR part 108.

(g) *Disability Requirements—Fair Housing Act, Section 504 and the Americans with Disabilities Act.* The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. Recipient must also comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35.

Subpart B—Tenant Participation

§ 964.100 Role of resident council.

The role of a resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing. Resident councils may actively participate through a working partnership with the HA to advise and assist in all aspects of public housing operations.

§ 964.105 Role of the jurisdiction-wide resident council.

(a) *Jurisdiction-wide resident council.* Resident councils may come together to form an organization which can represent the interest of residents residing in units under a HA's jurisdiction. This can be accomplished by the presidents of duly elected resident councils forming an organization, by resident councils electing a representative to the organization, or through jurisdiction-wide elections. If duly elected resident councils form such an organization, the HA shall recognize it as the voice of authority-wide residents for input into housing authority policy making.

(b) *Function.* The jurisdiction-wide council may advise the Board of

Commissioners and executive director in all areas of HA operations, including but not limited to occupancy, general management, maintenance, security, resident training, resident employment, social services and modernization priorities.

(c) *Cooperation with other groups.* There shall be regularly scheduled meetings between the HA and the local duly elected resident council, and the jurisdiction-wide resident council to discuss problems, plan activities and review progress.

§ 964.110 Resident membership on HA Board of Commissioners.

HUD encourages to the maximum extent possible resident membership on HA Board of Commissioners, for the purpose of having maximum input into HA policy and decision-making on matters concerning public housing.

§ 964.115 Resident council requirements.

A resident council shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(a) It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses; or

(3) In one or more contiguous buildings;

(4) In a development; or

(5) In a combination of these buildings or developments;

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(c) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five (5) elected board members.

The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

§ 964.117 Resident council partnerships.

A resident council may form partnerships with outside organizations, provided that such relationships are complementary to the resident council in its duty to represent the residents, and provided that such outside organizations do not become the governing entity of the resident council.

§ 964.120 Resident management corporation requirements.

A resident management corporation must consist of residents residing in public housing and have each of the following characteristics in order to receive official recognition by the HA and HUD:

(a) It shall be a non-profit organization that is validly incorporated under the laws of the State in which it is located;

(b) It may be established by more than one resident council, so long as each such council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation;

(c) It shall have an elected Board of Directors, and elections must be held at least once every three (3) years;

(d) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(e) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in the public housing represented by the resident management corporation;

(f) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

§ 964.125 Eligibility for resident council membership.

(a) Any member of a public housing household whose name is on the lease of a unit in the public housing development and meets the requirements of the by-laws is eligible to be a member of a resident council. The resident council may establish additional criteria that are non-discriminatory and do not infringe on rights of other residents in the development. Such criteria must be stated in the by-laws or constitution as appropriate.

(b) The right to vote for resident council board shall be limited to designated heads of households (any age) and other members of the household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

(c) Any qualified voting member of a resident council who meets the requirements described in the by-laws and is in compliance with the lease may seek office and serve on the resident council governing board.

§ 964.130 Election procedures and standards.

At a minimum, a resident council may use local election boards/commissions. The resident council shall use an independent third-party to oversee elections and recall procedures.

(a) Resident councils shall adhere to the following minimum standards regarding election procedures:

(1) All procedures must assure fair and frequent elections of resident council members—at least once every three years for each member.

(2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.

(3) Each resident council shall adopt and issue election and recall procedures in their by-laws.

(4) The election procedures shall include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(5) All voting members of the resident community must be given sufficient notice (at least 30 days) for nomination and election. The notice should include a description of election procedures, eligibility requirements, and dates of nominations and elections.

(b) If a resident council fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted, HUD shall require the HA to withdraw recognition of the resident council and to withhold resident services funds as

well as funds provided in conjunction with services rendered for resident participation in public housing.

(c) HAs shall monitor the resident council election process and shall establish a procedure to appeal any adverse decision relating to failure to satisfy HUD minimum standards. Such appeal shall be submitted to a jointly selected third-party arbitrator at the local level. If costs are incurred by using a third-party arbitrator, then such costs should be paid from the HAs resident services funds pursuant to § 964.150.

§ 964.135 Resident involvement in HA management operations.

Residents shall be involved and participate in the overall policy development and direction of Public Housing operations.

(a) Resident management corporations (RMCs) may contract with HAs to perform one or more management functions provided the resident entity has received sufficient training and/or has staff with the necessary expertise to perform the management functions and provided the RMC meets bonding and licensing requirements.

(b) Residents shall be actively involved in a HA's decision-making process and give advice on matters such as modernization, security, maintenance, resident screening and selection, and recreation.

(c) While a HA has responsibility for management operations, it shall ensure strong resident participation in all issues and facets of its operations through the duly elected resident councils at public housing developments, and with jurisdiction-wide resident councils.

(d) A HA shall work in partnership with the duly elected resident councils.

(e) HAs, upon request from the duly elected resident council, shall ensure that the duly elected resident council officers as defined in subpart B of this part, and other residents in the development are fully trained and involved in developing and implementing Federal programs including but not limited to Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grant Program, Urban Revitalization Demonstration, Drug Elimination, and FIC.

(f) HAs shall involve resident council officers and other interested residents at the development through education and direct participation in all phases of the budgetary process.

(g) Resident council officers shall be encouraged to become involved in the resident screening and selection process for prospective residents at the development. Those selected to perform resident screening and selection functions must be trained by the HA in resident screening and selection and must sign a legal document committing to confidentiality.

§ 964.140 Resident training.

(a) *Resident training opportunities.* HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

(1) Community organization and leadership training;

(2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;

(3) Public housing policies, programs, rights and responsibilities training; and

(4) Business entrepreneurial training, planning and job skills.

(b) *Local training resources.* HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:

(1) Resident organizations;

(2) Housing authorities;

(3) Local community colleges, vocational schools; and

(4) HUD and other Federal agencies and other local public, private and non-profit organizations.

§ 964.145 Conflict of interest.

Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the HA.

§ 964.150 Funding tenant participation.

(a) *Funding duly elected resident councils and jurisdiction wide resident councils.* (1) The HA shall provide funds it receives for this purpose to the duly elected resident council at each development and/or those jurisdiction-wide councils eligible to receive the resident portion of the tenant services account to use for resident participation activities. This shall be an addition to the Performance Funding System (PFS), as provided by 24 CFR part 990, to permit HAs to fund $25 per unit per year for units represented by duly elected resident councils for resident services, subject to the availability of appropriations. Of this amount, $15 per unit per year would be provided to fund tenant participation activities under subpart B of this part for duly elected resident councils and/or jurisdiction-wide councils and $10 per unit per year would be used by the HA to pay for costs incurred in carrying out tenant participation activities under subpart B of this part, including the expenses for conducting elections, recalls or arbitration required under § 964.130 in subpart B. This will guarantee the resources necessary to create a bona fide partnership among the duly elected resident councils, the HA and HUD. Where both local and jurisdiction-wide councils exist, the distribution will be agreed upon by the HA and the respective councils.

(2) If funds are available through appropriations, the HA must provide tenant services funding to the duly elected resident councils regardless of the HA's financial status. The resident council funds shall not be impacted or restricted by the HA financial status and all said funds must be used for the purpose set forth in subparts B and C of this part.

(3) The HA and the duly elected resident council at each development and/or those jurisdiction-wide councils shall collaborate on how the funds will be distributed for tenant participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the Field Office for intervention. HUD Field Office shall require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of the Field Office intervention, the Field Office shall refer the matter to HUD Headquarters for final resolution.

(b) *Stipends.* (1) HUD encourages HAs to provide stipends to resident council officers who serve as volunteers in their public housing developments. The amount of the stipend, up to $200 per month/per officer, shall be decided locally by the resident council and the HA. Subject to appropriations, the stipends will be funded from the resident council's portion of the operating subsidy funding for resident council expenses ($15.00 per unit per year).

(2) Pursuant to § 913.106, stipends are not to be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(3) Funding provided by a HA to a duly elected resident council may be made only under a written agreement between the HA and a resident council, which includes a resident council budget and assurance that all resident council expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation

of the local development. The agreement must require the local resident council to account to the HA for the use of the funds and permit the HA to inspect and audit the resident council's financial records related to the agreement.

Subpart C—Tenant Opportunities Program

§ 964.200 General.

(a) The Tenant Opportunities Program (TOP) provides technical assistance for various activities, including but not limited to resident management, for resident councils/resident management corporations as authorized by Section 20 of the U.S. Housing Act of 1937. The TOP provides opportunities for resident organizations to improve living conditions and resident satisfaction in public housing communities.

(b) This subpart establishes the policies, procedures and requirements for participating in the TOP with respect to applications for funding for programs identified in this subpart.

(c) This subpart contains the policies, procedures and requirements for the resident management program as authorized by section 20 of the U.S. Housing Act of 1937.

§ 964.205 Eligibility.

(a) *Resident councils/resident management corporations.* Any eligible resident council/resident management corporation as defined in subpart B of this part is eligible to participate in a program administered under this subpart.

(b) *Activities.* Activities to be funded and carried out by an eligible resident council or resident management corporation, as defined in subpart B of this part, must improve the living conditions and public housing operations and may include any combination of, but are not limited to, the following:

(1) *Resident capacity building.* (i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of resident management enablement for a specific project or projects; and

(iii) Assisting in the actual creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(2) *Resident management.* (i) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(ii) Training of residents with respect to fair housing requirements; and

(iii) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(3) *Resident management business development.* (i) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(ii) Technical assistance and training in resident managed business development through:

(A) Feasibility and market studies;

(B) Development of business plans;

(C) Outreach activities; and

(D) Innovative financing methods including revolving loan funds; and

(iii) Legal advice in establishing a resident managed business entity.

(4) *Social support needs (such as self-sufficiency and youth initiatives).* (i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, etc;

(iii) Management-related employment training and counseling;

(iv) Coordination of support services;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition and safety;

(vii) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas;

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident councils on youth initiatives and program activities; and

(5) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(6) *General.* (i) Required training on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project and property management;

(ii) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(iii) Training in accessing other funding sources; and

(iv) Hiring trainers or other experts (RCs/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the HA, or other sources knowledgeable about the program).

§ 964.210 Notice of funding availability.

A Notice of Funding Availability shall be published periodically in the Federal Register containing the amounts of funds available, funding criteria, where to obtain and submit applications, and the deadline for submissions.

§ 964.215 Grant agreement.

(a) *General.* HUD shall enter into a grant agreement with the recipient of a technical assistance grant which defines the legal framework for the relationship between HUD and a resident council or resident management corporation for the proposed funding.

(b) *Term of grant agreement.* A grant shall be for a term of three to five years (3–5 years), and renewable at the expiration of the term.

§ 964.220 Technical assistance.

(a) *Financial assistance.* HUD will provide financial assistance, to the extent available, to resident councils or resident management corporations for technical assistance and training to further the activities under this subpart.

(b) *Requirements for a management specialist.* If a resident council or resident management corporation seeks to manage a development, it must select, in consultation with the HA, a qualified housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties in connection with the daily operations of the project.

§ 964.225 Resident management requirements.

The following requirements apply when a HA and its residents are interested in providing for resident performance of several management functions in one or more projects.

(a) *Resident management corporation responsibilities.* Resident councils interested in contracting with a HA must establish a resident management corporation that meets the requirements

for such a corporation, as specified in subpart B. The RMC and its employees must demonstrate their ability and skill to perform in the particular areas of management pursuant to the management contract.

(b) *HA responsibilities.* HAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the HA. A HA shall enter into good-faith negotiations with a corporation seeking to contract to provide management services.

(c) *Duty to bargain in good faith.* If a HA refuses to negotiate with a resident management corporation in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(d) *Management contract.* A management contract between the HA and a resident management corporation is required for property management. The HA and the resident management corporation may agree to the performance by the corporation of any or all management functions for which the HA is responsible to HUD under the ACC and any other functions not inconsistent with the ACC and applicable state and local laws, regulations and licensing requirements.

(e) *Procurement requirements.* The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the HA is subject. Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of a HA to contract with a RMC.

(f) *Rights of families; operation of project.* If a resident management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of part 941 of this chapter, the resident management program may not, as determined by the HA, interfere with the rights of other residents of such project or harm the efficient operation of such project.

(g) *Comprehensive improvement assistance with RMCs.* (1) The HA may enter into a contract with the RMC to provide comprehensive improvement assistance under part 968 of this chapter to modernize a project managed by the RMC.

(2) The HA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the RMC provide otherwise by contract.

(3) In assessing the modernization needs of its projects under 24 CFR part 968, or other grant mechanisms established by the Housing and Community Development Act of 1987, the HAs must consult with the tenant management corporation regarding any project managed by the corporation, in order to determine the modernization needs and preferences of resident-managed projects. Evidence of this required consultation must be included with a HA's initial submission to HUD.

(h) *Prohibited activities.* A HA may not contract for assumption by the resident management corporation of the HA's underlying responsibilities to HUD under the ACC.

(i) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the HA) to protect HUD and the HA against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(j) *Waiver of HUD requirements.* Upon the joint request of a resident management corporation and the HA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the resident management corporation and the HA, that the requirement unnecessarily increases the costs to the project or restricts the income of the project; and that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Any waiver granted to a resident management corporation under this section will apply as well to the HA to the extent the waiver affects the HA's remaining responsibilities relating to the resident management corporation's project.

(k) *Monitoring of RMC performance.* The HA must review periodically (but not less than annually) the management corporation's performance to ensure that it complies with all applicable requirements and meets agreed-upon standards of performance. (The method of review and criteria used to judge performance should be specified in the management contract.)

§ 964.230 Audit and administrative requirements.

(a) *TOP grant recipients.* The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreement with HUD for the purpose of audit or other examinations.

(1) Grant recipients must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

(2) A final audit shall be required of the financial statements made pursuant to this subpart by a Certified Public Accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance.

(b) *Resident management corporations.* Resident management corporations who have entered into a contract with a HA with respect to management of a development(s) must comply with the requirements of OMB Circulars A–110 and A–122, as applicable. Resident management corporations managing a development(s) must be audited annually by a licensed certified public accountant, designated by the corporation, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the HA within 30 days of issuance. These requirements are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

Subpart D—Family Investment Centers (FIC) Program

§ 964.300 General.

The Family Investment Centers Program provides families living in public housing with better access to educational and employment opportunities by:

(a) Developing facilities in or near public housing for training and support services;

(b) Mobilizing public and private resources to expand and improve the delivery of such services;

(c) Providing funding for such essential training and support services that cannot otherwise be funded; and

(d) Improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services. FIC provides funding to HAs to access educational, housing, or other social service programs to assist public housing residents toward self-sufficiency.

§ 964.305 Eligibility.

(a) *Public Housing Authorities.* HAs may apply to establish one or more FICs for more than one public housing development.

(b) *FIC Activities.* Activities that may be funded and carried out by eligible HAs, as defined in § 964.305(a) and § 964.310(a) may include:

(1) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(2) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(3) The acquisition, construction or renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(4) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(5) The employment of service coordinators.

(c) *Follow up.* A HA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

(d) *Environmental Review.* Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under § 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns.

§ 964.308 Supportive services requirements.

HAs shall provide new or significantly expanded services essential to providing families in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(a) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(b) Employment training and counseling (e.g., job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(c) Computer skills training;

(d) Education (e.g., remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(e) Business entrepreneurial training and counseling;

(f) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(g) Personal welfare (e.g., substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(h) Supportive Health Care Services (e.g., outreach and referral services); and

(i) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

§ 964.310 Audit/compliance requirements.

HAs cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the HA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [HAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [HAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

§ 964.315 HAs role in activities under this part.

The HAs shall develop a process that assures that RC/RMC representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application for funding. The HA shall give full and fair consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) After HUD approval of a grant, notify the duly elected resident organization and if none exists, notify the residents of the development of the approval of the grant; provide notification of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, HAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance. Training, employment and contracting opportunities connected with programs funded under the FIC and TOP are covered by Section 3.

§ 964.325 Notice of funding availability.

A Notice of Funding Availability will be published periodically in the **Federal Register** containing the amounts of funds available, funding criteria, where to obtain and submit applications, the deadline for the submissions, and further explanation of the selection criteria.

§ 964.330 Grant set-aside assistance.

The Department may make available five percent (5%) of any amounts available in each fiscal year (subsequent to the first funding cycle) available to eligible HAs to supplement grants previously awarded under this program. These supplemental grants would be awarded if the HA demonstrates that the funds cannot otherwise be obtained and are needed to maintain adequate levels of services to residents.

§ 964.335 Grant agreement.

(a) *General.* HUD will enter into a grant agreement with the recipients of a Family Investment Centers grant which defines the legal framework for the relationship between HUD and a HA.

(b) *Term of grant agreement.* A grant will be for a term of three to five years depending upon the tasks undertaken, as defined under this subpart.

§ 964.340 Resident compensation.

Residents employed to provide services or renovation or conversion work funded under this program shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 964.345 Treatment of income.

Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the resident's total annual income that is used to determine the resident rental payment during:

(a) The period that the resident participates in the program; and

(b) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(1) The date the resident ceases to continue employment without good cause; or

(2) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program. (See § 913.106, Annual Income.) This provision does not apply to residents participating in the Family Self-Sufficiency Program who are utilizing the escrow account.

§ 964.350 Administrative requirements.

The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreements with HUD for the purpose of audit or other examinations.

(a) Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

(b) The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 are applicable with respect to the acceptance and use of assistance by private nonprofit organizations.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

9. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

10. In § 990.108, new paragraphs (f) and (g) are added, to read as follows:

§ 990.108 Other costs.

* * * * *

(f) *Funding for Resident Council expenses.* In accordance with the provisions of 24 CFR part 964 and procedures determined by HUD, each HA shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly elected resident council in support of the duly elected resident council's activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected resident council and/or jurisdiction-wide councils, including but not limited to stipends. Ten dollars per unit per year shall fund HA costs incurred in carrying out resident participation activities.

(g) *Funding for Resident Council office space.* If there is no community or rental space available, and HUD has approved the use of a vacant rental unit for Resident Council office space, the unit will be eligible for operating subsidy (subject to appropriations) at the rate of the AEL for the number of months the unit is devoted to such use.

* * * * *

11. A new subpart D, consisting of §§ 990.401 through 990.405, is added to read as follows:

Subpart D—Resident Management Corporations Operating Subsidy

Sec.

990.401 Calculation of operating subsidy.
990.402 Calculation of total income and preparation of operating budget.
990.403 Adjustments to total income.
990.404 Retention of excess revenues.
990.405 Use of retained revenues.

Subpart D—Resident Management Corporations Operating Subsidy

§ 990.401 Calculation of operating subsidy.

Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in

accordance with this part, with the following exceptions:

(a) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized HA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects in accordance with § 990.105(e)(5).

(b) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(c) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(d) Any reduction in the subsidy of a HA that occurs as a result of fraud, waste, or mismanagement by the HA shall not affect the subsidy calculation for the resident management corporation project.

§ 990.402 Calculation of total income and preparation of operating budget.

(a) Subject to § 990.403, the amount of funds provided by a HA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(b) For purposes of determining the amount of funds provided to a project under § 990.402(a) of this section, the provision of technical assistance by the HA to the resident management corporation will not be included.

(c) The resident management corporation and the HA must submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with § 990.401, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to the functions which will continue to be performed by the HA.

(d) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host HA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available to the HA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the HA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(e) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(f) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV.1 and interest generated will be included in the calculation of operating subsidy in accordance with this part.

§ 990.403 Adjustments to total income.

(a) Operating subsidy calculated in accordance with § 964.401 of this chapter will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(b) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with § 990.401 of this subpart, the contract may specify that income be provided to the project from other sources of income of the HA.

(c) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(1) Any reduction in the total income of a HA that occurs as a result of fraud, waste, or mismanagement by the HA.

(2) Any change in the total income of a HA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

§ 990.404 Retention of excess revenues.

(a) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved as specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a HA under part 990, subpart A.

(2) The funds provided by the HA to the resident management corporation.

(b) The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the HA (such as operating subsidy under part 990, subpart A, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

§ 990.405 Use of retained revenues.

Any revenues retained by a resident management corporation under § 990.404 of this subpart may only be used for purposes of improving the maintenance and operation of the project, establishing businesses enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

Dated: August 18, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species: Final Five Plants From San Bernardino Mountains, California; Texas Ayenia, etc.; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plants Ayenia limitaris (Texas Ayenia) and Ambrosia cheiranthifolia (South Texas Ambrosia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines *Ayenia limitaris* (Texas ayenia) and *Ambrosia cheiranthifolia* (South Texas ambrosia) to be endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. Texas ayenia is known from a single population in Hidalgo County, Texas. South Texas ambrosia has been verified recently from eight populations, four in Nueces County, three in Kleberg County, and one overlapping both counties in Texas. These species are threatened by habitat destruction and fragmentation through alteration and conversion of native plant communities to commercial uses; displacement by invasive nonnative grasses; and low population numbers. This action will implement Federal protection provided by the Act for Texas ayenia and South Texas ambrosia. Critical habitat is not being designated.

EFFECTIVE DATE: September 23, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Corpus Christi Ecological Services Field Office, U.S. Fish and Wildlife Service, c/o Texas A&M University at Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

FOR FURTHER INFORMATION CONTACT: Angela Brooks, at the above address (telephone 512/994–9005; facsimile 512/994–8262).

SUPPLEMENTARY INFORMATION:

Background

Texas ayenia, a member of the cacao family, was first collected in Hidalgo County, Texas, by C.G. Pringle in 1888, and was named *Nephropetalum pringlei* by B.L. Robinson and J.M. Greenman in 1896. In 1960, Carmen Cristóbal revised the genus *Ayenia* and described *Ayenia limitaris* as a new species. The previously described *Nephropetalum pringlei* was not mentioned in the revision. Prior to Cristóbal's description of *Ayenia limitaris* in 1960, South Texas specimens of this species had been identified as *A. berlandieri*, a species of tropical Mexico. In 1986, Laurence Dorr and Lisa Barnett transferred *Nephropetalum pringlei* to the genus *Ayenia* and reduced it to synonymy with *Ayenia limitaris*.

Texas ayenia is a pubescent subshrub approximately 60–150 centimeters (cm) (2–5 feet (ft)) tall, with alternate, simple leaves. The cordate-based leaves are approximately 8 cm (3 inches (in)) long and 3.5 cm (1.4 in) wide. The inflorescences are axillary, up to 4 per node, with each inflorescence supporting two or more perfect flowers. Flower color has been reported as green, pink, or cream. The fruit is a 5-celled, pubescent capsule approximately 8 millimeters (mm) (0.3 in) long, with short, curved prickles (Damude and Poole 1990).

Texas ayenia occurs at low elevations in dense subtropical woodland communities. Previous collectors have found the plant in openings within chaparral and along the edges of thickets (Correll and Johnston 1979). The present site is a Texas Ebony-Anacua (*Pithecellobium ebano-Ehretia anacua*) plant community located within the Arroyo Colorado drainage. This area was once an active floodplain; however, the effect of past flooding on Texas ayenia is unknown.

The Texas Ebony-Anacua plant community, which occurs on well drained, but heavy soils on riparian terraces, once covered much of the Rio Grande delta (Diamond 1990). Canopy cover is close to 95 percent in this climax community type (Damude and Poole 1990). Associated species include la coma (*Bumelia celastrina*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and snake-eyes (*Phaulothamnus spinescens*). The Texas Ebony-Anacua community grades into the Texas Ebony-Snake-eyes community in the drier portions of the woodland habitat (Diamond 1990). Both plant communities have been reduced to discontinuous fragments, often surrounded by agricultural fields, pastures, or urban development, and now cover less than 5 percent of their original area (Jahrsdoerfer and Leslie 1988).

Texas ayenia occurred historically in Cameron and Hidalgo Counties in the United States, and the states of Coahuila, Nuevo Leon, and Tamaulipas in Mexico. The only recent collection in Mexico was from a Tamaulipan population in 1981; however, the present status of this population is unknown (Damude and Poole 1990). Texas ayenia has not been relocated at any of the historic Cameron County locations since the early 1960s. The status report by Damude and Poole (1990) noted a 1988 observation of six spindly plants at the Hidalgo County site, and the following year only one individual was observed.

Searches were undertaken in 1990 and 1991 by a number of personnel from the Service and Texas Parks and Wildlife Department, but no plants were found. In 1992, Service personnel and Jim Everitt of the U.S. Department of Agriculture located one plant at the Hidalgo County site. In 1994, Joe Ideker (Native Plant Project, McAllen, Texas, pers.comm. 1994) located 20 additional plants at this site. This site, on private property, is the only one recently verified for the species.

South Texas ambrosia was first collected in San Fernando, Tamaulipas, Mexico, by Luis Berlandier in 1835, and was named *Ambrosia cheiranthifolia* by A. Gray in 1859. The first United States collection was made in 1932 by Robert Runyon from an area near Barreda (now Russelltown) in Cameron County, Texas (Turner 1983).

South Texas ambrosia, a member of the aster family, is a herbaceous, erect, silvery to grayish-green, rhizomatous perennial plant, 10–30 cm (0.3–1.0 ft) tall. Its simple leaves are usually opposite on the lower portion of the plant and alternate above. The staminate flower heads are arranged in inconspicuous terminal racemes 5–10 cm (2–4 in) long. The pistillate flower heads are in small clusters in the leaf axils just below the staminate racemes (Turner 1983). Due to its rhizomatous growth, a single plant may be represented by hundreds of clonal stems.

South Texas ambrosia grows at low elevations in open clay-loam to sandy-loam prairies and savannas. Much of the original native habitat for South Texas ambrosia has been converted to agricultural fields, improved pastures, or urban areas. Many savanna areas have been cleared and planted to nonnative grasses, such as buffelgrass (*Cenchrus ciliaris*), which outcompete and eventually displace much of the native vegetation. Other potential prairie habitat may now be invaded by thorny shrub and tree species as a result of fire suppression or overgrazing. South Texas ambrosia does not appear to survive intensive plowing, blading, or disking; however, some lesser soil disturbance may enhance its growth. Associated native grasses found at the existing sites include Texas grama (*Bouteloua rigidiseta*), buffalo grass (*Buchloe dactyloides*), Texas speargrass

(*Stipa leucotricha*), and tobosa (*Hilaria mutica*). Invading nonnative grasses found at the sites include buffelgrass, King Ranch bluestem (*Bothriochloa ischaemum* var. *songarica*), bermuda grass (*Cynodon dactylon*), and St. Augustine grass (*Stenotaphrum secundatum*) (U.S. Fish and Wildlife Service 1988). Associated native woody species found scattered throughout the existing sites include mesquite (*Prosopis glandulosa*), huisache (*Acacia smallii*), huisachillo (*Acacia schaffneri*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and lotebush (*Ziziphus obtusifolia*).

Historically, South Texas ambrosia occurred in Cameron, Jim Wells, Kleberg, and Nueces counties in South Texas, and the state of Tamaulipas in Mexico. The current status of any Mexican populations is unknown. The historic populations in Cameron and Jim Wells counties have not been relocated. Only one location noted in the status report (Turner 1983) is known to be still extant. Three populations, two in Nueces County, and one in Kleberg County, were discovered by Ruth O'Brien (Texas A&M University at Corpus Christi, pers. comm. 1993). Three Nueces County populations were discovered in 1992 and 1993 by William Carr (Texas Parks and Wildlife Department, pers. comm. 1993). The extant populations occur on private land, highway and railroad rights-of-way, and the Kingsville Naval Air Station. Four historic locations for South Texas ambrosia, one extirpated and three extant, also support the endangered slender rush-pea (*Hoffmannseggia tenella*), which was federally listed (50 FR 45624; November 1, 1985) because of threats similar to those affecting South Texas ambrosia. One known location for South Texas ambrosia also supports the endangered black lace cactus (*Echinocereus reichenbachii* var. *albertii*), which was federally listed (44 FR 61918; October 26, 1979) because of habitat destruction and collecting threats.

Federal action on these species began as a result of section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and giving notice of its intention to review the status of the plants named therein. *Ambrosia cheiranthifolia* was included as endangered, and *Ayenia limitaris*, then under the name *Nephropetalum pringlei*, was included as extinct in the Smithsonian report and Service notice.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered. *Ambrosia cheiranthifolia* was included in the June 16, 1976, proposal. The 1978 amendments to the Act required that all proposals over two years old be withdrawn, although a one year grace period was given to proposals already over two years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals that had expired.

A list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, **Federal Register** (45 FR 82479). *Ambrosia cheiranthifolia* was included in Category 2 of the list and *Nephropetalum pringlei* was included in Category 1*. Category 2 species are those for which there is some evidence of vulnerability, but for which there are insufficient data to support listing proposals at the time. Category 1 species are those for which the Service has on file substantial data on biological vulnerability and threats to support the preparation of listing proposals. Category 1* species are also those whose status in the recent past is known to support listing, but that may have already become extinct.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within one year of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all of the plants contained therein, including *Nephropetalum pringlei* (=*Ayenia limitaris*) and *Ambrosia cheiranthifolia*, were treated as being newly petitioned on October 13, 1982. In each year from 1983 through 1992, the Service found that the petitioned action was warranted, but listings of *Ayenia limitaris* and *Ambrosia cheiranthifolia* were precluded by other listing actions of higher priority in accordance with section 4(b)(3)(B)(iii) of the Act.

A status report on South Texas ambrosia was completed May 20, 1983 (Turner 1983). This report provided sufficient biological information to justify proposing to list South Texas ambrosia as endangered.

Notices revising the 1980 list of plants under review for listing as endangered or threatened species were published in the **Federal Register** on September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). *Nephropetalum pringlei* (=*Ayenia limitaris*) was included in Category 2 and *Ambrosia cheiranthifolia* was included in Category 1 of these notices.

A status report on Texas ayenia was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient biological information to justify proposing to list Texas ayenia as endangered.

The proposed rule to list Texas ayenia and South Texas ambrosia as endangered was published in the **Federal Register** on August 5, 1993 (58 FR 41696). Publication of that proposed rule constituted the final one-year finding for these species.

Summary of Comments and Recommendations

In the August 5, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, which invited general public comment, were published in the *Monitor* (McAllen, Texas) and the *Corpus Christi Caller Times* (Corpus Christi, Texas) on August 20, 1993, and August 17, 1993, respectively. Three comments were received. Two commenters supported the listing; one commenter was neutral. Issues raised by commenters are discussed below.

Issue 1—The proposed rule fails to note industrial development as one of the major causes of habitat loss for rare plants.

Service Response—The Service has included industrial development as a threat in this final rule.

Issue 2—From the proposed rule discussion of the taxonomic history of Texas ayenia it is unclear why the correct scientific name is not *Ayenia pringlei* because *Nephropetalum pringlei* is an earlier name than *Ayenia limitaris*.

Service Response—Dorr and Barnett (1986) concluded that the correct placement of this species was within the genus *Ayenia*. However, the specific epithet *pringlei* had already been used

for another species in *Ayenia*. So, although the name *Nephropetalum pringlei* is earlier than *Ayenia limitaris*, the use of *pringlei* as the specific epithet would create two species with the same name, which is not allowed by the rules of botanical nomenclature.

Issue 3—Records for South Texas ambrosia indicate 25 occurrences, with 17 of them extant. Records show 5 occurrences in Nueces County, 11 in Kleberg County, and 1 occurrence overlapping in both counties.

Service Response—The discrepancy between the number of occurrences given in the comment letter and the number of populations reported in the proposed rule is due to the Service considering several of the occurrences to be close enough together to be part of a single population.

Issue 4—One commenter noted that if individuals of either species were present on floodways the plants would not obstruct flows, therefore, vegetation maintenance in the floodways would not affect the plants.

Service Response—While individual plants may not obstruct flood flows, the densely wooded community in which Texas ayenia occurs would. Should this densely wooded community be present, or new areas of appropriate habitat be added to the floodway system, Federal agencies would need to determine the species' absence before conducting floodway vegetation maintenance.

Issue 5—One commenter provided an assessment of the threats of habitat destruction, fragmentation, and loss of genetic variability on both species.

Service Response—The Service appreciates this information.

Issue 6—One commenter offered to coordinate with the Service to protect the species and their habitats.

Service Response—The Service appreciates the need to cooperate and coordinate with Federal, state, and local agencies, private organizations, and citizens to protect and recover these species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Texas ayenia and South Texas ambrosia should be classified as endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ayenia limitaris* Cristóbal (Texas ayenia) and *Ambrosia cheiranthifolia* Gray (South Texas ambrosia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction is the primary threat to Texas ayenia and South Texas ambrosia. The past and current practices of converting native South Texas brush and woodlands to agricultural fields, improved pastures, and urban areas, or clearing brush and woodlands for urban water development, industrial development, or flood control have destroyed 95 percent of this native vegetation (Jahrsdoerfer and Leslie 1988). Most native Texas Gulf Coast prairies have been converted to agricultural fields or improved pastures. The amount of conversion of these plant communities in Mexico is similar though not quantified. The remaining remnant native prairie, brush, and woodland tracts are often surrounded by agricultural fields, pastures, or urban development. These modified habitats pose potential threats to the native areas through agricultural chemical drift from aerial spraying; chemical runoff following rains; invasion of nonnative grasses such as buffelgrass, guineagrass (*Panicum maximum*), King Ranch bluestem, and Angleton bluestem (*Dichanthium aristatum*); and trampling and possible collection pressures due to easy accessibility from nearby urban areas. The few remaining populations of the species are vulnerable to extinction if any of their remaining habitat is modified.

Even roadside remnants of native vegetation in South Texas are often bladed, or plowed and seeded with exotic grasses such as buffelgrass and King Ranch bluestem. Herbicides are often used to control vegetation around signs, guard rails, and bridge abutments, and to kill shrubby vegetation encroaching on the right-of-way. Due to the rarity of Texas ayenia and South Texas ambrosia, the likelihood they will be directly impacted by roadway maintenance is small, but almost any impact could lead to extinction of either species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No commercial trade is known for either of these species; however, the potential exists for vandalism and collection. Listing these species, with the resulting publicity, will highlight their rarity and may increase their attractiveness to some collectors. Excessive recreational or scientific use is not known or anticipated for either species.

C. *Disease or predation.* Although the Texas ayenia population has shown no evidence of disease or predation, Cristóbal (1960) notes the floral buds of *Ayenia* species are often deformed by Hymenopteran larvae. Cristóbal also notes *Ayenia* fruits can be deformed by Dipteran larvae thus inhibiting seed release. No evidence of grazing or browsing has been observed for Texas ayenia.

No threats of disease or predation are known for South Texas ambrosia; however, damage to stems and rhizomes is possible in situations of severe trampling or grazing.

D. *The inadequacy of existing regulatory mechanisms.* Presently, neither species is protected by Federal or State law. Listing under the Act would provide protection for these species.

E. *Other natural or manmade factors affecting its continued existence.* With only one known verified population, Texas ayenia may have low genetic variability, which could limit its ability to adapt to environmental changes. It is unknown whether past flooding created or maintained habitat for Texas ayenia. However, since the present population occurs within a previously active drainage of the Arroyo Colorado (Damude and Poole 1990), a flood could negatively impact the species. Observers have noted that the population declined during the recent drought in the Lower Rio Grande Valley (J. Everitt, U.S. Department of Agriculture, pers. comm. 1992). The extreme rarity of this species makes it vulnerable to extinction from any number of chance events.

South Texas ambrosia may also be vulnerable to extinction due to lowered genetic variability. Populations are clonal, so despite having many stems, the populations may actually represent very few genetically different individuals. It has been noted that species like South Texas ambrosia that were once more widespread, but are now reduced to low numbers, may be more vulnerable to the detrimental effects of lowered genetic diversity than species that were always rare (Huenneke 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list Texas ayenia and South Texas ambrosia as endangered. The status of endangered is appropriate because of these species' limited distribution, low population numbers, and imminent threats of habitat destruction.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical features (I) Essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic areas occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Texas ayenia and South Texas ambrosia at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the "Summary of Factors Affecting the Species," Texas ayenia and South Texas ambrosia are potentially threatened by taking or vandalism. These activities are difficult to prevent and only regulated by the Act with respect to plants in cases of (1) Removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make Texas ayenia and South Texas ambrosia more vulnerable to collecting or vandalism and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through section 7 consultation. Therefore, it would not now be prudent to determine critical habitat for Texas ayenia and South Texas ambrosia.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect Texas ayenia or South Texas ambrosia include brush clearing for flood control by the International Boundary and Water Commission, management recommendations to landowners by the Soil Conservation Service for activities funded by the Agricultural Stabilization and Conservation Service, and agricultural pesticide registration by the Environmental Protection Agency. Additionally, a population of South Texas ambrosia occurs on Kingsville Naval Air Station and may be affected by maintenance or construction activities at this facility.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce these species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on Federal lands and removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation and survival of the species. It is anticipated that few trade permits would ever be sought or issued because the species are not in cultivation or common in the wild: Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/766–3972; facsimile 505/766–8063).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cristóbal, C.L. 1960. Revision del género *Ayenia* L. (Sterculiaceae). Opera Lilloana 4:1–230.

Damude, N., and J. Poole. 1990. Status report on *Avenia limitaris*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Diamond, D. 1990. Plant communities of Texas (series level). Texas Parks and Wildlife Department, Austin, Texas.

Dorr, L.J., and L.C. Barnett. 1986. The identity of *Nephropetalum* (Sterculiaceae). Taxon 35(1):163–164.

Huenneke, L.F. 1991. Ecological implications of genetic variation in plant populations. *In* D. Falk and K. Holsinger, eds. Genetics and Conservation of Rare Plants. Oxford University Press, New York.

Jahrsdoerfer, S.E., and D.M. Leslie, Jr. 1988. Tamaulipan brushland of the Lower Rio Grande Valley of South Texas: description, human impacts, and management options. U.S. Fish and Wildlife Service, Biol. Rep. 88(36). 63 pp.

Turner, B.L. 1983. Status report on *Ambrosia cheiranthifolia*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

U.S. Fish and Wildlife Service. 1988. Slender rush-pea (*Hoffmannseggia tenella*) recovery plan. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 38 pp.

Author

The primary author of this final rule is Angela Brooks (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Asteraceae—Aster family:						
*	*	*	*	*	*	*
Ambrosia cheiranthifolia.	South Texas ambrosia	U.S.A. (TX), Mexico	E	547	NA	NA
*	*	*	*	*	*	*
Sterculiaceae—Cacao family:						
Ayenia limitaris	Texas Ayenia	U.S.A. (TX), Mexico	E	547	NA	NA
*	*	*	*	*	*	*

Dated: July 11, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

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50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Five Plants From the San Bernardino Mountains in Southern California Determined to be Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines *Erigeron parishii* (Parish's daisy) to be threatened and *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca) to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). These five plant species are endemic to the carbonate deposits (limestone and dolomite) of the San Bernardino Mountains, San Bernardino County, California. Most of the carbonate deposits in this mountain range are within actively used mining claims or mining claims that are being maintained for their mineral resources. Limestone, ranging from cement grade to pharmaceutical grade, is currently mined in the area; dolomite is not currently mined. The open or terraced mining techniques that are used, as well as associated overburden dumping and road construction, result in destruction of the plants' habitat. Other threats to the plants include off-highway vehicle use, urban development near the community of Big Bear, expansion of a ski area, and energy development projects. Several of the plants are also threatened with stochastic extinction due to the small numbers of populations or total number of individuals. This rule implements the Federal protection and recovery provisions afforded by the Act for these five plants.

EFFECTIVE DATE: September 23, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above address or at (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino Mountains in southern California have been recognized for supporting a wide diversity of natural habitats that have resulted from their geographic position between desert and coastal environments, elevational zonation, and uncommon substrates such as limestone outcrops. The San Bernardino National Forest (Forest), which encompasses most of the San Bernardino Mountains, constitutes less than 1 percent of the land area of the State, yet contains populations of over 25 percent of all plant species that occur naturally in California.

Outcrops of carbonate substrates, primarily limestone and dolomite, occur

in several bands running on an east-west axis along the desert-facing slopes of the San Bernardino Mountains, with disjunct patches occurring just to the south of Sugarlump Ridge and to the east as far as the Sawtooth Hills. These outcrops are a remnant of an ancient formation of sandstone, shale, and limestone, through which the granitic core of the Transverse Ranges has emerged (Fife 1988).

The five taxa under discussion, *Erigeron parishii* (Parish's daisy), *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca), are restricted primarily to carbonate deposits or soils derived from them. These taxa, and other plants that occur on carbonate deposits, have commonly been referred to as "limestone endemics" by botanists, whether they occur on limestone or dolomite (Krantz 1990, Schoenherr 1992). Collectively, these five taxa span a range approximately 56 kilometers (km) (35 miles) long, ranging in elevation from 1,220 meters (4,000 feet (ft)) at the base of the mountains to approximately 2,440 meters (8,000 ft), and occur as components in the understory of a variety of plant communities, including Jeffrey pine-western juniper woodland, pinyon-juniper woodland, pinyon woodland, Joshua tree woodland, blackbrush scrub, and desert wash.

Pinyon-juniper woodland communities dominate the desert-facing slopes above 1,220 meters (4,000 ft) in elevation, and grade into a Joshua tree woodland at lower elevations (Vasek and Thorne 1988). Pinyon-juniper woodlands extend up to almost 2,100 meters (7,000 ft) in elevation, where they intergrade with a Jeffrey pine woodland on drier sites or mixed conifer forest on wetter sites. Open forests of lodgepole pine and limber pine are found at the highest elevations. A wide variation in the species composition exists within the pinyon-juniper woodland. *Pinus monophylla* (pinyon pine) or *Juniperus osteosperma* (Utah juniper), and more rarely *Juniperus occidentalis* (western juniper) or *Juniperus californica* (California juniper), are the structurally dominant species, occasionally occurring together. Holland (1986) has referred to separate Mojavean pinyon woodland and Mojavean juniper woodland and scrub communities. The understory varies with slope and elevation, but typically includes species such as *Cercocarpus ledifolius* (mountain mahogany), *Ephedra viridis* (Mormon tea), *Yucca schidigera* (Mohave yucca), *Yucca brevifolia* (Joshua tree), and *Encelia virginensis* (encelia). Patches of local dominance by *Coleogyne ramosissima* (blackbrush) on lower elevation desert facing slopes, or *Arctostaphylos* sp. (manzanita) on more interior canyons, are common.

Erigeron parishii is a small perennial herb of the aster family (Asteraceae) that reaches 1 to 3 decimeters (dm) (4 to 12 inches (in)) in height. The linear leaves are covered with soft, silvery hairs. Up to 10 solitary flower heads are borne on cauline stalks; ray flowers are deep rose to lavender, and heads have greyish green and glandular phyllaries. *E. parishii* was first described by Asa Gray in 1884 based on specimens collected by Samuel B. Parish in Cushenbury Canyon in 1881. *E. parishii* has sometimes been confused with *E. utahensis*, a plant found on carbonate substrates in the mountains of the Mojave Desert and in Utah, Colorado, and Arizona, but differs from the latter in the structure of the pappus and its silvery-white rather than grey-green stem.

Erigeron parishii is the most widely ranging of the five taxa discussed herein, with a range 56 km (35 miles) long. The plant is known from fewer than 25 occurrences, with the total population numbering approximately 16,000 individuals. Fewer than a third of the occurrences comprise more than 1,000 individuals each (Barrows 1988a). From White Knob at the western terminus, populations occur primarily along the belt of carbonaceous substrates, southeast to Pioneertown. The plant is typically found associated with pinyon woodlands, pinyon-juniper woodlands, and blackbrush scrub from 1,220 to 1,950 meters (4,000 to 6,400 ft) in elevation. It is usually found on dry rocky slopes, shallow drainages, and outwash plains on substrates derived from limestone or dolomite. Some populations occur on a granite/limestone interface, usually a granitic parent material overlain with an outwash of limestone materials. Two small outlying populations at the eastern edge of its range near Pioneertown occur on quartz monzonite substrates. Historic occurrences were recorded from Rattlesnake Canyon south of Old Woman Springs and from the Little San Bernardino Mountains; these locations have not been surveyed in over 50 years and merit additional field surveys (Andy Sanders, University of California, Riverside, pers. comm., 1992).

Eriogonum ovalifolium var. *vineum* is a low, densely-matted perennial of the buckwheat family (Polygonaceae). The flowers are whitish-cream, darken to a reddish or purple color with age, and are borne on flowering stalks reaching 1 dm (4 in) in height. The plant flowers from May through June. The round to ovate leaves are white-woolly on both surfaces and are 0.7 to 1.5 centimeters (cm) (0.3 to 0.6 in) long. The diameter of mats is typically 1.5 to 2.5 dm (6 to 10 in), but may reach up to 5 dm (20 in) in particularly well-developed individuals.

Eriogonum ovalifolium var. *vineum* was first collected by S.B. Parish near Rose Mine, San Bernardino Mountains, in 1894, and was described as *E. vineum* by John K. Small in 1898. In 1911, Aven Nelson published the combination *E. ovalifolium* var. *vineum*. Jepson in his manual used the combination of *E. ovalifolium* var. *vineum* in 1943. Munz (1959) accepted the work of Stokes (1936), and recognized it as *E. ovalifolium* ssp. *vineum*, in his flora of California. In 1968, Reveal clarified the relationship of the plant to *E. ovalifolium* var. *nivale*, with which it had been confused, and used the name *E. ovalifolium* var. *vineum* (Reveal and Munz 1968). Three other varieties of *E. ovalifolium* are distinguished on the basis of floral and leaf characteristics, but none of them occur in the San Bernardino Mountains.

Eriogonum ovalifolium var. *vineum* is limited in distribution to the belt of carbonate substrates of the north slopes of the San Bernardino Mountains. The plant is currently known from approximately 20 occurrences over a distance of about 40 km (25 miles). Only a quarter of those occurrences comprise more than 1,000 individuals each (Barrows 1988b), with the total population numbering approximately 13,000 individuals. *E. ovalifolium* var. *vineum* occurs from the White Knob area east to Rattlesnake Canyon. Surveys by Barrows (1988b) resulted in a slight range extension of the plant in the Rattlesnake Canyon drainage. Since publication of the proposal, additional surveys by the Forest staff located two previously unknown populations, one near Jacoby Springs and one just north of Mineral Mountain (CNDDB 1992). Tierra Madre Consultants (TMC) located a previously unknown population west of White Knob (TMC 1992), which extends the known range of the plant west by 1.6 km (1 mile). A dozen other extensions of existing occurrences were reported by the Forest Service and TMC; all of these were within the known range of the plant (CNDDB 1992, TMC 1992).

Eriogonum ovalifolium var. *vineum* occurs within openings of pinyon

woodland, pinyon-juniper woodland, Joshua tree woodland, and blackbrush scrub communities between 1,400 and 2,400 meters (4,600 and 7,900 ft) in elevation. Other habitat characteristics include open areas with little accumulation of organic material, a canopy cover generally less than 15 percent, and powdery fine soils with rock cover exceeding 50 percent. The plant typically occurs on moderate slopes, although a few occurrences are on slopes over 60 percent. On milder, north-facing slopes, it co-occurs with *Astragalus albens*.

Recent fieldwork by Howard Brown (Pluess-Staufer Inc., *in litt.*, 1992) has refined the information on the carbonate geology of the San Bernardino Mountains. *Eriogonum ovalifolium* var. *vineum* clearly occurs on limestone substrate in the White Knob area, and from Arctic/Bousic Canyon west to Terrace Springs, south to Top Spring, and along the north side of Lone Valley to Tip Top Mountain. However, *E. ovalifolium* var. *vineum* occurs on dolomite in the Bertha Ridge area, north Holcomb Valley, Jacoby Canyon, and along Nelson Ridge, according to Brown (*in litt.*, 1992). Additionally, a population just to the south of Mineral Mountain is clearly on non-carbonate substrates; a population in Furnace Canyon seems to be on a mixed lithology of granite, limestone, and dolomite; and a population on Heartbreak Ridge is on carbonate substrate.

Astragalus albens is a small silvery-white perennial herb in the pea family (Fabaceae). The slender stems are decumbent, grow to 30 cm (12 in) in length, and support leaves comprised of 5 to 9 small leaflets. The purple flowers, which bloom from March to May, occur toward the ends of the branches in 5-to 14-flowered racemes and develop 8- to 11-seeded pods. In 1885, *A. albens* was described by Edward L. Greene based on a collection made by Parish and Parish 3 years earlier (Greene 1885). In 1927, Per Axel Rydberg published the name *Hamosa albens* (Rydberg 1927). In 1964, R.C. Barneby synonymized the genus *Hamosa* and included the species in *Astragalus* (Barneby 1964). *A. leucolobus*, a common associate on carbonate soils, is distinguished from *A. albens* by its cobwebby pubescence on the leaflets, which are strongly folded along the midrib, and differently shaped pods.

Astragalus albens is currently known from fewer than 20 occurrences scattered throughout the eastern half of the carbonate belt, running from Furnace Canyon southeast to the head of Lone Valley, a range of 24 km (15 miles). The proposal stated that the total number of individuals was estimated at 2,000, but that this number is likely to be greater in years of substantial rainfall. Several known populations comprised a larger number of individuals during the 1992 field season than had previously been reported. That may, in part, be due to favorable rainfall during March 1992, which resulted in a large establishment of seedlings, and in part to a more thorough survey effort. Of significance is the extension of a population in the Top Spring-Smarts Ranch Road area; several thousand individuals were found in this area, making it the primary population center for the species. Population estimates for 1992 place the total number of individuals between 5,000 and 10,000.

The plant is typically found on carbonate substrates along rocky washes and gentle slopes within pinyon woodland, pinyon-juniper woodland, Joshua tree woodland, and blackbrush scrub communities. *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* co-occur with *Astragalus albens* at several locations. Most occurrences are found between 1,500 and 2,000 meters (5,000 and 6,600 ft) in elevation on soils derived directly from decomposing limestone bedrock. Three occurrences are found below 1,500 meters (5,000 ft) in elevation in rocky washes that have received limestone outwash from erosion higher in the drainages. According to Brown (*in litt.*, 1992), two populations occur on granite substrates (Gordon Quarry and Granite Peaks), and one occurs on granite and quartzite (Cactus Flat). Other habitat characteristics include an open canopy cover with little accumulation of organic material, rock cover exceeding 75 percent, and gentle to moderate slopes (5 to 30 percent).

Lesquerella kingii ssp. *bernardina* is a silvery, short-lived perennial member of the mustard family (Brassicaceae) reaching 1 to 2 dm (4 to 8 in) in height. The plant has yellow flowers located toward the ends of the stems. The basal leaves are ovate and have long petioles. The type material was collected by Frank W. Peirson at the east end of Bear Valley in 1924. In 1932, Munz described this plant as *L. bernardina*. In 1958, Munz combined *L. bernardina* with *L. kingii*, and made the combination of *L. kingii* ssp. *bernardina* (Wilson and Bennett 1980). *L. kingii* ssp. *kingii* is found in the mountains of the eastern Mojave Desert and the Inyo-White ranges extending into Nevada. It is distinguished from *L. kingii* ssp. *bernardina* by its smaller petals and styles.

Lesquerella kingii ssp. *bernardina* is currently known from two areas, on either side of Bear Valley. One cluster of occurrences is on the north side of the valley, near the east end of Bertha Ridge, adjacent to the community of Big Bear, and is subject to impacts from urbanization. The other cluster is centered on the north-facing slope of Sugarlump Ridge to the south of the valley, approximately 10 km (6 miles) south of the Bertha Ridge occurrences. These latter occurrences were discovered during spring 1990 on an existing downhill ski run, and on and adjacent to proposed ski runs and lift lines within an existing ski area (California Natural Diversity Data Base (CNDDB) 1990). The estimate of total number of individuals in the Bertha Ridge occurrences was 25,000 in 1980 and less than 10,000 in 1988; it is unclear whether this was due to differences in sampling techniques or drought conditions (Wilson and Bennett 1980, CNDDB 1990). In 1991, the Sugarlump Ridge populations totalled approximately 10,000 individuals (CNDDB 1991).

The habitat for *Lesquerella kingii* ssp. *bernardina* is characterized by carbonate substrates, either brown sandy soils with white carbonate rocks or outcrops of large carbonate rock. According to geologic information supplied by Brown (*in litt.*, 1992), all populations of *L. kingii* ssp. *bernardina* both in the Bertha Ridge and the Sugarlump Ridge areas occur on dolomite. Slopes are typically gentle to moderate and are both north- and south-facing between 2,100 and 2,700 meters (6,800 and 8,800 ft) in elevation. Within Jeffrey pine-western juniper woodlands, as well as white fir forest in some locations, the subspecies is found in open areas with little accumulation of organic material. The plant seems to be tolerant of slight disturbance; scattered plants were found growing on old roads, undeveloped lots, and undeveloped yards within the Whispering Forest housing tract (Myers and Barrows 1988). However, the plant is conspicuously absent from heavily graded and mulched ski runs in the Bear Mountain ski area.

The carbonate substrates that support *Lesquerella kingii* ssp. *bernardina* lie south and west of those that support most of the populations of the other four taxa under discussion. However, near the east end of Bertha Ridge, the southernmost population of *Eriogonum ovalifolium* var. *vineum* occurs in close proximity to one colony of *Lesquerella kingii* ssp. *bernardina*.

Oxytheca parishii var. *goodmaniana* is a small wiry annual of the buckwheat

family (Polygonaceae). The type material was collected by Parish and Parish in 1882 near Cushenbury Spring. For a number of years, historical collections were mistakenly identified as *O. parishii* var. *abramsii* or *O. watsonii*. Barbara Ertter (1980) described the variety in honor of George J. Goodman, who was the first to recognize both the distinctiveness of the variety and its close relationship to *O. parishii*. *O. parishii* var. *goodmaniana* stands 0.5 to 3 dm (2 to 12 in) tall with a basal rosette of leaves 1 to 3 cm (0.4 to 1.2 in) long and stems with bracts at the nodes. The flowers consist of 6 small white to rose or greenish-yellow petals; clusters of 3 to 12 flowers are subtended by a distinct involucral bract. *O. parishii* var. *goodmaniana* is separated from the other three varieties of *O. parishii* by the presence of only four to five awns on the bracts, rather than seven or more.

Oxytheca parishii var. *goodmaniana* is the most restricted of the carbonate endemic species of the San Bernardino Mountains. Forest Service surveys in 1992 located three additional populations, bringing the total number of known occurrences to seven (CNDDB 1992). One location near Cushenbury Spring is located near an active limestone mine; two more occurrences are located near the abandoned Green Lead gold mine, one of which is bisected by a road; the fourth occurrence is located near the north side of Holcomb Valley. The three newly discovered populations are located along the Helendale Fault in the vicinity of Tip Top Mountain, Mineral Mountain, and Rose Mine. This represents a significant extension of approximately 19 km (12 miles) to the southeast from the previously known range of the plant. Given the availability of potentially suitable habitat between the newly discovered and the previously known populations, other sites supporting this taxon may be found with additional surveys.

With the exception of the north Holcomb Valley population, which occurs on dolomite, all populations of *Oxytheca parishii* var. goodmaniana occur on limestone or a mixed lithology of limestone and dolomite (TMC 1992). In 1990, the total known population consisted of fewer than 3,000 individuals. With discovery of the new populations, however, current estimates have been doubled. Since it is an annual species, the number of individuals might be higher in years with winter and spring rainfall and temperatures favorable to seed germination and seedling establishment. The low number of occurrences, however, as well as individuals, also subjects the species to the possibility of stochastic extinction.

Previous Federal Action

Federal action on three of the five plants began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51), which included *Erigeron parishii* and *Lesquerella kingii* ssp. *bernardina* as threatened and *Eriogonum ovalifolium* var. *vineum* as endangered, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of the Service's intention thereby to review the status of the plant taxa named therein, including *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, and *Lesquerella kingii* ssp. *bernardina*.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* as category 1 candidates (species for which the Service has substantial information on biological vulnerability and threat to support proposals for listing) and *Erigeron parishii* as a category 2 candidate (species for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial information on biological vulnerability and threats is not currently available to support proposals for listing).

On February 15, 1983 (48 FR 6752), the Service published a notice of its prior finding that the listing of *Eriogonum ovalifolium* var. *vineum and Lesquerella kingii* ssp. *bernardina* is warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act, as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, the finding must be recycled on an annual basis, until the species is either proposed for listing or the petitioned action is found to be not warranted. In October 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, further findings were made that the listing of *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* was warranted, but that the listing of these species was precluded by other pending proposals of higher priority. In the September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184), plant notices of review, *Eriogonum ovalifolium* var. *vineum* and *Lesquerella kingii* ssp. *bernardina* were again included as category 1 candidates, and *Erigeron parishii* as a category 2 candidate. The February 21, 1990, notice also included *Astragalus albens* in category 1 and *Oxytheca parishii* var. *goodmaniana* in category 2. Since publication of that notice, additional survey work was completed for *Oxytheca parishii* var. *goodmaniana*, providing new information on the status of that species. Similarly, the Service was made aware of increased threats to *Erigeron parishii*, in the form of two new pending mining operations that would likely adversely impact this species. As a result, on November 19, 1991 (56 FR 58332), the Service published a proposed rule in the **Federal Register** to list the five plants as endangered.

Summary of Comments and Recommendations

In the November 19, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information relevant to a final decision on the listing proposal. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Requests for a public hearing were received from eight parties, primarily mining industry representatives, but also including the National Inholders Association and the Bear Mountain Ski Resort. As a result, on May 15, 1992, and again on May 26, 1992, the Service published notices in the **Federal Register** (57 FR 20805 Bernardino Sun and the Barstow Desert Dispatch. Requests for a public hearing were received from eight parties, primarily mining industry representatives, but also including the National Inholders Association and the Bear Mountain Ski Resort. As a result, the Service conducted a hearing on June 3, 1992, at the San Bernardino County Government Center in San Bernardino. Testimony was taken from 1 p.m. to 4 p.m., and from 6 p.m. to 8 p.m., with 21 parties presenting testimony.

During the comment periods, the Service received written and oral comments from 51 parties. Multiple comments were received from mining industry representatives, both during and after the closure of the comment periods. The California Department of Fish and Game, The Nature Conservancy, California Native Plant Society, Audubon Society, Sierra Club, Natural Heritage Foundation, Center for Plant Conservation, Rancho Santa Ana Botanic Garden, University of California Natural Reserve System, and the Forest Service were 10 of 36 commenters

expressing support for the listing proposal. Eleven commenters, including seven mining industry representatives, two multiple-use groups, and one assemblyman opposed the listing. The Bureau of Mines initially opposed the listing during the public comment period. However, oral testimony at the public hearing by a Bureau of Mines representative indicated a more neutral stance and an offer to assist in data analysis to be used in the development of a Forest Service habitat management guide for the five taxa. Most of those opposed to the listing also asked for a 6-month extension to the rulemaking process to allow results of additional surveys completed during the 1992 field season to be included in the final determination. Four commenters were neutral, including a Congressman, one county supervisor, and the Big Bear Chamber of Commerce. In addition, results of additional surveys for the plants (CNDDB 1992, TMC 1992) and additional biological information that was submitted to the Service since publication of the proposal have been incorporated into this final rule. Opposing comments and other comments questioning the rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: Numerous comments were received concerning the Service's reference to the five plants as "limestone endemics" in the proposal. This reference appears to be of great concern to the mining industry because a number of populations occur on dolomite, quartz monzonite, granite, or mixed lithologies of these substrates, and not solely on limestone, in the strict sense. Other commenters focused on the Service's use of inaccurate geologic maps that indicated that substrates at particular plant locations were limestone, while maps currently being revised by the U.S. Geological Survey (USGS) will indicate that substrates in those locations may actually consist of dolomite or other rock types. Many of these commenters believe that more accurate geologic data would disprove the hypothesis that these plants are "limestone endemics."

Service Response: According to the Dictionary of Geologic Terms, one definition of "limestone" is given as "(A) general term for that class of rocks that contain at least 80 per cent of the carbonates of calcium or magnesium" (American Geologic Institute 1976). Apparently in keeping with this definition, the USGS map for the Lucerne Valley quadrangle (7.5 minute series) referred to the Furnace Limestone unit as being comprised of white carbonate rocks, grey carbonate rocks, quartzite, and phyllite—metasedimentary rocks of Paleozoic age (USGS 1964). Similarly, the California Division of Mines and Geology map for the San Bernardino quadrangle (1:250,000) refers to the same units as upper Paleozoic limestone and marble, and Cambrian and uppermost Precambrian crystalline limestone (California Division of Mines and Geology 1986). These maps represent the best information available to the Service. The colloquial use of the term "limestone endemic" to refer to the five taxa under discussion is based, in part, on the generic use of the term "limestone" by geologists and botanists. While intending to use "limestone" as a generic term, the Service erred in the proposal by referring to such substrates as calcium carbonate deposits, rather than simply carbonate deposits. The term calcium carbonate, or limestone in the more technical sense, refers to carbonate with a high percent of calcium, as differentiated from dolomite, which is carbonate with a high percent of magnesium. The Service has used more precise descriptions of substrate type in this rule and generally refers to these species as "carbonate endemics." The Service looks forward to any additional information that the revised USGS maps will provide.

Issue 2: Numerous commenters contended that the plants are not endemic to the 35-mile range of the north slope of the San Bernardino Mountains but are also found to the east and west of that range and in mountain ranges of the Mojave Desert. Several commenters indicated that geologists had observed several of the taxa in the New York Mountains.

Service Response: The record of botanical collections and surveys from the San Bernardino Mountains and the Mojave Desert ranges is more than adequate to establish general ranges of the plants. Additional surveys were conducted in 1992 in four mountain ranges in the east Mojave Desert, in the San Bernardino Mountains, and in the San Gabriel Mountains to determine any range extensions for the five taxa. Only one of the four new populations of *Erigeron ovalifolium* var. *vineum* was located outside of the known range and this was within a mile of known locations. The Forest Service also conducted additional surveys in 1991 and 1992 for all five taxa, which resulted in a significant range extension for *Oxytheca parishii* var. *goodmaniana*. However, with the exception of the range extension for *Oxytheca parishii* var. *goodmaniana*, the newly located populations do not represent significant new biological or distributional data affecting the status of the remaining four plants. Although the new range extension for *Oxytheca parishii* var. *goodmaniana* is considered significant, the taxon is still so limited in distribution that listing as endangered is still appropriate. In addition, no unthreatened populations were discovered.

Issue 3: Numerous commenters contended that surveys for the plants were not adequate or up-to-date, that the plants have only been found on limestone because only limestone substrates were targeted for surveys, and that the discovery of additional populations with each new survey indicates that the plants are more widespread than previously thought. Some commenters stated that the surveys were performed by "biased individuals" whose unpublished reports had not been subject to peer review, and that information on which the proposal was based constituted "junk science." Other commenters stated that the existing knowledge of the plants was more than adequate to proceed with listing, and that a 6-month extension for the purpose of collecting additional information on the range and distribution of the plants, as requested by the mining industry, was unnecessary.

Service Response: Botanists have been collecting plants in southern California for scientific study for over 150 years; all five plants were originally collected at least 100 years ago. Carbonate substrates in particular have been the focus of numerous surveys because botanists have recognized that these nutrient-deficient substrates often support unique taxa. As early as 1979, the Forest Service performed rangewide surveys of three of the taxa (*Erigeron parishii, Eriogonum ovalifolium* var. *vineum*, and *Lesquerella kingii* ssp. *bernardina*). Moreover, since 1979, the Forest Service has conducted surveys of almost all ground-disturbing projects on the San Bernardino National Forest to determine project impacts to species considered to be sensitive and has performed botanical investigations of at least 25 taxa. The surveys have been conducted on numerous substrates and throughout the geographic range of the San Bernardino and adjacent National Forests, including the San Bernardino, San Gabriel, and San Jacinto Mountains. While the Service recognizes that new occurrences may be discovered through additional surveys, the body of information is adequate to proceed with this listing. The Service accepts the reliability of the surveys performed and

considered this information the best scientific information available.

Issue 4: Several commenters charged that the Service ignored results of propagation studies on *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* performed by Rancho Santa Ana Botanic Garden that indicate that 1) the two plants do not require limestone, and 2) the plants are easy to propagate from seeds and cuttings. The industry believes these results show a potential for successful reclamation after mining.

Service Response: The Service is fully aware of the propagation efforts for two of the species (*Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum*) by Rancho Santa Ana Botanic Garden researchers (Mistretta 1991). However, germination or survival under horticultural conditions does not accurately represent conditions required for long-term survival in the wild. Other efforts to propagate *Erigeron parishii* from seed have met with less success (Forest Service 1992). The results of these studies are preliminary and inconclusive, and the long-term viability of species under cultivation is questionable. In addition, the normal life histories and other habitat characteristics of substrate endemics typically are not maintained in horticultural settings.

The success rate for salvage of *Eriogonum ovalifolium* var. *vineum* from the Gordon Quarry was less than 50 percent (Forest Service 1992). Although some potential for reclamation with these species after mining may exist, the purpose of the Act is to conserve ecosystems upon which listed species depend. Reintroduction is a potentially important recovery tool, but it has not been shown to restore mine sites to pre-disturbance conditions that would ensure the long-term survival of such plants and, therefore, does not preclude the need to list the species.

Issue 5: Several commenters were concerned that important information concerning the potential for reclamation of mined sites was not included in the proposal. They claim that three of the plants (Astragalus albens, Erigeron parishii, and *Eriogonum ovalifolium* var. *vineum*) are opportunistic, weedy intruders, or invaders. As evidence, they cited the Barrows surveys that document populations occurring on roadbeds, roadcuts, and quarry benches. They also state that accompanying notes indicate populations in these disturbed habitats are more vigorous or more dense than those on adjacent pristine areas, and the plants appear to tolerate light disturbances. Some commenters indicated that old roadbeds, roadcuts, and old quarry benches constituted more than "lightly disturbed" habitat, and that the plants in fact can recolonize heavily disturbed sites. One commenter stated that "the effects of mining as a possible positive influence" had not been considered.

Service Response: The Service did not reference *Astragalus albens*, *Erigeron parishii*, and *Eriogonum ovalifolium* var. *vineum* growing on old roadbeds, roadcuts, and quarry benches because, in most cases, these plants did not constitute independent self-perpetuating populations, but rather scattered individuals that had dispersed into disturbed habitat from adjacent populations on undisturbed habitat. The Forest Service has noted that *Eriogonum ovalifolium* var. *vineum* and *Erigeron parishii* have colonized infrequently used roads at three sites, and small quarries at two sites, each of which is less than 1 hectare (2 acres) in size, have been abandoned for 20 to 25 years, and had small patches of native vegetation left within them at the time of mining. In contrast, no colonization by any of the five plants has been observed in the larger quarries. Furthermore, Forest Service surveys at the Right Star site for *Astragalus albens* indicate that the mean density of individuals in disturbed areas is significantly lower than that in adjacent undisturbed areas (137 versus 679 per acre) (Forest Service, *in litt.*, 1992).

Initial flushes of recolonization by plants may occur in response to light and very intermittent disturbance. The mechanism under which recolonization occurs and its role in the long-term survival of the five species is unknown. Research on recolonization may indicate that the species can recolonize areas to aid in their long-term survival. However, data do not indicate that these plants have extensive recolonization capabilities. Heavily disturbed sites, (i.e., those stripped to bedrock with little residual fine-textured substrates, and with no nearby islands of native vegetation from which plants can recolonize) do not show any levels of successful recolonization.

Several recent reports document *Erigeron parishii* occurring on tailing slopes (Brown, *in litt.*, 1992). Recent observations by an interagency reclamation review team that visited all four current quarry operations on the north slope of the San Bernardino Mountains found that *Salsola* sp. (Russian thistle) was the most prevalent plant on tailing slopes and road berms (Forest Service 1992). *Erigeron parishii* or the other taxa under discussion on even "lightly disturbed" sites may or may not represent independent self-perpetuating populations.

Issue 6: Several commenters stated that a lack of understanding of mining operations has led to a premature conclusion about the impact of mining on plant habitat. One commenter noted that a block of mining claims does not represent the actual area that would be disturbed during mining operations. Brown (*in litt.*, 1992), who recently remapped the geology of the San Bernardino quadrangle in collaboration with USGS, stated that about 2 percent of the limestone in the San Bernardino Mountains is of commercial value and would be subject to mining within the next 75 years. The remaining limestone will not be mined, though virtually all of it is under claim.

Service Response: The impact of mining on plant habitat is not restricted to the quarry site itself, but includes loss of habitat through overburden (materials that need to be removed to reach the underlying limestone, as well as the low-grade limestone that is currently not being marketed) dumping, tailing dumping, road construction (including sidecasting), and exploratory mining activity, which may constitute a surface disturbance several times the size of the quarry. Additional biological values of the habitat may be lost through habitat fragmentation, alteration of hydrology, and an increase in airborne particulates that may depress pollinator success.

Aside from whether the extent of primary and secondary impacts of mining on plant habitat are being accurately assessed, the threat that exists to plant habitat from the mere presence of mining claims must be considered. According to the Mining Law of 1872 (30 U.S.C. 22 *et seq.*), a claimholder must have a sincere intent to mine; in fact, a claim can be legally seized by another party if the original claimholder is shown not to meet this requirement. No mechanisms are currently available to Federal land management agencies making regulatory decisions to protect sensitive natural resources on lands that are under claim. This situation is discussed more thoroughly under Factor D below.

Issue 7: A few commenters stated that the Endangered Species Act addresses species, and not varieties or subspecies. Therefore, if the range of the three species (*Eriogonum ovalifolium*, *Lesquerella kingii*, and *Oxytheca parishii*), which includes the Sierra Nevada Mountains, the desert mountain ranges, Oregon, and Nevada, is considered, none of the varieties or subspecies of these three plants could be considered endangered under the Act.

Service Response: Section 3(15) of the Act states that "The term "species"

includes any subspecies of fish or wildlife or plants. * * *" In response to concerns from the Smithsonian Institution that the definition included subspecies but not varieties, the Service published regulations on April 26, 1978 (43 FR 17912) that discussed common use of both terms by botanists and recognized plant "varieties" as equivalent to "subspecies" and, therefore, "species," as defined by the Act.

Issue 8: A few commenters thought that the five taxa do not meet the definition of "endangered" according to the Act. Similar comments stated that the taxa are so "regenerative" and so common they could never be endangered, farmers in Lucerne Valley have been trying to eradicate *Astragalus albens* for years without success, the California Department of Fish and Game has not listed these taxa as rare, and the only reason the taxa were being proposed for listing was to satisfy the California Native Plant Society lawsuit agreement.

Service Response: Although additional survey data and information on threats posed to the five plant taxa by mining were presented to the Service, none of the information contradicted the Service's contention that the five taxa are threatened by mining and other potential impacts in the San Bernardino Mountains (see Factor A in Summary of Factors Affecting the Species). In fact, a report submitted on behalf of the mining industry (TMC 1992) confirmed the limited distribution of these five taxa. For example, in the TMC report, the greatest increase in population size for any of the five taxa surveyed amounted to less than 2 percent for *Eriogonum ovalifolium* var. *vineum* and occurred primarily within the currently known range of the plant. Thus, the Service has concluded that the distribution of the five species was sufficiently well known prior to the proposed listing, and has not significantly changed with additional survey results. The comment concerning the commonness of *Astragalus albens* in Lucerne Valley is evidently a case of mistaken identity; A. *albens* has never been recorded from the Valley.

The procedures for designating species as threatened or endangered are outlined in section 4(a)(1) of the Act and promulgated regulations (50 CFR part 424). As discussed earlier in this rule, Federal action on several of these taxa began as early as 1975. While the California Native Plant Society lawsuit settlement may have accelerated the rate at which California plant species have been proposed for listing, the suit does not change the standards by which species are evaluated for potential listing. Moreover, preparation of the proposal was essentially completed prior to the California Native Plant Society settlement agreement. Although the State has not pursued listing any of these taxa, the California Department of Fish and Game has clearly stated its support for the listing of all five taxa and has provided a substantial amount of information to the Service that was used in preparation of this final rule.

Based upon information the Service has received regarding the status and distribution of these five species, including data from the Forest Service, The Nature Conservancy, local botanists, private consultants, and mining industry, the Service believes that the listing of these plants is warranted. The Service finds that *Astragalus albens, Eriogonum ovalifolium* var. *vineum, Lesquerella kingii* ssp. *bernardina,* and *Oxytheca parishii* var. *goodmaniana* are in danger of extinction throughout all or a significant portion of their ranges and, therefore, fit the definition of endangered as defined in the Act. *Erigeron parishii* has the widest range and largest number of populations of the species proposed herein for listing; moreover, several populations are known to occur on non-carbonate substrates that are not under claim. However, a large portion of its range is under mining claims, and only the population at the Burns Reserve currently has any permanent protection. Therefore, it is likely to become endangered in the foreseeable future and fits the definition of threatened as defined in the Act.

Issue 9: Several commenters stated that the effects of drought on the plants had not been considered in the proposal, implying that the plants would not be considered rare if surveys were performed during non-drought years when the species were more abundant. One commenter felt that the effects of drought should be studied and quoted Rupert Barneby who, when describing *Astragalus albens,* wrote "* * * in years of low rainfall, * * * the populations become decimated or even annihilated except for dormant seeds. In the first spring after a drought of several seasons duration, whole colonies of young plants can be found in prolific flower * * *" (Barneby 1964).

Service Response: It is well known that drought will reduce both vigor and abundance of annual as well as short-lived or herbaceous perennial species. In the same sentence that was quoted above, Rupert Barneby wrote that "* * * the plants flower precociously; and a good proportion of them are probably monocarpic, especially in years of low rainfall * * *" (Barneby 1964). Monocarpic plants, those which flower and fruit once and then die, may be particularly subject to the vagaries of climate, especially in regions that are typically arid. Seed for these plants may persist in the soil for years before favorably climatic conditions allow for successful seedling germination and establishment. This habit points out the need to maintain undisturbed habitat for the plants to accommodate the "boom and bust" cycles in population sizes. While the Service agrees that it would be interesting to study the effects of drought on the fluctuations in plant population sizes, the ranges of all five plants under discussion are small and their habitat currently receives little protection. Reference to the effects of drought on *Astragalus albens* and *Lesquerella kingii* ssp. bernardina is included in this rule in the Background section and under Factor E in the Summary of Factors Affecting the Species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Erigeron parishii* Gray (Parish's daisy), *Eriogonum ovalifolium* Nuttall var. *vineum* (Small) A. Nelson (Cushenbury buckwheat), *Astragalus albens* Greene (Cushenbury milk-vetch), *Lesquerella kingii* Wats. ssp. *bernardina* (Munz) Munz (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* Ertter (Cushenbury oxytheca) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. All five species proposed for listing are restricted primarily to carbonate and adjacent carbonate/granitic substrates occupied by pinyon-juniper woodland on the northern side of the San Bernardino Mountains. The imminent and primary threat facing these species is the ongoing destruction of the carbonate substrates on which they grow by activities associated with limestone mining, including direct removal of mined materials, disposal of overburden on adjacent unmined habitat, and road construction.

Additional threats to their habitat include off-highway vehicle use, urban development near the community of Big Bear, development of a ski run, and energy development projects.

The first burst of mining activity in the San Bernardino Mountains occurred in the 1860s with the discovery of gold in Holcomb Valley. Historically, gold was extracted both by underground mining and by placer mining. Only small-scale and weekend prospecting for gold continues today. However, gold-bearing alluvium in Holcomb Valley has a low to medium potential for development in the future, and a good potential exists for a large gold extraction operation in the Blackhawk area (Forest Service 1988). Several silver mines were also in operation during the late 1800s in Cushenbury Canyon and near Blackhawk Mountain.

Limestone is considered a locatable mineral, as are gold and silver, and, therefore, is open to claim under the 1872 mining law. Virtually all of the approximately 13,210 hectares (32,620 acres) of carbonate substrates within the San Bernardino Mountains are currently under claim. Recent calculations by Brown (*in litt.*, 1992) break down the 13,210 hectares (32,620 acres) into component substrates as follows: 4,040 hectares (9,980 acres) of dolomite (30.6 percent), 7,910 hectares (19,530 acres) of limestone (59.9 percent); and 1,260 hectares (3,110 acres) mixed limestone and dolomite (9.5 percent).

Most of the currently mined limestone is being processed by four operations that are located along the base of the north slope of the mountains. Because of the limited availability of limestone in the western United States, those claims currently not under production are still being maintained either in anticipation of a future market, as a means of keeping claims from being mined by competing companies, or in anticipation of leasing out claims for the extraction of other valuable minerals.

In the surrounding Lucerne Valley mining district, the first limestone mines started operation in the 1940s; the current annual production of limestone is approximately 3.3 million tons (Forest Service 1988). Annual production, however, typically represents only the fraction of material that is trucked off the mine site as product. The ratio of disturbed material to product material may range from 1:1 up to more than 5:1. Forest Service records indicate that ratios at Riverside Cement (Partin) between 1972 and 1977 ranged from 4.9:1 to 13:1, and averaged 7.1:1. A 1988 calculation for the same operator placed the ratio at 6.7:1 (Forest Service 1988). Thus, based on the 1988 production of 3.3 million tons of limestone and a 5:1 ratio of disturbed material to limestone, 16.5 million tons of waste material would be generated. A typical mine site consists of an open pit or terraced pit, haul roads for hauling the blasted rock to a processing plant, and the processing plant itself, which sorts and crushes the material. The overburden is redistributed in piles on site. In the future, less low-grade limestone will be left onsite as the market for limestone products changes. The direct impacts to four of the five plants from limestone mining include the removal and destruction of individuals and habitat from mining, the construction of haul roads, and the deposition of overburden piles on top of currently occupied habitat. Certain operations targeting pharmaceutical grade limestone tend to create a higher ratio of exploratory roads and access roads relative to the size of the quarry operations since those deposits are smaller.

Aside from impacts associated with gold and limestone mining, several species are potentially threatened by destruction of habitat by other activities. Sand and gravel is currently being mined, and a new operation has been proposed for several washes on the lower desert-facing slopes that may impact at least one occurrence of *Erigeron parishii* (TMC 1989). Urban development has encroached upon several occurrences of *Lesquerella kingii* ssp. *bernardina* near Big Bear City and threatens to encroach upon an occurrence of *Erigeron parishii* near Pioneertown. The proposed addition of a downhill ski run to the ski area on the north side of Sugarlump Ridge may eliminate portions of an occurrence of *Lesquerella kingii* ssp. *bernardina*.

Other impacts include the destruction of individuals and habitat through increased off-highway vehicle and other recreational use that departs from roads built for mining assessment work as well as abandoned mine roads. The Forest Service has proposed construction of two new sections of the integrated off-highway vehicle system; these will potentially impact populations of all taxa except *Lesquerella kingii* ssp. *bernardina*.

Since publication of the proposal to list the five taxa, initial proposals for two energy developments have been received by the Forest Service. A proposed hydroelectric generation plant, which includes the use of an old mine quarry to hold water and new ground disturbance for construction of water delivery pipelines, would likely negatively affect populations of all five taxa except *Lesquerella kingii* ssp. *bernardina*. A 115-kilovolt powerline proposed for construction through Cushenbury Canyon may affect *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, *Astragalus albens*, and *Oxytheca parishii* var. *goodmaniana*.

Because the location of the five plants is tied primarily to the location of carbonate deposits, it is useful to discuss threats relative to the primary plant population centers. A description of the primary population centers of the five plants and the threats in each area follows.

The westernmost occurrences of two of the plants under discussion (*Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum*) are in the vicinity of White Mountain, an outcrop that rises to 2,100 meters (6,900 ft) in elevation above the desert community of Lucerne Valley. The third largest of the limestone mines is located here, with an annual production of approximately 500,000 tons. The proximity of occurrences of *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* to current mining operations indicates that these plants occurred on the mining site, but have been extirpated from it. The westernmost populations of these two species will soon be eliminated under a recently approved mining plan of operations. As compensation for this impact, the County of San Bernardino has directed the mining company to sponsor horticultural studies and experimental reseeding on reclaimed portions of the mine site.

Approximately 7.5 km (6 miles) to the east of White Mountain, the north side of Holcomb Valley drops off abruptly into Furnace Canyon. Habitat for *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* was removed by quarry operations, including the construction of haul roads and the dumping of overburden at these quarry sites, which were primarily abandoned prior to 1974. In the areas adjacent to the quarry sites, populations of *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens*, portions of which have been eliminated, are still found. A proposed hydroelectric generation plant would use one of the abandoned quarries. If the proposed hydroelectric plant is approved, new disturbance associated with the project would likely disturb habitat for *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, *Astragalus albens*, and *Oxytheca parishii* var. *goodmaniana*.

The second largest operating limestone mine, with an annual production of 800,000 tons, is operating in the vicinity of Marble Canyon, a few miles east of Furnace Canyon. A recent expansion of one overburden pile is

eliminating a sizable population of *Astragalus albens*.

Six kilometers (4 miles) to the east of Furnace Creek is the deeply incised Cushenbury Canyon. The mining operation located at this site has an annual production of 2,000,000 tons of limestone, the largest of the four currently operating limestone mines. *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens* are found on the rocky slopes surrounding Cushenbury Canyon. A number of populations have already been negatively affected by mining and road construction. Up until several years ago, dust from the crushing operation was settling on the slopes downwind from the operation. The resultant and still present crust that formed on the slopes is thought to have inhibited the growth and survival of a number of plant species, including populations of *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens*. A population of *Oxytheca parishii* var. *goodmaniana*, one of the most restricted of the five taxa under discussion, was also rediscovered in this area in 1978. The species was not searched for in a 1990 survey at this location due to continuing drought conditions. A few populations of *Erigeron parishii* are found on alluvial substrates below the mouth of Cushenbury Canyon. A recent proposal to mine these alluvia for sand and gravel would threaten these populations.

Erigeron parishii, *Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens* occur 3.2 km (2 miles) to the east of Cushenbury Canyon on Blackhawk Mountain, which rises to an elevation of 2,000 meters (6,700 ft). Historically, gold and silver were mined near Blackhawk Mountain. New gold mining activity using cyanide heap-leach methods has been proposed for the north slope of Blackhawk Mountain, although to date only exploratory drilling has been done. Blackhawk Mountain currently supports one of the best assemblages of the carbonate endemic species. Old roads bisect the habitat, but the lack of limestone mining has left much of the landscape intact. Creek drainage, another dozen occurrences of these three species are scattered along Nelson Ridge and an unnamed ridge that flank Long Valley for a distance of approximately 6.4 km (4 miles). No active mining is currently found along the Helendale Fault, though historic mining may have affected certain occurrences, and some assessment work is currently being done.

Above Lone Valley, the main fork of Arrastre Creek slowly climbs for another 6.4 km (4 miles) towards the Rose Mine Valley-Tip Top Mountain area. Scattered occurrences of *Eriogonum ovalifolium* var. *vineum* are found along this stretch. Some of the densest stands of *Eriogonum ovalifolium* var. *vineum* have been bisected by motorcycle and jeep trails near Rose Mine Valley (Krantz 1979b); such use of the area continues.

Farther south and east, the tributaries of Arrastre Creek run off the north and west slopes of Tip Top Mountain, which rises to an elevation of 2,000 meters (6,700 ft). On the south and east side of Tip Top Mountain, tributaries flow into the Rattlesnake Canyon drainage. Along this drainage is another cluster of occurrences of *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum*. Significant new populations of *Oxytheca parishii* var. *goodmaniana* were located by Forest Service surveys in 1992 near Tip Top Mountain and nearby Mineral Mountain. The easternmost occurrences for *Oxytheca parishii* var. *goodmaniana* and *Eriogonum ovalifolium* var. *vineum* occur a few miles east of Tip Top Mountain. Historic mining has affected *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum;* Krantz (1979b) noted that a dirt road leading to an abandoned quarry had bisected habitat for both plants. *Erigeron parishii* may be able to tolerate some disturbance, as evidenced by its occurrence along roadsides, while *Eriogonum ovalifolium* var. *vineum* remains absent from roadsides in this area (Krantz 1979a, 1979b). Off-road vehicle traffic currently adversely impacts plants in this area.

About 24 km (15 miles) south and east of Tip Top Mountain, the mountains give way to the broad alluvial fans of the upper desert. Near Burns Reserve and Pioneertown, a few disjunct occurrences of *Erigeron parishii* are found. The Burns Reserve is protected by the State of California through the auspices of the Natural Reserve System of the University of California. The Pioneertown site has been proposed for urban development. The Nature Conservancy has secured a voluntary agreement with the landowner to protect the *Erigeron parishii* at this site.

Scattered patches of carbonate substrate occur outside the main belt that traverses the San Bernardino Mountains. On the east end of Bertha Ridge, north of Bear Valley, several small patches of *Lesquerella kingii* ssp. *bernardina* and *Eriogonum ovalifolium* var. *vineum* occur. These populations are adjacent to the community of Big Bear and are subject to impacts associated with urban development. Surveys by Myers and Barrows (1988) indicated that several occurrences of *Lesquerella kingii* ssp. *bernardina* have been reduced in size since the previous surveys were performed in 1980 (Wilson and Bennett 1980).

At the northern edge of Holcomb Valley, *Oxytheca parishii* var. *goodmaniana* is found near an old gold mine site. A low to moderate potential exists for the reactivation of mining activity in this area in the future, depending on the price of gold (Forest Service 1988).

On the north-facing slope of Sugarlump Ridge on the south side of Bear Valley, several large populations of *Lesquerella kingii* ssp. *bernardina* were recently discovered. Several of these populations may be affected by the proposed expansion of a downhill ski area (Michael Brandman & Associates 1990).

In summary, virtually all of the carbonate substrates where these five species occur are under claim and subject to being mined or are threatened by other disturbance. The only sizable carbonate substrates not under claim are located on the south side of Bear Valley near Sugarlump Ridge. Those claims that are not currently being mined are being maintained either in anticipation of expanding operations once current quarry supplies are depleted (as a means of keeping competing companies from mining the claims) or in anticipation of leasing the claims for the mining of other valuable minerals.

All five taxa, except *Erigeron parishii*, are limited mainly in distribution to carbonate substrates within a 40-km (25-mile) range along the primarily northern slopes of the San Bernardino Mountains. The range of the five taxa overlap for the most part, but *Erigeron parishii* extends to the southeast another 16 km (10 miles). Although *Erigeron parishii* is found primarily on carbonate substrates, several occurrences are on non-carbonate substrates. The five species occur on lands under mining claim or on lands that have been patented, which subjects them to habitat destruction. Other activities, such as off-highway vehicle recreation, urbanization, development of a ski run, and energy development projects, threaten to alter or destroy habitat for, as well as the limited number of occurrences of, these five species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Although these species are not presently sought after by collectors, they are vulnerable to taking because of their limited distribution. Some plant taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following

listing. The increased public attention could potentially increase their desirability, thereby increasing the threat of collection.

C. Disease or predation. No data exist to substantiate whether or not disease threatens any of the plants. The seed capsules of *Lesquerella kingii* ssp. *bernardina* were observed to have been broken open by unknown seed predators at one of the Big Bear occurrences (C. Rutherford, U.S. Fish and Wildlife Service, and M. Lardner, U.S. Forest Service, pers. obs., 1990). It is unknown whether seed predation would affect the viability of the species. In the vicinity of Round Mountain, several occurrences of *Astragalus albens* are known to occur within a grazing allotment administered by the Bureau of Land Management (BLM). The effects of cattle grazing on this species have not yet been investigated.

D. The inadequacy of existing regulatory mechanisms. All five plants are on List 1B of the California Native Plant Society, indicating that, in accordance with chapter 10, sec. 1901 of the California Department of Fish and Game Code, they are eligible for State listing. If State listing were pursued, the Native Plant Protection Act and the California Endangered Species Act would prohibit the "take" of State-listed plants (Fish and Game Code chapter 10, sec. 1908, and chapter 1.5, sec. 2080), but would not protect the plants from taking via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 10, sec. 1913). Although these State laws provide a measure of protection to the species, they are not adequate to protect the species in all cases. Numerous activities do not fall under the purview of this legislation, such as certain projects proposed by the Federal government and projects falling under State statutory exemptions. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized or where adverse impacts are not mitigated to the point of insignificance.

About 20 to 25 percent of the occurrences of *Erigeron parishii* and 15 to 20 percent of the occurrences of *Eriogonum ovalifolium* var. *vineum* occur on private land. The mining of limestone on private land is under the jurisdiction of the county of San Bernardino, which is responsible for administering regulations in accordance with the California Environmental Quality Act and the California Endangered Species Act. The county has included terms and conditions in the granting of certain operating permits that have directed the applicants to undertake efforts to restore the habitat and reintroduce *Erigeron parishii* and *Eriogonum ovalifolium* var. *vineum* to the site. Recently, the county included a permit condition for the expansion of an overburden pile that required the applicant to designate preserve areas with the concurrence of the California Department of Fish and Game and the Service. One population of *Erigeron parishii* occurs on land owned by the University of California at the Burns Pinyon Reserve; no activities are currently planned that would affect the population. The remaining occurrences of these two species, as well as almost all the occurrences of the other three species are primarily on lands managed by the Forest Service and, to a lesser degree, by BLM.

Several laws enacted by Congress and regulations promulgated to implement them address surface management of Federal lands, including mining, but they provide limited protection for natural resources. For instance, the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701 et seq.), as amended, was passed to provide policy for "the management, protection, development, and enhancement" of public lands managed by BLM. Section 302 of FLPMA, which addresses management of use, occupancy, and development of public lands, states "* * * the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands" (43 U.S.C. 1732 (b)). Unnecessary or undue degradation is defined to mean surface disturbance greater than that which would normally result by a prudent operator taking into account the effects of mining operations on other resources (43 CFR 3809.0–5(k)). The policy of FLPMA as expressed by regulation is that a person has a statutory right to mine certain Federal lands (43 CFR 3809.0–6). Mining operations that exceed 5 acres in extent and certain other defined operations require a plan of operations that must be approved by BLM (43 CFR 3809.1–4, 1–6). However, prior to approval of the plan, BLM must evaluate the action with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any.

Federal agencies, such as BLM, are required to (1) confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat, or (2) enter into formal consultation with the Service on any action that is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. However, Federal agencies are not required to implement Service recommendations for proposed species or proposed critical habitat. Therefore, although FLPMA affords some general protection in that resources other than mining interests must be considered by an operator, the protections afforded listed species pursuant to section 7 of the Endangered Species Act are not required to be implemented unless listing takes place. Thus, listing affords additional protection to these particular species.

Additionally, section 601 of FLPMA specifically addresses management of public lands within the California Desert Conservation Area, which includes all BLM lands where four of the five plants occur (except *Lesquerella kingii* ssp. *bernardina*) (43 U.S.C. 1781). The purpose of this section is "to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality" (43 U.S.C. 1781). Multiple use is defined, in part, to mean "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people . . ." (43 U.S.C. 1702(c)). The concept of multiple use includes the "harmonious and coordinated management of the various resources without permanent impairment of the . . . quality of the environment with consideration being given to the relative values of the resources . . ." (Id.).

Section 1781 of FLPMA states that the use of these desert resources should be provided for in a multiple use and sustained yield management plan (43 U.S.C. 1781(a)(4)). These resources specifically include "certain rare and endangered species of wildlife, plants, and fishes . . . [which] are seriously threatened by inadequate Federal management authority, and pressures of increased use . . ." (43 U.S.C. 1781(a)(3)). As a result, the Secretary of the Department of the Interior is directed to prepare and implement a

long-term plan for the "management, use, development, and protection" of the lands within this Conservation Area (43 U.S.C. 1781(d)). This plan is to take into account multiple use and sustained yield, and provide for resource use and development, which is to include "maintenance of environmental quality, rights-of-way, and mineral development" (Id.). So even though FLPMA may contain language to protect the five plant species to a certain degree through the maintenance of environmental quality, FLPMA was written to provide for multiple use. Such use does not necessarily elevate the needs of these species over other public land uses. Indeed, regulations promulgated to implement certain provisions of FLPMA provide for the approval of mining if the appropriate Federal official has complied with the section 7 consultation provisions of the Endangered Species Act (43 CFR 3809.1–6(a)(5)). However, the protections afforded listed species pursuant to section 7 of the Endangered Species Act are not required to be implemented unless listing takes place. Therefore, listing affords another layer of protection to these species.

Similar regulations have been promulgated for National Forest System lands (36 CFR part 228) so that mining "shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources" (36 CFR 228.8). Although these regulations do not specifically require compliance with section 7 of the Endangered Species Act as a prerequisite to approval of a mining plan of operations, the Act requires Service consultation for any action the Federal action agency authorizes, funds, or carries out (16 U.S.C. 1536) that may affect a federally listed species. Therefore, Forest Service approval of a mining plan of operations would require section 7 compliance, which would afford additional protection to listed plant species.

The Forest Service has attempted to reduce impacts of mining within carbonate plant habitat. As early as 1977, the Forest Service recognized four of the plants (all but *Oxytheca parishii* var. *goodmaniana*) as "sensitive species;" *Oxytheca parishii* var. *goodmaniana* was added to its list of sensitive species in 1990. The Forest Service has worked with the mining companies to minimize impacts to the plants since at least 1987 (Forest Service, *in litt.*, 1992). In the Management Plan for the San Bernardino National Forest (Forest Service 1988), the Forest Service recommended conserving at least two-thirds of the existing populations for three of the taxa (*Erigeron parishii, Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens*) in perpetuity by establishing refugia for conserving selected occurrences of these five plants as part of a regional conservation plan. In addition, all of the habitat for *Lesquerella kingii* ssp. *bernardina* was recommended for protection. This would entail securing refugia sites either by withdrawal from mineral entry or by transferring claim rights. To date, the Forest Service has hosted several interagency meetings to develop strategies to implement this forest management plan direction by identifying criteria for refuge design and strategies for establishing a minerals withdrawal. A draft habitat management guide for the carbonate plants is expected to be released within several years. However, approval and implementation of recommended actions may not take place for several years subsequent to release of the guide.

In response to the proposal, Brown (*in litt.*, 1992) has claimed that the actual amount of limestone to be mined in the foreseeable future (defined as 75 years) is only 2 percent of the existing surface expression of limestone deposits in the San Bernardino Mountains. The 1872 mining law states that claimholders must have an actual intent to mine. The Service, therefore, must assume that all claims are being held with the intent to mine. One industry representative cited two reasons why claimholders would not relinquish claims even if no future mining were intended. First, it would prohibit a competing company from mining the mineral resource. Secondly, the claims could be mined for strategic minerals other than limestone. The 1872 mining law does not include a mechanism for voluntary relinquishment of a claim or transfer of a claim to a third party for the purposes of resource conservation even if a claimholder wished to do so. Once it was proven that the third party had no intent to mine, the claim could legally be seized by other mining interests (Bill Tilden, Pfizer, Inc., pers. comm., 1992).

The surface management of public lands under U.S. mining laws (43 CFR part 3809) requires BLM to process applications to "patent" mining claims on all Federal lands. BLM has reported that since the proposal to list the carbonate plants was published, it has received an increase in patent applications submitted by industry claimholders with claims occurring within the range of the five carbonate plants (Mike Ford, geologist, formerly BLM, pers. comm., 1992). One industry representative has indicated that changes in the 1872 mining law will require that the cost of the required annual assessment work per 8-hectare (20-acre) claim ($100) be paid as a fee directly to BLM, rather than performed as on-the-ground assessment work. This may provide additional incentive to claimholders to patent claims to avoid the increase in out-of-pocket costs for the annual assessment work. An increase in the number of claims being patented could remove these lands from continued Federal jurisdiction. The elimination of Federal jurisdiction becomes important regarding protection of plants because of the reduced protection afforded by the Endangered Species Act for plants on private lands.

E. Other natural or manmade factors affecting its continued existence. Populations consisting of a small number of individuals always face the possibility of stochastic extinction (i.e., extinction due to random events, including fire, flood, drought, landslide, disease, or predation). The total amount of annual precipitation, as well as the timing of such precipitation, may be crucial for seedling germination and subsequent establishment. A significant drop in the size of *Lesquerella kingii* ssp. *bernardina* populations in the Bertha Ridge area between 1980 and 1988 (from 25,000 to 15,000 individuals) may be in part due to several years of drought conditions. Conversely, the high amount of precipitation received during March 1992 may, in part, account for the increased number of *Astragalus albens* individuals observed during 1992 surveys compared to the number found in previous surveys. Such fluctuations in population sizes should be expected, but at the same time emphasize the need to maintain *in situ* seedbanks on suitable habitat. Moreover, drought-stressed plants can become vulnerable to additional damage from pathogens or insects. The risk of stochastic extinction for *A. albens* and *Oxytheca parishii* var. *goodmaniana*, which currently consist of fewer than 10,000 individuals each, is considered high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these five species in determining to issue this final rule. Based on this evaluation, the preferred action is to list *Eriogonum ovalifolium* var. *vineum*, *Astragalus albens*, *Lesquerella kingii* ssp. *bernardina*, and *Oxytheca parishii* var. *goodmaniana* as endangered. Destruction of their habitat by activities associated with limestone mining, sand and gravel mining, off-road vehicle and other recreational use, and energy

development projects, as well as their vulnerability to stochastic events, exposes these four plant species to the danger of extinction throughout all or a significant portion of their ranges. These species thus fit the Act's definition of endangered. While *Erigeron parishii* faces the same threats as the other four species, it has the widest range of distribution; at least a few populations within the range of the species occur at locations with non-carbonate substrates, which are not currently under mining claim. Therefore, the preferred action is to list *Erigeron parishii* as threatened.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *Eriogonum ovalifolium* var. *vineum*, *Astragalus albens*, *Lesquerella kingii* ssp. *bernardina*, *Oxytheca parishii* var. *goodmaniana*, and *Erigeron parishii* is not presently prudent. The publication of critical habitat descriptions and maps required for critical habitat designation would increase the degree of threat to these plants from possible take or vandalism, and could contribute to their decline. The listing of species as either endangered or threatened publicizes the rarity of the plants and can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All appropriate Federal agencies and local planning agencies have been notified of the location of these species and importance of protecting their habitat. Protection of these species' habitat will be addressed through the recovery process and potentially through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Populations of all five plant species occur in large part on Federal land. *Erigeron parishii*, *Eriogonum ovalifolium* var. *vineum*, and *Astragalus albens* occur on land managed by the San Bernardino National Forest and the California Desert District of BLM. *Lesquerella kingii* ssp. *bernardina* and *Oxytheca parishii* var. *goodmaniana* occur primarily on land managed by the San Bernardino National Forest. Federal activities potentially impacting one or more of the five plants and likely to trigger formal consultation under section 7 of the Act include the approval of mining plans of operations; approval of mining reclamation plans; construction of recreational facilities, such as off-highway vehicle trails and the ski run; rights-of-way for various activities including access to mining claims and energy development corridors; and grazing allotments. The patenting of mining claims are processed by BLM; however, legal opinions differ as to whether this process can be considered a Federal activity subject to section 7 of the Endangered Species Act. The Army Corps of Engineers (Corps) will have permitting authority as described under section 404 of the Clean Water Act for construction of a hydroelectric power plant and a sand and gravel mining operation being proposed for the Cushenbury Springs area. By regulation, nationwide or individual permits cannot be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Endangered Species Act. In addition, construction of the hydroelectric power plant most likely will require the approval of the Federal Energy Regulatory Commission and thus require formal consultation.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all listed plants. With respect to the five carbonate endemics from southern California, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction, or remove, cut, dig up, damage or destroy listed plants on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the five plant species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination

was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this rule is Constance Rutherford, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	
Asteraceae—Aster family:						
* *	*	*	*	*	*	
Erigeron parishii	Parish's daisy	U.S.A. (CA)	T	548	NA	NA
* *	*	*	*	*	*	
Brassicaceae—Mustard family:						
* *	*	*	*	*	*	
Lesquerella kingii ssp. *bernardina.*	San Bernardino Mountains bladderpod.	U.S.A. (CA)	E	548	NA	NA
* *	*	*	*	*	*	
Fabaceae—Pea family:						
* *	*	*	*	*	*	
Astragalus albens	Cushenbury milk-vetch	U.S.A. (CA)	E	548	NA	NA
* *	*	*	*	*	*	
Polygonaceae—Buckwheat family:						
* *	*	*	*	*	*	
Eriogonum ovalifolium var. *vineum.*	Cushenbury buckwheat	U.S.A. (CA)	E	548	NA	NA
* *	*	*	*	*	*	
Oxytheca parishii var. *goodmaniana.*	Cushenbury oxytheca	U.S.A. (CA)	E	548	NA	NA
* *	*	*	*	*	*	

Dated: August 3, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 209
Remedial Actions Reporting; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. RSEP–7, Notice No. 2]

RIN 2130–AA85

Remedial Actions Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: FRA is amending its railroad safety enforcement regulations to require railroads to report actions taken to remedy certain alleged violations of law. If a railroad receives notice from an FRA or State safety inspector that (i) the inspector is recommending that a civil penalty be assessed for an alleged violation of law and (ii) that a remedial actions report must be submitted, the railroad shall report to the inspector the actions that it took to remedy the alleged violation. In such a case, the railroad is required to submit the remedial actions report within 30 days after the end of the month in which the railroad received the notice. The rule also provides that if appropriate required remedial actions cannot be taken by the railroad within such 30-day period, it shall submit to the inspector (i) a written explanation of the reasons for any delay and (ii) a final report upon completion of the remedial actions.

EFFECTIVE DATE: This final rule will be effective January 1, 1995.

ADDRESSES: Any petition for reconsideration should reference Docket No. RSEP–7, Notice No. 2, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Room 8201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Enforcement (RRS–10), FRA, Office of Safety, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–366–9252), or David H. Kasminoff, Trial Attorney (RCC–30), FRA, Office of Chief Counsel, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–366–0635).

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1993, FRA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend part 209, entitled "Railroad Safety Enforcement Procedures," by revising § 209.3 and adding a new "Subpart E—Reporting of Remedial Actions." The proposed Subpart E prescribed reporting procedures for railroads notified by an FRA or State safety inspector both that assessment of a civil penalty would be recommended against them for their alleged noncompliance with the Federal railroad safety laws and that a remedial actions report must be submitted to the inspector. 58 FR 33595.

In a study released on July 31, 1990 (GAO/RCED–90–194), the General Accounting Office (GAO) concluded that FRA had no assurance that railroads were correcting problems identified in FRA's routine inspections because there were no requirements that railroads respond in writing to indicate that an identified defect had been repaired. The GAO report acknowledged that, even in the absence of requirements to report corrective actions, railroads voluntarily responded in writing to FRA concerning most track and signal defects indicating that corrective actions have been taken. For example, in 1986 through 1988 FRA identified about 361,000 track defects, for which approximately 320,000, or 89 percent, had a railroad response recorded in the "Action" and "Date" columns of the railroad's copy of the Track Inspection Report. In the same period, FRA identified about 35,000 signal defects, for which approximately 30,000, or 86 percent, had a railroad response recorded in the "Action" and "Date" columns of the railroad's copy of the Signal and Train Control Inspection Report.

The GAO report further noted that, although some railroads also reported corrective actions for equipment and operating practices defects, FRA maintained no record of these written responses and that FRA did not reinspect in every case to verify the correction of a safety defect. The GAO recommended that FRA establish an effective inspection follow-up program that would include (i) requiring railroads to report actions taken on FRA inspection findings, (ii) determining what reinspection levels are needed to ensure that railroads are responding to inspection findings, and (iii) assessing civil penalties for failure to report corrective actions.

On September 3, 1992, the President signed into law the Rail Safety Enforcement and Review Act (RSERA), Pub. L. 102–365, 106 Stat. 972, which mandated in § 3 the issuance of rules requiring submission of remedial actions reports. On July 5, 1994, the general and permanent provisions of the RSERA and of all the other Federal railroad safety laws were simultaneously repealed, reenacted without substantive change, and recodified as positive law in title 49 of the U.S. Code by Public Law 103–272. See H.R. Rep. No. 103–180, 103d Cong., 1st Sess. (1993). Section 3 of the RSERA provided as follows:

(a) Regulations.—The Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall issue regulations to require that any railroad notified by the Secretary that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, as such term is defined in section 212(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(e)), or any rule, regulation, order, or standard issued under such provision, shall report to the Secretary, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

(b) Explanation of Delay.—Regulations issued under subsection (a) shall provide that, if appropriate remedial actions cannot be taken by a railroad within such 30-day period, such railroad shall submit to the Secretary an explanation of the reasons for any delay.

(c) Schedule for Regulations.—The Secretary shall—(1) within 9 months after the date of enactment of this Act, issue a notice of proposed rulemaking for regulations to implement this section; and (2) within 2 years after the date of enactment of this Act, issue final regulations to implement this section.

49 U.S.C. 20111(d), formerly codified at 45 U.S.C. 437 note. As recodified at 49 U.S.C. 20111(d), the section now reads as follows:

(d) Regulations Requiring Reporting of Remedial actions.—(1) The Secretary shall prescribe regulations to require that a railroad carrier notified by the Secretary that imposition of a civil penalty will be recommended for a failure to comply with this part, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

(A) actions taken to remedy the failure; or

(B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

The Secretary has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49 (c), (d), (f), (g), (m), (s), (ee), (gg), and internal delegations.

The term "Federal railroad safety laws" in § 3 of the RSERA means the provisions of law that as a result of recodification are now, generally, at 49 U.S.C. subtitle V, part A or 49 U.S.C. chap. 51 or 57 and the rules, regulations, orders, and standards issued under any of those provisions. See Pub. L. 103–272 (1994). Before recodification, these statutory provisions were contained in the following statutes: (i) the *Federal Railroad Safety Act of 1970* (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Pub. L. 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*); (ii) the *Hazardous Materials Transportation Act* (Hazmat Act) (49 U.S.C. 5101 *et seq.*, formerly codified at 49 App. U.S.C. 1801 *et seq.*); (iii) the *Sanitary Food Transportation Act of 1990* (SFTA) (49 U.S.C. 5713, formerly codified at 49 App. U.S.C. 2801 (note)); and those *laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act* (DOT Act), as in effect on June 1, 1994 (49 U.S.C. 20302, 21302, 20701–20703, 20305, 20502–20505, 20901, 20902, and 80504, formerly codified at 49 App. U.S.C. 1655(e)(1), (2), and (6)(A)). 49 U.S.C. 20111 and 20109, formerly codified at 45 U.S.C. 437 (note) and 441(e). Those laws transferred by the DOT Act include, but are not limited to, the following statutes: (i) the *Safety Appliance Acts* (49 U.S.C. 20102, 20301, 20302, 20304, 21302, and 21304, formerly codified at 45 U.S.C. 1–14, 16); (ii) the *Locomotive Inspection Act* (49 U.S.C. 20102, 20701–20703, 21302, and 21304, formerly codified at 45 U.S.C. 22–34); (iii) the *Accident Reports Act* (49 U.S.C. 20102, 20701, 20702, 20901–20903, 21302, 21304, and 21311, formerly codified at 45 U.S.C. 38–43); (iv) the *Hours of Service Act* (49 U.S.C. 20102, 21101–21107, 21303, and 21304, formerly codified at 45 U.S.C. 61–64b); and (v) the *Signal Inspection Act* (49 U.S.C. 20102, 20502–20505, 20902, 21302, and 21304, formerly codified at 49 App. U.S.C. 26).

FRA performs its safety inspections in order to monitor and enforce compliance with the Federal railroad safety laws by all entities subject to its jurisdiction, not simply by railroads. The entities themselves still retain ultimate responsibility for detecting, repairing, and avoiding violations of those laws. Nevertheless, the reporting requirement will assist FRA in monitoring followup actions by railroads with respect to conditions sufficiently serious to warrant possible future civil penalty actions.

If an FRA inspector, State inspector participating in investigative and surveillance activities under 49 C.F.R. Part 212, or other duly authorized official performing a railroad safety inspection (hereinafter referred to collectively as "FRA Safety Inspector") determines that a railroad has not complied with a provision of the Federal railroad safety laws and if the inspector decides to recommend the assessment of a civil penalty against the railroad for the noncompliance, the inspector will first prepare an inspection report. This report includes the following information: the name of the FRA Safety Inspector, his or her identification number, the report number, the name and job title of the railroad representative served with the report, the railroad's name and computer code, the railroad division and subdivision (if applicable), and the inspection report date. Further, the inspection report also indicates if the FRA Safety Inspector has checked the box specifying "Violation Recommended." If a violation is recommended, the FRA Safety Inspector will prepare a violation report including a recommendation for the assessment of a civil penalty.

The central requirement of the final regulations is that any railroad receiving notification on the new version of the inspection report that (i) the FRA Safety Inspector is recommending the assessment of a civil penalty for a failure by that railroad to comply with a provision of the Federal railroad safety laws and (ii) a report of remedial actions must be filed, shall fill out the "Railroad Followup" section of the railroad copy of the inspection report. The railroad must then return the form to the designated FRA Safety Inspector within 30 days after the end of the month in which such notification is received. The remedial actions report must include the name and job title of the individual completing the form on behalf of the railroad and indicate the date(s) on which the remedial actions occurred. A copy of the new inspection report on which to report to FRA remedial actions taken is appended to this final rule.

Under the terms of the final regulations, the duty to submit a remedial actions report does not arise merely upon notification that a recommendation for the assessment of a civil penalty will be made (*i.e.*, in the box stating "Violation Recommended," the word "yes" is selected). It arises only if notification is also provided to the railroad on the inspection report itself that submission of a remedial actions report for that specific failure is required (*i.e.*, in the box stating "Written Notification to FRA of Remedial Action is:" the word "Required" is selected). Broadly construed, under one permissible interpretation of the reporting requirement of § 3 of the RSERA, the requirement could apply to all violations for which the assessment of a civil penalty is recommended. This reading of § 3 would, of course, include all violations involving physical defects (*e.g.*, in track, equipment, and signals) where, absent remedial actions, the physical defect continues to pose a safety hazard, *e.g.*, a defective wheel on a freight car. However, this interpretation would also include violations involving a defect in human performance, such as permitting a locomotive engineer to work in excess of 12 hours in violation of the Federal hours of service laws. In that instance, the excess service creates a risk during the period of the excess service itself, but does not carry a continuing threat to safety.

FRA concludes that the intent of Congress in enacting § 3 of the RSERA was to require the reporting of remedial actions only for a failure to comply that, in the judgment of the FRA Safety Inspector, could literally and specifically be corrected by the specific railroad notified. In other words, we think that Congress required remedial actions reports only for violations that could still pose an ongoing risk to rail safety if not corrected (e.g., operation of a freight car that the railroad received in interchange in revenue service with a defective wheel). In light of FRA's interpretation of § 3 of the RSERA and in an effort to develop meaningful compliance data, the final regulations apply remedial actions reporting to only three general categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended. The three general categories consist of (i) physical defects, (ii) recordkeeping and reporting violations, and (iii) filing violations.

The final regulations neither compel nor permit any affected railroad to decide for itself whether a particular recommendation to FRA for the assessment of a civil penalty falls under one of the three general categories, and thus results in the need to submit a

remedial actions report. Consider, for example, a situation in which a railroad is informed that because of its operation of a box car with a plain bearing box having no visible free oil, in violation of 49 CFR 215.107, a recommendation will be made for the assessment of a civil penalty. However, the safety inspector neglects to include the requisite notification on the inspection report that submission of a remedial actions report is required. Although the inspector's omission would not affect the railroad's underlying obligation to pay any civil penalty assessed for the substantive freight car violation, FRA's failure to provide the required notification would, under this rule, mean that the railroad had no duty to file a remedial actions report regarding the substantive violation.

After a railroad returns the completed remedial actions report to the FRA Safety Inspector, he or she will first determine if the remedial actions taken were proper and adequate under the circumstances of the violation. If not, he or she will contact the representative of the railroad who completed the report form to obtain additional information. If necessary, the FRA Safety Inspector will return a deficient report to the appropriate railroad representative for revision. Once the remedial actions report is sufficient, the FRA Safety Inspector will submit a copy of this report to FRA's Office of Chief Counsel, which may make use of it during the penalty assessment and negotiation process. FRA's Office of Safety will then correlate the data representing the different types of remedial actions that entities affected by the reporting requirement have undertaken. This computerized data will assist FRA in systematically targeting inspections by integrating available accident and injury data with inspection and compliance data, so as to better determine if affected entities are minimizing and correcting safety problems.

Under certain unusual circumstances, a railroad may be notified that assessment of a civil penalty will be recommended for a failure of that railroad to comply with a provision of the Federal railroad safety laws unless the company undertakes a specific programmatic response to the compliance problem. In such cases, although penalty action may be withheld, it will be treated as if the penalty has already been recommended, that is submission of a remedial actions report would be required. Further, there are instances where a recommendation for the assessment of a civil penalty may be made, but later overturned by regional officials for technical or policy reasons or declined by FRA's Office of Chief Counsel for evidentiary or other legal deficiencies. FRA considers the phrase " * * * that has received written notification * * * from an FRA Safety Inspector both that assessment of a civil penalty will be recommended * * * and that it must submit a remedial actions report * * * "as the triggering language that requires a railroad to report its remedial actions to FRA within 30 days after the end of the month in which such notification is received. *See* 49 CFR 209.405.

Discussion of Comments and Conclusions

A total of 11 responses were received concerning the NPRM. At the public hearing held in Washington, D.C. on October 19, 1993, six organizations were represented: the Association of American Railroads (AAR); The American Short Line Railroad Association (ASLRA); Consolidated Rail Corporation (Conrail); National Railroad Passenger Railroad Corporation (Amtrak); Union Pacific Railroad Company (UP); and Brotherhood Railway Carmen Division, Transportation Communications International Union (BRC). Prepared statements were provided by the AAR, the ASLRA, and the BRC, and written comments were received from the AAR, the ASLRA, the UP, the BRC, the American Public Transit Association (APTA), Akzo Chemicals Inc. (Akzo), Chemical Manufacturers Association (CMA), and Southeastern Pennsylvania Transportation Authority (SEPTA). Discussions follow with respect to the primary issues raised by the commenters. In light of the comments received, FRA has reconsidered some of its proposals.

1. *Should the final rule require remedial actions reports for all categories of failures to comply with provisions of the Federal railroad safety laws for which assessment of civil penalties have been recommended, or just for failures that can literally and specifically be corrected?*

The NPRM set forth FRA's belief that the intent of Congress in enacting § 3 of the RSERA was to require reporting of remedial actions only for failures to comply that could literally and specifically be corrected. FRA, however, acknowledged that one permissible reading of the statute is that remedial actions reports are required for all categories of alleged violations, and encouraged commenters to submit their views on FRA's interpretation of § 3 of the RSERA. Specifically, FRA asked any commenter believing that expansive reporting is required by the statute, or inherently useful, to recommend specific ways that generally responsive measures taken to prevent violations similar to those involved in completed or past transactions could usefully be reported to FRA.

Five commenters agreed with FRA's position that the rule should apply to only three general categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended. The three general categories consist of (i) physical defects, (ii) recordkeeping and reporting violations, and (iii) filing violations.

The AAR believed that to require more expansive reporting would expand the scope of the rule beyond FRA's statutory authority, since in § 3(a) of the RSERA Congress ordered remedial actions reports only on "actions taken to remedy that failure," referring to the particular "failure" to comply for which a civil penalty would be sought. The AAR also stated that there is no policy or safety reason for FRA to expand the scope of the rule and that FRA already has sufficient information available to assist it in allocating agency resources. The ASLRA opined that to require reporting of actions not susceptible to physical change or administrative correction would be counterproductive, leading to unnecessary paperwork and costs. The CMA believed that FRA should be more selective in determining when a remedial actions report must be filed and that FRA Safety Inspectors (as that term is now defined in the final rule) should have discretion to decide if safety concerns warrant the submission of a report even for failures involving physical defects, recordkeeping and reporting violations, and filing violations.

In contrast, the BRC believed that FRA's proposed restrictive approach runs contrary to the legislative history and does not comport with Congressional intent, and that Congress specifically intended to limit FRA's discretion in implementation of the RSERA. The BRC stated that completed or past transactions in violation of the law and regulations are not usually isolated instances, but are indicative of an ongoing pattern of violations which can be remedied by additional instruction, education, or discipline. The BRC also indicated that even if the rule is applied to all categories of violations, remedial actions reporting would still address only violations that FRA Safety Inspectors could confirm with sufficient evidence to warrant the recommendation of assessment of a civil penalty.

While FRA disagrees with the AAR's conclusion that it would lack the statutory authority to expand the scope of the rule, FRA also disagrees with the BRC's conclusion that the legislative history, including House Report No. 102–205, establishes a Congressional intent to subject all violations to the reporting requirement. Section 3 of the RSERA required remedial actions reports for "actions taken to remedy *that* failure" (emphasis added), and FRA concludes that Congress was referring to actions taken to remedy the particular "failure" to comply for which a civil penalty would be sought (*i.e.*, to the specific instance that constituted a violation), not to the generic failure on other occasions to comply with the same regulatory or statutory provision.

After careful consideration of all of the comments, FRA has decided to require the reporting of remedial actions only for failures to comply that can literally and specifically be corrected, as set forth in the NPRM. In response to the concerns raised by the BRC, FRA emphasizes that for violations involving completed or past transactions that can no longer be remedied by the given railroad (*e.g.*, permitting a locomotive engineer to work in excess of 12 hours in violation of the Federal hours of service laws or offering a freight car in interchange with a defective wheel that FRA identified to the receiving railroad as requiring repair), FRA will expect the railroad against whom a civil penalty is recommended (or even against whom only a written warning is issued) to reassess its own overall policy and attitude toward future compliance, such as by reallocating its resources or providing additional employee training. Moreover, since the civil penalty that will be recommended is expected to serve as an incentive toward generally responsive actions, to require a remedial actions report for violations that can no longer be remedied by that railroad would be superfluous.

2. *Should the reporting requirement apply to all entities over which FRA has enforcement authority, e.g., shippers of hazardous materials, or just to railroads?*

The only two organizations that commented on this issue favored the proposed expanded coverage of the rule. The BRC believed that expanded coverage would promote better accountability and permit FRA to fully monitor compliance with the law and regulations. CMA generally supported the proposed reporting requirement, including expansion of the proposed definition of "responsible company" to include shippers, if improved safety in the shipment of hazardous materials by rail can be realized. However, CMA noted that a discussion of the rule's economic impact on shippers was omitted from FRA's regulatory impact analysis.

As acknowledged in the NPRM, § 3 of the RSERA mandated issuance of rules requiring remedial actions reports only from railroads. FRA proposed making the rule applicable to all persons other than individuals under our rulemaking authority under § 202 of the Safety Act, in furtherance of our enforcement authority under the Hazardous Materials Transportation Act, in order to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws.

FRA has reconsidered its proposal and decided to limit the applicability of the final rule to only railroads. First, FRA believes that if Congress had intended for all persons besides railroads to be included under § 3 of the RSERA, Congress would have expanded the scope of the rule. Second, FRA now concludes that in most instances in which FRA Safety Inspectors choose to cite shippers of hazardous materials for violations of the Hazardous Materials Regulations, the tank cars or shipping papers that are the subjects of the civil penalty recommendations are no longer under the control of the shipper. Accordingly, the majority of these violations are for completed or past transactions and thus would not subject shippers to the reporting requirement even under the proposed expanded approach.

The shippers would still, however, be expected to reevaluate their future compliance policies and procedures. For example, a shipper receives written notification from an FRA Safety Inspector that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 173.29 for failure to properly secure all of the closures on a residue tank car, but the car is found in a rail yard hundreds of miles from the shipper's facility. Although this failure would fall within one of the three general categories of correctable violations, under ordinary circumstances the required remedial actions (e.g., securement of the car's closures) would be performed exclusively by the railroad. The shipper might investigate the circumstances surrounding the tank car's preparation and then implement new procedures, but under the terms of the NPRM the shipper would not be required to submit a remedial actions report.

3. *Does FRA have the legal authority to impose civil or criminal penalties on railroads and/or individuals that either violate or cause a violation of the reporting requirements?*

The proposed rule identified the penalties that FRA might impose upon any person who violates or causes the violation of any requirement of Subpart E, and noted that penalties were authorized by § 209 of the Safety Act. However, the AAR, the ASLRA, and the UP stated that although the source of FRA's authority in promulgating the rule was § 3 of the RSERA, neither that section nor any other section of the RSERA authorized the imposition of civil or criminal penalties. The three commenters noted that while § 209 of the Safety Act authorized penalties for violations of safety rules or regulations issued under that Act, § 3 of the RSERA was neither an amendment nor an addition to the Safety Act. They then concluded that since FRA never provided any notice or a reasoned explanation for why the rule's substantive provisions are "necessary" for railroad safety under § 202(a) of the Safety Act (now codified at 49 U.S.C. 20103), or "necessary or appropriate" for safe transportation of hazardous materials under § 105(a)(1) of the Hazardous Materials Transportation Act (now codified at 49 U.S.C. 5103), neither civil nor criminal penalties are authorized.

These commenters opined that since the underlying violation is already subject to a civil penalty, and the necessary incentives to submit a remedial actions report are already in place, the possible imposition of an additional penalty would be superfluous. The BRC contended that the incentive provided by a separate penalty for submitting an improper remedial actions report increases accountability and forces the railroads to ensure completion of the report.

FRA adopts the NPRM proposal that civil and/or criminal penalties may be imposed upon any person, including a railroad, who either violates or causes the violation of any requirement of Subpart E. As stated in the authority citation for the proposed revised part 209, FRA's authority for including civil and criminal penalty provisions in the remedial actions reporting rule derives from our rulemaking authority under 49 U.S.C. 20103 (formerly contained in § 202 of the Safety Act). See 49 CFR 1.49(m). Contrary to the implication of the AAR, the ASLRA, and the UP, FRA is not issuing the remedial actions reporting rule with respect to violations of the Hazardous Materials Regulations under the authority of 49 U.S.C. 5103 (formerly contained in § 105(a)(1) of the Hazardous Materials Transportation

Act). With regard to submission of remedial actions reports for violations of the Hazardous Materials Regulations, our authority for including civil and criminal penalty provisions in the rule derives from our rulemaking authority under 49 U.S.C. 20103, in furtherance of our enforcement authority under the provisions of law formerly known as the Hazardous Materials Transportation Act. See 49 CFR 1.49 (m) and (s). Of course, FRA could issue these rules under the provisions of law formerly contained in the Safety Act even if the provisions of law formerly contained in § 3 of the RSERA did not exist, so this is an academic argument. For the record, FRA believes these rules are necessary for safety.

Accordingly, consistent with FRA's belief that Congress did not intend for FRA to lack the authority to enforce the remedial actions reporting rule, we are issuing the rule under both 49 U.S.C. 20111(d) and 49 U.S.C. 20103 in order to avail ourselves of all potential remedies that may be necessary to achieve compliance. To the extent that we are issuing the rule under 49 U.S.C. 20103, we have concluded that it is "necessary" to ensure railroad safety, as required by § 20103(a). FRA strongly disagrees with the AAR's conclusion that the NPRM failed to sufficiently set forth why the submission of remedial actions is "necessary" for railroad safety. The AAR quoted FRA's statement in the NPRM that "* * * it is doubtful that this proposed rule alone will reduce the number of defective conditions in the industry, or that it will materially impact on the already declining rate of train accidents." 58 FR 33601. The AAR also observed that FRA "* * * is unable to quantify any direct or indirect safety benefit from this proposed rule." 58 FR 33601. The AAR further noted that even if certain correctable violations (which, if uncorrected, pose ongoing safety risks) have meaningful connections to safety, this nexus does not establish that the submission of remedial actions reports is "necessary" to railroad safety.

Although FRA readily acknowledged in the NPRM that it is unable to quantify any direct or indirect safety benefit from the proposed rule, it also stated that the potential benefit will come about by increasing the ability of the railroad industry to manage quality control. 58 FR 33601. FRA also concluded that the rule will improve its ability to efficiently and effectively manage its inspection resources. 58 FR 33601. In addition, it was hoped that railroads (previously included under the term "responsible company"), after being required to report remedial actions to FRA, will create their own internal databases of the remedial actions reports. Although we noted that internal analyses of the information was not required by the NPRM, we stated that such analyses (in conjunction with other resource management data) might lead railroad management to take actions designed to reduce and/or effectively respond to defective conditions. 58 FR 33601.

We also stated in the NPRM that remedial actions reporting will assist FRA in monitoring follow-up actions by railroads with respect to conditions sufficiently serious to warrant possible future civil penalty actions. 58 FR 33601. FRA then noted that the rule also holds particular potential for reducing the amount of time that FRA Safety Inspectors spend returning to an inspection location to check on the status of a violation for which a violation report had previously been submitted. 58 FR 33601. The rule also will permit FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws.

4. *Should notification to a railroad that it must submit a remedial actions report be provided to a specific person and place designated by that railroad?*

The proposed rule identified the entity itself as the person upon whom written notification of the requirement to submit a remedial actions report would be served. No provision was included to permit a railroad to direct FRA to serve the written notice upon either a named individual or an individual having a particular job title or job function on the railroad. FRA anticipated that written notice would be given directly to an appropriate local railroad official, such as a foreman, trainmaster, or supervisor.

Five commenters opined that unless FRA requires each railroad to identify a specific person or contact within that railroad, delays or failure to respond to the remedial actions report could result. The AAR proposed that FRA provide initial notification of a filing requirement to nonagreement officers (or their designates) involved in managerial field supervision, with duplicate notice sent to a location to be specified by each railroad. The AAR stated that while cost savings are difficult to quantify, providing notification to a headquarters location would enhance timeliness and compliance. The AAR requested that if the final rule does not require central notification, then FRA Safety Inspectors should be required to make every effort to hand deliver notification to the nonagreement managers (or their designates) who accompany the field inspectors. Conrail stated that many of its first-line supervisors, with whom FRA Safety Inspectors currently leave inspection reports, assume that the reports are not their responsibility to forward or answer because the problems did not exist or originate in their territories.

The BRC argued that if the railroads need to implement internal reforms in order to comply with FRA regulations then blame cannot be placed on the remedial actions reporting requirement. The BRC opined that to the extent that the railroads already monitor and control required repairs to track and equipment, their current internal accountability will foster compliance with this rule. It also believed that since most violations are resolved and handled locally, the remedial actions report form could be completed locally.

FRA is not persuaded that a requirement to provide notification of the duty to submit a remedial actions report to either a specific local-level nonagreement official and/or to an official at a central location of the railroad is either necessary or appropriate. Upon consideration of all of the comments, FRA believes that to require its inspectors to expend additional time serving notice upon only certain categories of railroad employees at each inspection location and also to maintain current lists of names and mailing addresses of designated railroad officials at central locations, would undermine FRA's ability to efficiently and effectively manage its inspection resources.

Under current FRA procedures, FRA Safety Inspectors usually will deliver their inspection report directly to the individual who accompanied them on the railroad's property during the inspection. Other times, the inspectors will communicate with an appropriate local railroad official (either agreement or nonagreement) shortly after they perform an unaccompanied inspection. In any event, the inspection report form shows to whom FRA has delivered the report, so there is a clear basis on which a railroad can insist on accountability by its own officers and employees. Accordingly, we believe that each railroad is uniquely qualified to establish its own internal control mechanism for ensuring that all information concerning remedial actions reporting, delivered by FRA to any relevant local employee of the railroad, is reported to the necessary individuals in the railroad's hierarchy in a timely and efficient manner.

5. *Should the inspection report itself be adapted and modified to serve as the remedial actions report form?*

The NPRM proposed the continued use by FRA Safety Inspectors of a different type of inspection report form specific to each discipline. However, only one generic remedial actions report form, regardless of the rule, regulation, order, or standard involved, would be used by all railroads required to report their remedial actions. It was anticipated that FRA would develop a number of specific remedial actions report forms unique to each discipline, either as part of, or as attachments to, the inspection reports themselves.

The AAR, the UP, and the ASLRA strongly urged FRA to amend its existing inspection reports to serve as remedial actions report forms, thus eliminating much of the paperwork and reporting burdens from the railroads. The AAR also noted that several of FRA's current inspection forms already serve this purpose, such as the "Railroad Followup" section on inspection reports for Track, Motive Power and Equipment, and Signal and Train Control inspections.

FRA agrees with the commenters that modifying the inspection report to serve as the remedial actions report form will generally ease the paperwork burden imposed by this rule on the railroads and will specifically reduce the amount of time required to complete the form. FRA has also decided to combine all four of its discipline-specific inspection reports into one new generic inspection report, to be designated as Form FRA F 6180.96. To denote that a railroad is required to submit a remedial actions report, the FRA Safety Inspector checks the box marked "required" in the section entitled "Remedial Actions" of the new inspection report form. The railroad will then provide the required remedial actions report information directly on its copy of the inspection report, and mail that form back to the appropriate FRA Safety Inspector.

6. *Should the instructions on the remedial actions report form be changed to make submission of a brief narrative statement optional, thus permitting a railroad to submit its report by only selecting the appropriate remedial action code?*

The NPRM proposed prohibiting a railroad from reporting its remedial actions simply by indicating that corrective actions were performed. The proposed rule would have required a railroad to report to FRA with the necessary level of specificity by selecting the appropriate reporting code along with a brief narrative description to indicate the nature of the actions taken.

The AAR and the ASLRA contended that, with the exception of the code "other remedial actions," FRA should not require written narrative statements when an applicable action code already exists. They believed that preparation of a narrative adds to compliance time and costs, but yields no railroad safety benefits. They further argued that the absence of a narrative would not undermine the quality of railroad compliance, since FRA could perform field audits and random samplings of railroad records.

The BRC strongly favored retention of the narrative description requirement and suggested that additional instructions be added to the reporting form to enhance the quality of the narrative statement, *e.g.*, when repairs to a railroad car are necessary the narrative statement should indicate the place of repair, the extent of the repair, and the name of the person performing the repair. The BRC opined that the narrative statement would assist FRA in determining if a railroad needed to take additional actions, without the need for a formal audit.

FRA agrees with the AAR and the ASLRA that under most circumstances the selection of a remedial action code on the reporting form will fully and accurately reflect the action or actions taken to remedy a failure to comply with a provision of the Federal railroad safety laws. Examples of such codes include the following: repair or replacement of a defective component without movement, movement of a locomotive or car for repair (where permitted) and its subsequent repair, completion of a required test or inspection, removal of a noncomplying item from service but not for repair (where permitted), or reduction of operating speed (where sufficient to achieve compliance). It is primarily this coded information that FRA anticipates entering into its computer database to augment FRA's ability to efficiently and effectively manage its inspection resources. With the exception of the residuary code for "other remedial actions," FRA concludes that requiring inclusion of a narrative statement on the report form would unnecessarily add to the time that a railroad would expend on completion of the form and would be of marginal value to railroad safety.

Contrary to the BRC's argument, FRA believes that the possibility of a followup FRA inspection, coupled with potential imposition of civil and criminal penalties for filing a false remedial actions report, will serve as a significant deterrent to any railroad considering filing a report with a false or misleading remedial action code selected. Accordingly, FRA is revising the final rule to require a railroad compelled to file a remedial actions report to select only an appropriate remedial action code to fully describe the remedial action or actions performed. Completion of the brief narrative description section will ordinarily be optional; however, for any railroad selecting the remedial action code "other remedial actions" completion of the brief narrative description section will be mandatory.

7. *Did FRA substantially underestimate the regulatory impact of the rule when it stated that it would cost the railroad industry only $66,500 per year to fill out the required remedial actions reports?*

The NPRM noted that the potential benefit of the rule comes from increasing the ability of the railroad industry to manage quality control, as well as by improving FRA's ability to efficiently and effectively manage its inspection resources. It was anticipated that it would not take the realization of many benefits to offset the relatively insignificant cost to society of approximately $75,000 per year ($66,500 to the railroad industry each year to fill out the required remedial actions reports and approximately $8,100 to FRA to review the reports). Moreover, the public reporting burden for the collection of information was estimated to average approximately 23 minutes 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.

The AAR argued that FRA's cost estimate is off by at least a factor of ten. This commenter believed that although a voluntary report may take only 15 minutes to complete, the risk of civil and criminal penalties would require a railroad to devote more management time and attention to reporting and would increase the completion time to at least one and one-half hours. The AAR further contended that FRA erred by estimating the actual employee cost per hour to be $24.00, rather than $36.00 per hour with fringe benefits included in the calculation.

The ASLRA agreed with the AAR that the cost of implementation was grossly understated. This commenter believed that based upon wage levels for the larger Class II and Class III railroads of approximately $28.00 to $30.00 per hour, along with an average 90-minute time period required for recording, checking accuracy, and senior

management clearance, the estimated annual administration cost to small railroads will be approximately $50,000 to $75,000. Both commenters, and the UP, argued that the reporting burden would be eased if FRA incorporated the reporting requirement directly onto the inspection report, and relied primarily on a checkoff of coded responses in lieu of a written description of remedial actions performed.

As already discussed in this preamble, FRA has addressed many of the concerns about time and cost raised by the three commenters by modifying the inspection report to serve as the remedial actions report form and by making a railroad's submission of a narrative description optional, under most circumstances, instead of required. Accordingly, FRA anticipates that the public reporting burden for collection of information required for this rule will remain as estimated in the NPRM, an average of approximately 23 minutes per response for all reports filed as a result of §§ 209.405 and 209.407.

FRA rejects the argument that the risk of civil and criminal penalties will increase the time required to complete a mandatory remedial actions report over the time now required to complete a voluntary report. A railroad is legally obligated to correct a cited violation and avoid continued noncompliance, regardless of whether it is required to inform FRA of its remedial actions. Presumably, a railroad that currently voluntarily submits remedial actions reports to FRA is not choosing to provide inaccurate and untruthful information merely because the threat of civil and criminal penalties may be lacking. Accordingly, FRA concludes that the time required to read the remedial actions report form and select an appropriate remedial action code will be minimal.

Section-by-Section Analysis

Section 209.3 is reorganized, the definition of "person" is revised, and definitions of three important terms employed in the remedial actions regulations are added. The first of the newly defined terms is "FRA Safety Inspector." It is defined to mean an FRA safety inspector, a State inspector participating in railroad safety investigative and surveillance activities under Part 212 of this chapter, or any other official duly authorized by FRA. The term "railroad" is defined as it appears in the recodification of the provisions of law formerly contained in the Safety Act. The term "Federal railroad safety laws" includes the provisions of law that before their repeal and reenactment in title 49 of the U.S. Code were contained in the Safety Act, the Hazmat Act, SFTA, and those laws transferred to the jurisdiction of the Secretary of Transportation by subsections (e)(1), (2), and (6)(A) of section 6 of the DOT Act. Those laws which were transferred include, but are not limited to, the Safety Appliance Acts, the Locomotive Inspection Act, the Accident Reports Act, the Hours of Service Act, and the Signal Inspection Act. In addition, the term "Federal railroad safety laws" encompasses the rules, regulations, orders, and standards issued pursuant to the above provisions of law.

As discussed elsewhere in this preamble, FRA has decided to limit the applicability of the final rule to railroads only. Accordingly, the term "responsible company" has been eliminated.

Section 209.401 describes the purpose and scope of the remedial actions reporting regulations. FRA seeks to prevent and avoid accidents and injuries that could result from a railroad's failure to remedy certain violations of the Federal railroad safety laws that have been recommended for the assessment of a civil penalty. The rules require a railroad notified by an FRA Safety Inspector both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, to report to the inspector actions taken to remedy that failure. The railroad must report within 30 days after the end of the month in which it receives such notification.

In response to AAR's request, FRA has added new subsection (d) to § 209.401 to clarify that FRA requires the submission of a remedial actions report from a railroad against whom a civil penalty is recommended only for a failure to comply that could literally and specifically be corrected by that railroad. For completed or past transactions that can no longer be remedied (*e.g.*, permitting an engineer to work over 12 hours in violation of the Federal hours of service laws), FRA expects the railroad against whom a civil penalty is recommended to reassess its own overall policy and attitude toward future compliance, perhaps by reallocating its resources or providing additional employee training. In all these situations, a civil penalty has already been recommended as an incentive toward such generally responsive actions. Accordingly, to require a railroad to inform FRA of remedial actions taken in response to a particular violation that can no longer be remedied by that railroad would be superfluous.

Accordingly, a railroad that has delivered a freight car in interchange with a defective wheel that FRA identifies to a receiving railroad as requiring repair might be recommended for the assessment of a civil penalty, but the offering railroad would not be required to submit a remedial actions report to FRA for this completed transaction. However, if the receiving railroad is recommended for the assessment of a civil penalty, it would be required to submit a report because the nature of its violation poses an ongoing risk to rail safety. Of course, for purposes of resource allocation with respect to future FRA inspection and enforcement activity, FRA welcomes the receipt of remedial actions reports from all entities (including railroads and shippers of hazardous materials) on a voluntary basis when the FRA Safety Inspector checks the "Optional Box" on the inspection report. However, no entity will be penalized for failing to submit a noncompulsory report.

Section 209.403 defines the applicability of these regulations. The final regulations do not expand the number of entities affected by the reporting requirement beyond the single category required by the provisions of law formerly contained in the RSERA, *i.e.*, all railroads receiving written notification from an FRA Safety Inspector both that a recommendation for the assessment of a civil penalty is being made and that a remedial actions report must be submitted. The primary impact of this change from the proposed rule is that hazardous materials shippers over which FRA exercises enforcement authority will not be required to report their remedial actions to the inspector. While the regulations do not directly apply to individuals, as the penalty provision in § 209.409 makes clear, any individual who willfully thwarts the reporting provisions of the proposed rule would be held individually liable for the violation.

Section 209.405(a) requires that upon receipt of written notification on Form FRA F 6180.96 from an FRA Safety Inspector both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, the railroad shall report to the inspector all actions taken to remedy that failure. The railroad shall have 30 days after the calendar month in which the notification is received to submit this report to the inspector in writing. The duty to report to the inspector is not triggered merely by receiving written

notification from the inspector that assessment of a civil penalty will be recommended, but only in conjunction with receiving written notification from the inspector that a remedial actions report must be submitted.

Since a recommendation for the assessment of a civil penalty must be made before submission of a remedial actions report is required, the duty would never arise merely upon notification that a defect has been discovered. Alternatively, if a recommendation for the assessment of a civil penalty is made and a railroad receives written notification that a remedial actions report must be submitted, but no civil penalty is later assessed either for policy or evidentiary reasons, the duty to report remedial actions taken pursuant to this section still exists. Accordingly, if the railroad is ultimately not required to pay a civil penalty for the underlying alleged violation, the railroad would still be liable for a civil penalty under § 209.405 for failing to file a required remedial actions report regarding the underlying alleged violation.

Written notification that the submission of a remedial actions report is required will occur only when a failure to comply with a provision of a Federal railroad safety law for which the assessment of a civil penalty is recommended falls into one of three general categories. The three general categories consist of (i) physical defects, (ii) recordkeeping and reporting violations, and (iii) filing violations. These categories represent types of violations that could still pose ongoing risks to rail safety if left uncorrected and/or can actually be specifically corrected. The obligation to determine whether a particular failure recommended for the assessment of a civil penalty triggers the requirement to submit a remedial actions report rests totally with FRA. Moreover, since a railroad's duty to submit a remedial actions report arises only upon specific notification to this effect, no violation can occur under this section unless such notification is properly provided by FRA.

The ASLRA commented that since circumstances vary as to what constitutes a violation, FRA Safety Inspectors must receive clear guidance as to when a violation requires the submission of a remedial actions report. The commenter argues that without such guidance an inspector might impose the reporting requirement on all categories of violations, not just for the three general categories of violations discussed earlier. FRA is aware of the potential for inconsistent enforcement of the reporting regulations by its inspectors, and intends to provide them with comprehensive training concerning the types and circumstances of violations that require the submission of remedial actions reports.

The 30-day time period is merely provided for the administrative convenience of the railroad, so as to allow sufficient time to report its remedial actions by filling out the form provided to it. The pre-existing duty to correct the defect or take other appropriate remedial action remains the same as it was before the effective date of these regulations. Accordingly, a railroad would be subject to a new recommendation for the assessment of a civil penalty for a willful violation if, for example, it operated a freight car subject to the Freight Car Safety Standards, except under the provisions of 49 CFR 215.9, knowing it to be defective, but with the intent to delay making repairs until the end of the 30-day reporting deadline. Indeed, under 49 U.S.C. 21301 (formerly contained in § 209(c) of the Safety Act), each day the violation continued would constitute a separate offense. In an instance where the FRA Safety Inspector hand delivers the written notification directly to an appropriate official, such as a foreman, trainmaster, or supervisor on duty at the location where the failure to comply with the provision of a Federal railroad safety law is either found or discovered, the date of actual delivery will be the operative date for reporting purposes. This provision is intended to affect the same categories of railroads that currently receive notification from FRA either that a defect exists and/or that a recommendation for the assessment of a civil penalty is being made. A railroad receiving written notification by first class mail that a recommendation for the assessment of a civil penalty is being made would be deemed to have received such notification five business days after the date of mailing, as determined by the date accompanying the signature of the safety inspector.

This subsection also requires that the railroad reporting remedial actions shall not simply indicate that corrective actions were taken, but shall select the appropriate reporting code to indicate what actions were taken, including the date of corrective actions. To take an example from the accident/incident reporting regulations, if a railroad fails to submit to FRA a monthly report of railroad accidents/incidents within 30 days after the expiration of the month during which the accident/incident occurred, an example of remedial action would be to file a late report with FRA for the relevant month. The railroad would select the remedial action code "Report filed." *See* 49 CFR 225.11 and 225.13. Or if, under the Railroad Operating Rules, a railroad required to file with the Federal Railroad Administrator one copy of its code of operating rules, timetables, and timetable instructions failed to do so, an example of remedial action would be to file the copy of the relevant documents as soon as possible after receiving the notification. The railroad would select the remedial action code "Document filed." *See* 49 CFR 217.7.

Unless the railroad selects the remedial action code "other remedial actions," submission of a brief narrative description will be optional. Although a railroad selecting "other remedial actions" is required to describe its remedial actions in a somewhat precise manner, FRA does not expect a lengthy and technical step-by-step explanation of what remedial actions were taken.

Section 209.405(a)(3) provides that each railroad shall return the form only to the FRA Safety Inspector whose name and address are so designated. Although FRA presently employs a different type of inspection report specific to each discipline, the reporting form to be provided by FRA is the current version of a new inspection report (a copy of which is appended to this final rule) for use by all railroads required to report their remedial actions. The FRA inspector will submit a copy of the completed remedial actions report form to FRA's Office of Chief Counsel for use during the penalty assessment and negotiation process. It is anticipated that the available remedial action codes along with the brief narrative section (when applicable) will be sufficient to report the remedial actions involved. Accordingly, a railroad will not be permitted the option of submitting its own version of a reporting form to FRA, even if it contains the same information as the FRA form.

A railroad is expected to submit its remedial actions report to FRA within the time limit specified in § 209.405(a), even if the railroad believes that a question exists as to factual elements constituting a violation of the statute or regulation cited on the inspection report. The only exception to this requirement concerns a railroad unable either to initiate or complete remedial actions that comply with the "Delayed Reports" requirement of § 209.407. If a railroad does contest the allegation, § 209.405(b) permits the railroad to explain its reasons on the remedial actions report form. To illustrate, while FRA does not expect a railroad to make repairs to a component part that the railroad does not believe is broken or

defective, § 209.405(b) does require the railroad to explain what actions it took to reach the conclusion that FRA's allegation was incorrect. For example, consider a situation in which a railroad disagrees with an inspector's conclusion that the height of a wheel flange on a car, from the tread to the top of the flange, was 1½ inches or more, in violation of 49 C.F.R. 215.103(b). Rather than select the category code corresponding to an actual repair job, the railroad would be expected to discuss what actions it took to disprove the inspector's conclusion. In response to SEPTA's concern, that by requiring the reporting of remedial actions FRA is in reality obtaining a guilty plea which interferes with the review and negotiations process, FRA states in § 209.405(b) that a railroad's failure to raise all pertinent defenses on the remedial actions report does not preclude it from doing so later in response to a penalty demand.

Section 209.407 sets forth in subsection (a) the procedure that must be followed by a railroad if, upon receipt of written notification from FRA both that assessment of a civil penalty will be recommended for a failure by that railroad to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, it is unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405. Each railroad shall have 30 days after the calendar month in which the notification is received to report to FRA in writing the reasons for such delay and a good faith estimate of the date by which the remedial actions will be completed. For purposes of determining the calendar month in which written notification is received, the same analysis as applied to § 209.405(a) applies to this subsection as well. Further, as explained in the analysis of § 209.405(a), the 30-day time period is provided for the administrative convenience of the railroad, and the pre-existing duty to correct the defect or take other appropriate remedial actions would remain the same as it was before the effective date of these regulations.

This subsection also requires that the railroad reporting a delay in either initiating and/or completing remedial actions in a timely manner pursuant to § 209.405, shall not simply indicate that corrective actions could not be taken. It shall report to FRA with the necessary level of specificity to indicate why these actions could not be taken. This subsection makes clear that although FRA does not expect a lengthy and technical step-by-step explanation of why remedial actions could not be taken, the regulations are intended to force a railroad to be somewhat precise in its report. Consider an example from the Track Safety Standards: A railroad is informed that a recommendation for the assessment of a civil penalty is being made pursuant to 49 C.F.R. 213.109 for the failure of a 39-foot segment of its track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b). Under the wording of this subsection, a written explanation to FRA merely stating that "the defect could not be corrected" would be insufficient. However, an explanation briefly stating either that "no crossties are currently in stock but will arrive within 45 days and be installed within three days after arrival" or "no funds are currently available to initiate repairs and track has been taken out of service; repairs will be completed in 60 days when funds are expected to become available" would fulfill the regulatory requirement. However, if immediately upon receiving written notification from FRA that a remedial actions report must be submitted, a railroad in the above example makes a business decision to permanently cease operations over a segment of track, the appropriate section under which to report this remedial action would be § 209.405.

Section 209.407(a)(1) provides that each railroad shall submit its explanation of the reasons for its delay in a manner that provides the inspection report number, the inspection date, and the item number. A photocopy of both sides of the Form FRA F 6180.96 on which the railroad received notification may be used for this purpose. The railroad must retain the original of Form FRA F 6180.96 and, as soon as it finally takes all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws, submit it to FRA in accordance with § 209.407(b).

Section 209.407(a)(2) requires that upon completing all actions necessary to remedy a failure to comply with a provision of the Federal railroad safety laws, each railroad shall have 30 days after the calendar month in which the actions are completed to report to FRA in writing, in accordance with the remedial action code reporting procedures referenced in § 209.405(a) and (b).

FRA will expect a railroad to exercise good faith to determine the date by which it will complete its remedial actions, and to do so as promptly as possible. However, FRA has dropped the proposed requirement of § 209.407(c) concerning a showing of good cause by any railroad failing to complete its remedial actions within 90 days of receiving written notification of a failure to comply with a provision of the Federal railroad safety laws.

As set forth in the discussion of § 209.405(b), § 209.407(b) requires a railroad to submit its remedial actions report to FRA under the provisions of § 209.405 even if the railroad believes that a question exists as to factual elements constituting a violation of the statute or regulation cited on the inspection report. As also set forth in the analysis of § 209.405(b), if a railroad does contest the allegation it may explain its reasons on the remedial action report form and later present all pertinent defenses in response to a penalty demand.

Section 209.409 identifies the penalties FRA may impose upon any person, including a railroad, that violates any requirement of this subpart. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311 (formerly contained in § 209 of the Safety Act). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this subpart or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of submitting the relevant reports of remedial actions taken, but also in development of more accurate inspection and compliance data so as to better determine if railroads are minimizing and correcting safety problems.

Environmental Impact

FRA has evaluated these final regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions,

as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives. These final regulations meet the criteria that establish this as a non-major action for environmental purposes.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-significant under both Executive Order 12866 and the DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the final rule. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

FRA believes that, in general, the railroad industry performs repairs or takes other remedial actions in response to notification by FRA of defects and violations in a timely and complete manner. Especially where violations have been filed, failure to take corrective action could lead to vastly increased penalties and even individual liability. These regulations may provide some additional incentive to take such corrective action where it otherwise might not be taken, but that potential benefit cannot be quantified. However, it is doubtful that these regulations alone will reduce the number of defective conditions in the industry, or that they will materially reduce the rate of train accidents. Further, these regulations will not change the manner in which FRA enforces the other Federal railroad safety laws; the types of violations for which safety inspectors currently recommend the assessment of a civil penalty will remain the same.

At this time, FRA is unable to quantify any direct or indirect safety benefit from this final rule. The potential benefit of this rule comes about by increasing the ability of the railroad industry to manage quality control, as well as by improving FRA's ability to efficiently and effectively manage its inspection resources. It is hoped that railroads, after being required by these regulations to report remedial actions, will create their own internal databases of these reports. Although not required by these regulations, an internal analysis of this information, in conjunction with other resource management data, might lead railroad management to take actions designed to reduce or effectively respond to defective conditions.

The regulations will assist FRA in monitoring follow-up actions by railroads with respect to conditions sufficiently serious to warrant possible future civil penalty actions. Moreover, the regulations hold particular potential for reducing the amount of time safety inspectors spend returning to an inspection location to check on the status of a violation for which a violation report had previously been submitted. Further, the regulations permit FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws.

The extent to which these potential benefits will be realized will become clearer over time as both the railroads and FRA learn how to best use the data required by these regulations. What appears clear at this time, however, is that it will not take the realization of many benefits to offset the relatively insignificant cost to society of approximately $71,000 per year ($63,121 to the railroad industry each year to fill out the required remedial actions reports and approximately $7,700 to FRA to review the reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA has concluded that it will have a minimal economic impact on a minor number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations; therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. State rail safety agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Federalism Implications

This rule does 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, FRA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This final rule has information collection requirements in §§ 209.405 and 209.407. Section 209.405 provides that when a railroad is notified in writing by an FRA Safety Inspector that a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, and that a remedial actions report must be submitted, the railroad must report to FRA all actions taken to remedy that failure. Section 209.407 has an additional information collection requirement, stating that any railroad unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405 shall submit a written explanation of the reasons for the delay and a good faith estimate of the date by which the remedial actions will be completed. FRA is submitting this information collection requirement to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The public reporting burden for this collection of information is estimated to average approximately 23 minutes 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. A **Federal Register** notice will be published when Paperwork Reduction Act approval is obtained.

List of Subjects in 49 CFR Part 209

Railroad safety, Railroad remedial actions reporting rules.

The Final Rule

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. subtitle V, part A; 49 U.S.C. chap. 51 and 57; Pub. L. 103–272; 49 U.S.C. 20301, 20303, 20304, 21302, and 21304; 49 U.S.C. 21302 and 21304; 49 U.S.C. 21302, 21304, 21311, and 20901; 49 U.S.C. 21303, 21304, and 21102; 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20114, 20131–20143, 21301, 21302, 21304, 21311, and 24902; 49 U.S.C. 103(c); 49 U.S.C. 21302 and 21304; 49 U.S.C. 20302, 20305, 20502–20505, 20701–20703, 20901, 20902, 21302, and 80504; 49 U.S.C. 5103, 5104, 5110, 5112, 5120, and 5123–5125; and 49 CFR 1.49(c), (d), (f), (g), (m), (s), (ee), (gg), and internal delegations.

2. By revising § 209.3 to read as follows:

§ 209.3. Definitions.

As used in this part—

Administrator means the Administrator of FRA, the Deputy Administrator of FRA, or the delegate of either.

Chief Counsel means the Chief Counsel of FRA or his or her delegate.

Day means calendar day.

Federal railroad safety laws means the provisions of law generally at 49 U.S.C. subtitle V, part A or 49 U.S.C. chap. 51 or 57 and the rules, regulations, orders, and standards issued under any of those provisions. See Pub. L. 103–272 (1994). Before recodification, these statutory provisions were contained in the following statutes: (i) the *Federal Railroad Safety Act of 1970* (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Pub. L. 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*); (ii) the *Hazardous Materials Transportation Act* (Hazmat Act) (49 U.S.C. 5101 *et seq.*, formerly codified at 49 App. U.S.C. 1801 *et seq.*); (iii) the *Sanitary Food Transportation Act of 1990* (SFTA) (49 U.S.C. 5713, formerly codified at 49 App. U.S.C. 2801 (note)); and those *laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act* (DOT Act), as in effect on June 1, 1994 (49 U.S.C. 20302, 21302, 20701–20703, 20305, 20502–20505, 20901, 20902, and 80504, formerly codified at 49 App. U.S.C. 1655(e)(1), (2), and (6)(A)). 49 U.S.C. 20111 and 20109, formerly codified at 45 U.S.C. 437 (note) and 441(e). Those laws transferred by the DOT Act include, but are not limited to, the following statutes: (i) the *Safety Appliance Acts* (49 U.S.C. 20102, 20301, 20302, 20304, 21302, and 21304, formerly codified at 45 U.S.C. 1–14, 16); (ii) the *Locomotive Inspection Act* (49 U.S.C. 20102, 20701–20703, 21302, and 21304, formerly codified at 45 U.S.C. 22–34); (iii) the *Accident Reports Act* (49 U.S.C. 20102, 20701, 20702, 20901–20903, 21302, 21304, and 21311, formerly codified at 45 U.S.C. 38–43); (iv) the *Hours of Service Act* (49 U.S.C. 20102, 21101–21107, 21303, and 21304, formerly codified at 45 U.S.C. 61–64b); and (v) the *Signal Inspection Act* (49 U.S.C. 20102, 20502–20505, 20902, 21302, and 21304, formerly codified at 49 App. U.S.C. 26).

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA Safety Inspector means an FRA safety inspector, a state inspector participating in railroad safety investigative and surveillance activities under Part 212 of this chapter, or any other official duly authorized by FRA.

Motion means a request to a presiding officer to take a particular action.

Person generally includes all categories of entities covered under 1 U.S.C. 1, including but not limited to the following: a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor; however, *person*, when used to describe an entity that FRA alleges to have committed a violation of the provisions of law formerly contained in the Hazardous Materials Transportation Act or contained in the Hazardous Materials Regulations, has the same meaning as in 49 U.S.C. 5102(9) (formerly codified at 49 App. U.S.C. 1802(11)), *i.e.*, an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or authority of a government or tribe when offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise, but such term does not include the United States Postal Service or, for the purposes of 49 U.S.C. 5123–5124 (formerly contained in §§ 110 and 111 of the Hazardous Materials Transportation Act and formerly codified at 49 App. U.S.C. 1809–1810), a department, agency, or instrumentality of the Federal Government.

Pleading means any written submission setting forth claims, allegations, arguments, or evidence.

Presiding Officer means any person authorized to preside over any hearing or to make a decision on the record, including an administrative law judge.

Railroad means any form of nonhighway ground transportation that runs on rails or electro-magnetic guideways, including (i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and (ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Respondent means a person upon whom FRA has served a notice of probable violation, notice of investigation, or notice of proposed disqualification.

3. By adding a new Subpart E—Reporting of Remedial Actions, to read as follows:

Subpart E—Reporting of Remedial Actions

Sec.

209.401. Purpose and scope.
209.403. Applicability.
209.405. Reporting of remedial actions.
209.407. Delayed reports.
209.409. Penalties.

(a) The purpose of this subpart is to prevent accidents and casualties arising from the operation of a railroad that result from a railroad's failure to remedy certain violations of the Federal railroad safety laws for which assessment of a civil penalty has been recommended.

(b) To achieve this purpose, this subpart requires that if an FRA Safety Inspector notifies a railroad both that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, the railroad shall report to the FRA Safety Inspector, within 30 days after the end of the calendar month in which such notification is received, actions taken to remedy that failure.

(c) This subpart does not relieve the railroad of the underlying responsibility to comply with a provision of the Federal railroad safety laws. The 30-day period after the end of the calendar month in which notification is received is intended merely to provide the railroad with an opportunity to prepare its report to FRA, and does not excuse continued noncompliance.

(d) This subpart requires the submission of remedial actions reports for the general categories of physical defects, recordkeeping and reporting violations, and filing violations, where the railroad can literally and specifically correct a failure to comply with a provision of the Federal railroad safety laws, as reasonably determined by the FRA Safety Inspector. No railroad is required to submit a report for a failure involving either a completed or past transaction or a transaction that it can no longer remedy.

§ 209.403. Applicability.

This subpart applies to any railroad that receives written notification from

an FRA Safety Inspector both (i) that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and (ii) that it must submit a remedial actions report.

§ 209.405. Reporting of remedial actions.

(a) Except as provided in § 209.407, each railroad that has received written notification on Form FRA F 6180.96 from an FRA Safety Inspector both that assessment of a civil penalty will be recommended for the railroad's failure to comply with a provision of the Federal railroad safety laws and that it must submit a remedial actions report, shall report on this form all actions that it takes to remedy that failure. The railroad shall submit the completed form to the FRA Safety Inspector within 30 days after the end of the calendar month in which the notification is received.

(1) *Date of receipt of notification.* If the FRA Safety Inspector provides written notification to the railroad by first class mail, then for purposes of determining the calendar month in which notification is received, the railroad shall be presumed to have received the notification five business days following the date of mailing.

(2) *Completion of Form FRA F 6180.96, including selection of railroad remedial action code.* Each railroad shall complete the remedial actions report in the manner prescribed on the report form. The railroad shall select the one remedial action code on the reporting form that most accurately reflects the action or actions that it took to remedy the failure, such as, repair or replacement of a defective component without movement, movement of a locomotive or car for repair (where permitted) and its subsequent repair, completion of a required test or inspection, removal of a noncomplying item from service but not for repair (where permitted), reduction of operating speed (where sufficient to achieve compliance), or any combination of actions appropriate to remedy the noncompliance cited. Any railroad selecting the remedial action code "other remedial actions" shall also furnish FRA with a brief narrative description of the action or actions taken.

(3) *Submission of Form FRA F 6180.96.* The railroad shall return the form by first class mail to the FRA Safety Inspector whose name and address appear on the form.

(b) Any railroad concluding that the violation alleged on the inspection report may not have occurred may submit the remedial actions report with an appropriate written explanation. Failure to raise all pertinent defenses does not foreclose the railroad from doing so in response to a penalty demand.

§ 209.407. Delayed reports.

(a) If a railroad cannot initiate or complete remedial actions within 30 days after the end of the calendar month in which the notification is received, it shall—

(1) Prepare, in writing, an explanation of the reasons for such delay and a good faith estimate of the date by which it will complete the remedial actions, stating the name and job title of the preparer and including either:

(i) A photocopy of both sides of the Form FRA F 6180.96 on which the railroad received notification; or

(ii) The following information:

(A) The inspection report number;

(B) The inspection date; and

(C) The item number; and

(2) Sign, date, and submit such written explanation and estimate, by first class mail, to the FRA Safety Inspector whose name and address appear on the notification, within 30 days after the end of the calendar month in which the notification is received.

(b) Within 30 days after the end of the calendar month in which all such remedial actions are completed, the railroad shall report in accordance with the remedial action code procedures referenced in § 209.405(a). The additional time provided by this section for a railroad to submit a delayed report shall not excuse it from liability for any continuing violation of a provision of the Federal railroad safety laws.

§ 209.409. Penalties.

Any person who violates any requirement of this subpart or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this subpart.

Issued in Washington, D.C., on August 16, 1994.

Note: The following Inspection Report/Remedial Actions Report will not appear in the Code of Federal Regulations.

Jolene M. Molitoris,

Administrator.

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT

PAGE 1 OF ____
OMB Approval No.: 2130-xxxx

Inspector's Name	Inspector's Signature	Inspector's ID No.	Report No.	Date yy	Date mm	Date dd	Violation Recommended ☐ Yes ☐ No

Railroad/Company Name & Address	R/C	Division	RR/Co. Representative (Receipt Acknowledged)
	RR/Co. Code	Subdivision	Name Title Signature

From: City	Codes	Destination City & County	Codes	Mile Post: From _____ To _____
State		City		Inspection Point:
County		County		

Activity Code:											
Units:											

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

Description

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ | Railroad Action Code ☐ | Date (y/m/d) ____/____/____ | Comments on back? (y/n) ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

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Description

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ | Railroad Action Code ☐ | Date (y/m/d) ____/____/____ | Comments on back? (y/n) ☐

FORM FRA F 6180.xx

* SNFR - Special Notice for Repairs

** # of Occ - Number of Occurrences

RAILROAD FOLLOW-UP INSTRUCTIONS

1. Cease violating the Federal Railroad safety laws immediately. The time allowed to file this report does not allow a violation to continue.
2. Report remedial actions within 30 days after the end of the month in which notification of the recommendation for the assessment of a civil penalty was received. NOTE: If remedial actions cannot be taken within the 30-day period, an explanation of the reason for the delay must be submitted to the address indicated on this report.
3. Enter the type of remedial actions taken, using the appropriate Remedial Actions Source Codes for each item number.
4. Enter the completion date of the remedial actions for each item number.
5. The individual completing the remedial actions report form for the railroad must sign and date the form, thereby attesting to the completion of the remedial actions report for all line numbers. NOTE: This remedial actions report is intended to provide FRA with information of specific actions taken by the railroad in response to notification that a failure to comply with a provision of the Federal Railroad safety laws has been alleged; submission of this report does not preclude the railroad from later raising all pertinent defenses in response to a penalty demand.
6. Mail to the address indicated on the top right of this page.

WARNING! Any person who violates any requirement of 49 CFR Subpart E-Remedial Actions or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified at 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by Subpart E-Remedial Actions.

RR/Co. Representative's Title	Date Signed
RR/Co. Representative's Signature	

Return this form to the following address:

RAILROAD REMEDIAL ACTION CODES

A - Disciplinary action/decertification
B - Document filed
C - Inspection performed
D - Locomotive or car moved for repair (where permitted)
E - Removed from service
F - Repaired
G - Replaced
H - Report filed
J - Secured
K - Speed restriction, if applicable and sufficient
L - Test performed
M - Training/remedial actions training
N - Other remedial actions

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

Item	Railroad Remedial Comments

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)

INSPECTION REPORT
(Continuation)

PAGE ____ OF ____
OMB Approval No.: 2130-xxxx

Inspector's Name	Inspector's Signature	Inspector's ID No.	Report No.	Date yy	Date mm	Date dd	Violation Recommended ☐ Yes ☐ No

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

Description

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ | Railroad Action Code ____ | Date (y/m/d) ____/____/____ | Comments on back? (y/n) ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

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Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ | Railroad Action Code ____ | Date (y/m/d) ____/____/____ | Comments on back? (y/n) ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

Description

Written Notification to FRA of Remedial Action is: Required ☐ Optional ☐ | Railroad Action Code ____ | Date (y/m/d) ____/____/____ | Comments on back? (y/n) ☐

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/USC	Defect Code	Subrule	Speed	Class	Train #/Site	SNFR*	# of Occ.**	QIP Code

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FORM FRA F 6180.xx * SNFR - Special Notice for Repairs ** # of Occ. - Number of Occurrences

Item	Railroad Remedial Comments

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August 24, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1994–95 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on September 2, 1994.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 2 for late-season proposals. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 23, 1994, a public hearing was held in Washington, DC, as announced in the April 7 and June 8 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

On July 12, 1994, the Service published in the **Federal Register** (59 FR 35566) a third document which dealt specifically with proposed early-season frameworks for the 1994–95 season.

On August 4, 1994, a public hearing was held in Washington, DC, as announced in the April 7, June 8, and July 12 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early seasons from which wildlife conservation agency officials from the States and Territories selected early-season hunting dates, hours, areas, and limits.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, hours, areas, and limits. All pertinent comments on the proposals received through August 4, 1994, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the **Federal Register** on or about September 23, 1994.

Presentations at Public Hearing

A report on the status of waterfowl was presented. This report is briefly reviewed below as a matter of public information, and is a summary of information contained in the "Status of Waterfowl and Fall Flight Forecast" report.

The onset of spring in arctic and subarctic nesting areas this year was intermediate between that of 1992, which was one of the latest springs on record, and 1993, which was one of the earliest. Nesting phenology in the Arctic was more variable than last year and production from most populations will be near average. In nesting areas farther south, several Canada goose populations will benefit from improved habitat conditions in central Canada and the northcentral U.S. Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be only slightly smaller than those of last year. Of continuing concern, however, is the declining number of Atlantic and Southern James Bay Canada geese. Also of concern are dusky Canada geese, whose numbers appear to have stabilized, but at a level approximately half of those observed in the 1970's.

In 1993, the breeding population of ducks was lower than in 1992. However, improved habitat conditions in the northcentral U.S. resulted in increased production from that region, and led to a fall flight similar in size to that of 1992. During the 1993 hunting season, recovery rates of mallards were lower than rates from the 1992 season. However, recovery rates of immature mallards during the last two waterfowl seasons were greater than those from the 1988–91 period. In 1994, the estimated number of ducks in the surveyed area was 32.5 million, an increase of 24 percent from that in 1993 and similar to the long-term average. The estimated number of mallards was 7.0 million, which was higher than the estimate of 5.7 million in 1993 and similar to the long-term average. Estimates for seven of the other nine principal species were higher in 1994 than in 1993; the estimates for canvasbacks and scaup were similar to those of last year. Numbers of gadwall, green-winged teal, blue-winged teal, and northern shovelers were above their respective long-term averages; whereas estimates for mallards, American wigeon, redheads, and canvasback were similar to long-term averages. Estimates of northern pintails and scaup remained below their 1955-93 means. The number of ponds in May increased 47 percent this year, and was higher than the long-term average. Improved habitat conditions throughout most of the mid-continent region led to large increases in production indices. The predicted fall-flight index for mallards (12.0 million) is 36 percent higher than that of last year. The total duck fall-flight index for 1994 is 71 million birds, which is similar in size to those which occurred during the early 1980's.

Dr. Robert Trost reviewed harvest and hunter participation statistics from the 1993–94 hunting season. Harvest and hunter activity remained essentially unchanged from the previous year, with notable exceptions of increases in Canada goose and wood duck harvests. Harvest age ratio information suggested that production improved for ducks and was markedly improved for geese in 1993. Band-recovery data indicate that the reduced harvest rates of ducks in recent years continued in the 1993–94

hunting season. Although harvests of Canada geese are increasing with increasing Canada goose populations, harvests of some snow goose stocks appear to be declining despite marked increases in populations. This has happened despite increasingly more liberal harvest regulations. Further discussion was presented on the complexities of population-specific harvest management of geese when populations of different status overlap during the period of harvest. Final comments highlighted the importance of accurate information to ensure proper management of all migratory game bird populations.

Review of Comments Received at Public Hearing

Ten individuals presented statements at the August 4, 1994, public hearing. These comments are summarized below.

Dr. Rollin Sparrowe, President of the Wildlife Management Institute, expressed optimism for the recovery of duck populations this year following many years of decline due to poor habitat conditions and praised many wildlife agencies, private organizations, and individuals for maintaining their support during several years of adversity. However, now that recovery appears to be under way, he indicated that some liberalization in harvest regulations was warranted but the major question was how much and how fast should these liberalizations be implemented. He strongly urged all those participating in the process to listen to one another and to not confuse the public by disagreements in regulatory proposals between the Service and Flyway Councils. He added that a single year of recovery did not constitute an upward trend. Finally, he requested everyone to work together and to focus their efforts on habitat programs, since habitat is the principal component needed to sustain a full recovery of duck populations to objective levels.

The California Waterfowl Association, represented by Mr. Walter Sikes, urged the Service to adopt waterfowl hunting regulations proposed by the Pacific Flyway Council. They believe that the proposed regulations would provide greater incentives for duck hunters to maintain habitats and manage private lands for waterfowl than continuing with the proposed restrictive regulations. They believe that increases in the waterfowl breeding population size and the fall flight, this year, also justify liberalizing hunting regulations. The California Waterfowl Association questioned if previous harvest restrictions assisted in the recovery of waterfowl populations from low levels. They suggested that the Service has imposed restrictions based on a trend towards continental waterfowl management and a desire for simplified regulations. They believe that this may unnecessarily restrict hunting opportunities on healthy populations and that regulations should be consistent with population distribution and habitat conditions within a flyway.

Mr. Brian Cavey, a legislative assistant for Senator Max Baucus of Montana, supported recommendations put forth by the Central and Pacific Flyway Councils. He stated that Montana is a primary production area for most of the U.S., Canada, and other nations to the south and that this year's duck breeding population reached 1.4 million. He pointed out that this is an all-time high estimate and 60 percent greater than the 30-year average and that this great response was inpartly due to improved habitat conditions and landowner-sportsman-government cooperation in habitat programs.

Mr. Cavey indicated that last year about 14,000 hunters pursued waterfowl in Montana and numbered over 400,000 in the Central and Pacific Flyways. However, he was disappointed in the significant declining trends in waterfowl hunters observed over the past 20 years. He pointed out that this decline was in part due to the reduction in hunting stocks of birds and hunting restrictions which accompanied these losses.

Mr. Cavey pointed out that this year's duck breeding population estimate represented the second successive year of increases. Although it was known that a variety of circumstances contributed to this improvement, the Conservation Reserve Program (CRP) and the cooperative efforts of private landowners and State and Federal agencies have resulted in significant improvement in duck breeding habitat. He indicated that the hunters in Montana and the surrounding States expect and deserve the opportunity to share in the wealth of these improved waterfowl resources. Further, he recommended that the conservative increases in bag limits and season lengths recommended reflect an appropriate response to the current abundance of birds in the two flyways.

Mr. Bruce Barbour, representing the National Audubon Society, indicated that Eastern and Western Populations of tundra swans are increasing and stable, respectively, and had no concern over current population levels. He supported efforts to restore breeding populations of trumpeter swans throughout their historic breeding range. With respect to Canada geese, he pointed out that most populations are doing well, but that there is continued concern for the status of dusky, Aleutian, Southern James Bay, and Atlantic Populations. The Mid-Continent Population of snow geese remains of concern, as record high populations are degrading brood-rearing areas and as a result are exhibiting density-dependent population characteristics such as reduced clutch size, declines in gosling growth rates and body size and reduced juvenile survival. Increasing long-term habitat degradation on breeding areas is highly probable and a resultant future population crash is possible. For these reasons, the National Audubon Society supports extension of the closing framework date to February 28 in all southern tier (wintering) States in the Central Flyway.

For ducks, he identified a series of factors that have contributed to exceptionally good production across primary duck producing areas of the prairie and parkland region of the U.S. and Canada. However, he indicated that even though one excellent production year is not yet a trend, excellent water conditions have persisted through the summer and recovery in duck populations appears to have started. For these reasons, he stated that some liberalization in hunting regulations is possible, but advised cautious restraint that would not jeopardize recovery. He suggested that our goal should be to return as many breeding pairs as possible to the nesting grounds and to take full advantage of the likely excellent nesting conditions again in 1995 and continue the progressive recovery that is underway. He recommended that the Service continue the restrictive harvest regulations on pintail, hen mallards, black ducks, redheads, and canvasbacks. With respect to canvasbacks, the National Audubon Society supports the Service's proposed harvest strategy. However, he cautioned that the Service should consider the use of area closures in specific areas where canvasbacks heavily concentrate and where they may be especially vulnerable. Finally, he supported various types of existing Federal programs and legislation that would protect migratory bird habitats. In addition, he urged increased funding for the National Wildlife Refuge Program and indicated great concern for the proposed extension of the Intracoastal Waterway in Texas and its potential impact on the Laguna Madre and to those populations of redheads,

reddish egrets, and other species that depend on these habitats.

Mr. K.L. Cool, representing the Central Flyway Council, stated his concern for the long-term downward trend in the number of waterfowl hunters. He pointed out that the factors responsible for this decline have not been identified, but undoubtedly include: decreased duck numbers from drought, habitat loss and change, controversy over non-toxic shot implementation, cost of licenses and ammunition, and complex hunting regulations. He noted that this year we have a chance to reverse this trend by developing both a biological and practical hunting framework that will protect waterfowl populations.

Mr. Cool provided substantial evidence of the contribution of the United States Department of Agriculture's CRP to improvements in this year's duck production and predicted increase in this year's fall flight. He indicated that an estimated 3 million ducks were hatched in CRP fields in the northcentral U.S. this spring. He commended the Service for their realistic proposed increase in bag limits for ducks. He suggested that the change will send the correct message that waterfowl numbers are improving and will call appropriate attention to duck species and sexes still of concern. With the recommended bag-limit structure, we will be able to work with hunters to direct harvest away from certain species and sexes, while welcoming waterfowl hunters and conservationists back to the marsh to harvest an abundant renewable natural resource.

Mr. Cool then provided the rationale for the Central Flyway Council's desire to amend the Duck Stamp Act to change the minimum age requirement from 16 to 18. He could not support the decision to eliminate the point-system option from the regulatory frameworks. In this regard, he pointed out the success in States using the point system in directing harvest pressure towards species of abundance and away from species and sexes of concern. He requested that the Service offer a point system at parity this year and in the coming year provide the Flyways with a forum for further evaluation of this bag-limit option. He also requested reconsideration of the request to allow all Flyways an additional 7 days of hunting opportunity for ducks. He applauded the Service for accepting all goose and swan recommendations.

Representative Steve Gunderson (Wisconsin) expressed concern about a 9-day special September teal season being offered to "non-production States" while production States must wait for the late-season period. He supported the opening of the canvasback season Flyway-wide with certain minimum restrictions as recommended by the Upper-Region Regulations Committee of the Mississippi Flyway Council. He also endorsed a procedure recommended by the Upper-Region Regulations Committee of the Mississippi Flyway Council to manage Canada goose harvests in the Mississippi River Subzone in southwest Wisconsin.

Mr. Scott Sutherland, representing Ducks Unlimited (DU), Inc., commented that this has been an exceptional year for waterfowl production and the basis for much optimism. The DU Continental Plan has now been completed and now serves as a guide for directing DU's resources to the areas and species of greatest need. With respect to geese, he stated that although most populations are healthy, nine populations still remain a concern, including: cackling, dusky, Aleutian, Atlantic, and the Southern James Bay Populations of Canada geese; Pacific white-fronted geese; Pacific black brant; emporer geese; and Wrangle Island snow geese. He stated that breeding-population surveys and banding should be improved, and encouraged the National Biological Survey and the Service to direct sufficient resources to the collection and analysis of this information. With respect to ducks, he stated that several species are still below North American Waterfowl Management Plan goals, including the mallard, black duck, American wigeon, blue-winged teal, canvasback, and scaup; Steller's and spectacled eiders are also of concern. Overall, this year showed dramatic increases in the status of most ducks and underscores the need to continue to expand and improve operational survey and banding programs. These improvements in the database would allow the development of more refined regional and flyway management plans for all species. This year's fall flight will show a dramatic increase over last year and is directly related to improved precipitation and habitat programs currently in place, especially in the prairie areas of the north-central U.S. The CRP has greatly benefitted ground-nesting ducks. The funding for the North American Wetlands Conservation Act must also be maintained to restore and enhance wetland habitats.

Mr. Sutherland supported the recommendations of the four Flyway Councils. He pointed out that these recommendations were based on sound biological rationale and that careful liberalization for ducks is now warranted.

Representative Jay Dickey from the 4th Congressional District in Arkansas, supported a 10-day extension of the duck-hunting season in Arkansas and other areas. This would allow families additional time to spend together, while providing a boost to our economies. He congratulated the Service for guarding our duck resources through the past difficult times and making this request for liberalization possible at this time.

Representative Tim Petrie from the 6th Congressional District in Wisconsin, indicated that he would like to summarize concerns of 4,200 sportsman that signed a petition that requested an additional 9 days of duck hunting opportunity. He pointed out that the increase in the number of days from 30 to 39 would compensate Wisconsin hunters for days not allowed for special September teal seasons that are given to most Mississippi Flyway States. He noted that duck stamp sales in Wisconsin have fallen from 95,000 in 1990 to 77,000 in 1992. In contrast, he stated that duck populations have recovered and are now above long-term averages. Wisconsin sportsmen have contributed to these expanding populations by participating in habitat and nest-improvement programs and are deserving of additional duck-hunting opportunity.

Dr. Gary Will, representing the Pacific Flyway Council, agreed with most proposed frameworks governing duck hunting, with the exceptions that the daily bag limit of pintails should be increased by 1 drake and the season length should be increased by 7 days in all Flyways. Regarding the pintail limit, he said that the 1994 breeding population of 2.9 million pintails is 45 percent more than in 1993 and higher than when regulations allowed 7 pintails in the Pacific Flyway and up to 10 birds elsewhere. Mitigating the effects of the increased limit, he noted that the number of active adult hunters was down 61 percent in 1993 from that in 1984 and the direct recovery rates for pintails, which were about half of that for mallards, decreased from 0.0225 to 0.0111 during 1985–87 and 1988–92, respectively. Considering the forecasted size of the fall flight, the additional week was both reasonable and biologically sound.

Dr. Will recommended allowing modest liberalization of the take of white-fronted geese in California, Oregon, and Washington, which he estimated would result in an additional harvest of approximately 3,750 while still allowing a 5–10 percent annual population growth. He said that the

population would likely be at an objective level this fall, and development of the Service's requested long-term harvest strategy for this population would be completed. Lack of that strategy should not be a prerequisite to the Council's recommended changes.

Dr. Will reemphasized the Council's support for restrictions on tundra swan hunting in portions of the Pacific Flyway to minimize the accidental take of trumpeter swans, including an early closure in Utah and closing a portion of the Green River area in Utah to swan hunting. However, he urged adding 300 permits to Utah in compensation for lost harvest opportunities because of these restrictive measures. He encouraged the Service to continue to cooperate with the Council and participating States in the management of the Rocky Mountain Population of trumpeter swans. Efforts would include allowing a continued reasonable harvest of tundra swans while accommodating trumpeter swan range expansion to solve winter bottleneck problems in southeastern Idaho.

Flyway Council Recommendations and Written Comments

The preliminary proposed rulemaking which appeared in the April 7 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. As of August 4, 1994, the Service had received 82 comments; 54 of these specifically addressed late-season issues. The Service also received recommendations from all four Flyway Councils. The Flyway Councils generally supported "no change" in frameworks for most migratory game bird hunting seasons. Only those written comments are included herein where there is a difference between a Council recommendation and the Service's proposal. Late-season comments are summarized and discussed in the order used in the April 7 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included.

General

The California Waterfowl Association urged the Service to consider the link between hunting opportunities and hunter support of habitat programs when formulating regulations. They believe that the current sizes of waterfowl populations justify a relaxation of restrictions.

An individual from California requested that waterfowl harvests should be managed on a flyway basis.

The Nebraska Low Plains Waterfowlers' Association requested liberalizations in duck hunting frameworks this year. They requested that, if both season length and bag limits cannot be increased, season length alone should be liberalized. They believe that it is time to reward sportsmen for their support of waterfowl management.

The Minnesota Department of Natural Resources urged the Service to liberalize season length rather than bag limits if both could not be liberalized this year.

Dr. Robert McLandress, Director of the Waterfowl and Wetland Program of the California Waterfowl Association, expressed his concern for the 65 percent decrease in California waterfowl hunters during the past two decades and the impact of such losses on wetland habitat preservation and maintenance. He noted that the number of California waterfowl hunters was more highly correlated with pintail harvests and pintail breeding populations than with harvests and populations of other ducks.

Walter R. Sikes, representing the California Waterfowl Association, noted that 1994 would be the second year of good production for Pacific Flyway duck populations which should provide relief to the existing restrictions. He said that reduced waterfowl populations and hunting opportunities had discouraged support for habitat restoration efforts in California; but nonetheless, California waterfowlers have spent millions of dollars on waterfowl habitat improvement programs in that State. He indicated that historical data support relaxation of regulations, noting that during years with similar duck populations, seasons were 31 percent longer, bag limits were 75 percent higher, and hunter numbers were at least 35 percent greater than in 1993.

Two local sportsmen's organizations from Massachusetts requested thresholds figures for all species of waterfowl as to when seasons shall be opened or closed.

1. Ducks

A. General Harvest Strategy

Council Recommendations: The Pacific Flyway Council recommended seasons and limits similar to those in effect during 1985–87 (with the exception of pintail) when significant reductions in bag and season length were imposed to protect certain declining duck populations. The Council presented information on duck populations, hunter numbers, and duck harvest in support of their recommendations. Compared to that period, the current breeding population estimates of mallards, pintails and total ducks are up 22 percent, 13 percent and 20 percent respectively. Additionally, current breeding population estimates for all ducks except scaup are above their respective levels of 1985, which was the first year restrictive regulations were mandated.

Recent trends of duck breeding populations are upward compared to generally declining trends through the 1980's. Production estimates this year are excellent and the fall flight forecast of 71 million ducks is substantially above the estimates for 1985–87 which ranged from 55 to 66 million. The 1993 estimate of Pacific Flyway adult waterfowl hunters was 29 percent below the 1985–87 average, and was the second lowest on record. Although hunter numbers in 1993 increased for the first time since 1983, and additional hunters are anticipated in 1994, hunter numbers are not expected to approach the 1985–87 level. Band-recovery rates from birds banded in reference areas important to the Pacific Flyway indicate that substantial reductions in harvest rate for mallards and pintails occurred between 1985–87 and 1988–92, e.g. –27 and –51 percent for mallards and pintails, respectively.

B. Framework Dates

Council Recommendations: The Central Flyway Council recommended that the hunting season frameworks for duck, coot, and merganser seasons begin on the Saturday nearest October 1, (October 1, 1994) and extend until the Sunday nearest January 20 (January 22, 1995).

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework opening and closing dates of the Saturday nearest October 1 to January 20. The Lower-Region Regulations Committee also recommended that opening and closing dates be established as a basic regulation and not fluctuate annually.

The Pacific Flyway Council recommended outside season dates of the Saturday closest to October 1 to the Sunday closest to January 20. Floating framework dates are recommended because (1) the flyway has traditionally been offered Saturday openings and Sunday closing for most migratory game birds, (2) implementing a fixed calendar date, as recommended by the Service, will further restrict hunting opportunity in those States that traditionally open hunting on Saturday and close on Sunday, (3) departure from this traditional format will be confusing and unnecessarily restrictive, (4) there are no biological consequences to floating frameworks since we are dealing with

only plus or minus 3 days in opening and closing dates, (5) a Saturday opening allows participation by school-age hunters and those that have a traditional work week, (6) there are no biological or political justifications which warrant a change from previous outside framework dates.

C Season Lengths

Council Recommendations: The Atlantic Flyway Council and the Upper-Region and Lower Region Regulations Committees of the Mississippi Flyway Council recommended a 40-day duck season.

The Central Flyway Council recommended that for the High Plains Mallard Management Unit, season length would be 69 days, 16 of which must occur starting no earlier than the Saturday closest to December 10 (December 10, 1994). For the remainder of the Flyway (Low Plains portion), the Council recommended a season length of 53 days.

The Pacific Flyway Council recommended a season length of 79 days, with 7 additional days in the Columbia Basin Mallard Management Unit.

Written Comments: The Minnesota Department of Natural Resources supported the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation for a 40-day duck season.

An individual from California asked that the Service consider allowing 86 days of duck hunting in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow 46 days of duck hunting in the Low Plains portion of the Central Flyway.

The Wisconsin Department of Natural Resources requested that the Service reconsider its proposal for a 30-day duck season with a 4-bird daily bag limit. They suggested that if the Service feels a more conservative season is necessary this year, then a 40-day season with a 3-bird daily bag limit would be more acceptable.

The Wisconsin Department of Natural Resources endorsed the recommendations of the Mississippi Flyway Council's Upper-Region Regulations Committee. They also expressed concern that "non-production States" are offered a 9-day special teal season while production States are not offered some type of compensatory opportunity.

Two local sportsmen's organizations from Massachusetts requested a 35-day season for duck hunting in the Atlantic Flyway.

Several individuals from Arkansas asked that instead of increasing the daily bag limits from 3 to 4 birds, the Service consider increasing the season length from 30 to 40 days for duck hunting.

Congressman Don Sundquist of Tennessee endorsed the Mississippi Flyway Council's recommendation for a 40-day season with a 4-bird daily bag limit and urged the Service to reconsider the 30 day season proposal.

The Tennessee Wildlife Resources Agency encouraged the Service to adopt a season framework for ducks that included additional days and supported 40 days as biologically justified.

The Illinois Department of Conservation urged the Service to consider a 40-day season framework with a 3-bird daily bag limit.

Congressman Steve Gunderson of Wisconsin expressed concern for the Service's proposal to allow a 30-day season and asked that consideration be given to a 40-day season with a 3-bird daily bag limit to provide more recreational opportunity for hunters.

Both the Wisconsin Wildlife Federation and the Wisconsin Conservation Congress asked the Service to consider a 40-day season with a 3-bird daily bag limit.

The Michigan Department of Natural Resources expressed concern that the Service did not support the Mississippi Flyway proposal for a 40-day season with a 4-bird bag limit and suggested if further protection was warranted, they would prefer a 40-day season with a 3-bird daily bag limit.

The Indiana Department of Natural Resources disagreed with the Service's proposal and asked for reconsideration of a 40-day, 4-bird bag limit, but would accept a 3-bird bag limit and a 40-day season, if necessary.

The Kentucky Department of Fish and Wildlife Resources indicated preference for an increase in the season length rather than an increase in the daily bag limit, but stated that they may support the decisions of the Service, if conservative measures were necessary, based on additional information.

The Ohio Department of Natural Resources asked for a season of 40 days with a 4-bird bag limit, but if not acceptable to the Service, would opt for a longer season over an expanded bag limit.

The South Carolina Department of Natural Resources felt that State input was being disregarded and that the Service's restrictive proposal does not show support for hunting and will be difficult to explain to the sportsman.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council requested a 4-bird bag limit for their regular duck season, which will include no more than 1 canvasback, 1 black duck, and 1 pintail; 2 wood ducks and 2 redheads; and 3 mallards of which only 1 may be a hen.

The Central Flyway Council requested that the Service review its policy for the use of the point-system bag limit option that requires that it be no more liberal than the conventional bag limit.

The Central Flyway Council recommended that with respect to duck, coot and merganser hunting regulations, that States selecting the High Plains Mallard Management Unit season option of additional late hunting opportunity may select either the point system or the conventional bag for establishing daily possession limits in the entire State.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the conventional bag limit, the daily bag would be 4 birds with species and sex restrictions as follows: hen mallard, pintail, redhead, mottled duck, and canvasback, 1 bird; wood duck, 2 birds; all other species and sexes not mentioned above, 4 birds. The possession limit would be twice the daily bag limit.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the point-system bag limit, point values for species and sexes would be as follows: redhead, canvasback, hen mallard, pintail, hooded merganser and mottled duck, 100 points each; wood duck, 50 points each; mallard drake, gadwall, wigeon, green-winged teal, blue-winged teal, cinnamon teal, shoveler, whistling duck, common and red-breasted merganser, 20 points each; all other species and sexes of ducks, 35 points each. The possession limit under the point system would be the maximum number of birds that legally could have been taken in 2 days.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a point-system bag-limit option that would provide, for several species, 1 more bird in the daily bag limit than the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council requested that the Service review its current point-system bag-limit policy. They feel that

at least 1 more bird should be allowed in the point system than in the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the overall duck bag limit be increased from 3 to 4, that the number of male mallards allowed be increased from 2 to 3, and that 1 canvasback be allowed daily. The Lower-Region Regulations Committee also recommended a restriction of 3 mottled ducks in the 4-bird daily limit. Other species/sex restrictions would be the same as last year.

The Pacific Flyway Council recommended that the Service: (1) review its current point-system policy, (2) work with both Pacific and Central Flyway Technical Committees to interpret available data, and (3) consider all available new information and evaluate the point system against other bag-limit systems.

The Pacific Flyway Council recommended a daily bag limit of 5 ducks, including not more than: 4 mallards, only 1 of which may be a hen; 2 pintails, only 1 of which may be a hen; 2 redheads; and 1 canvasback.

Written Comments: The Minnesota Department of Natural Resources supported the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation for a daily bag limit of 4 ducks.

An individual from California requested that the Service consider increasing the total duck daily bag limit to 5, the mallard limit to 5, and the pintail limit to 2 in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow a daily bag limit of 3 mallards in the Low Plains portion of the Central Flyway.

An individual from California requested that the duck daily bag limit be increased to 6, with a 1 or 2 daily bag limit for mallards, or no mallards at all as an acceptable alternative. He also requested increasing the daily bag limit of pintails to 2.

Dr. Robert McLandress, Director of the Waterfowl and Wetland Program of the California Waterfowl Association, presented historical information on regulations and harvests of pintails and believed that an increase in the pintail daily bag limit to at least 3 birds was warranted and would provide much needed encouragement for hunters and habitat management in California. He believed bag limit restrictions for mallards in California were inappropriate given evidence of a preponderance of California produced mallards in the harvest, consistently high nesting success and good brood survival. He believed the breeding population decline in California in 1994 was caused by the elimination of set-aside rice lands, favored by nesting mallards; however, there were significant increases elsewhere in the State. In addition to increased limits of mallards and pintails, he recommended an addition of 1 duck to the daily bag limit and 8 additional days.

The Oklahoma Department of Wildlife Conservation requested that the Service work with the Flyway Councils to cooperatively review its policy on the use of the point system for determining daily bag limits for ducks. It was pointed out that the Central Flyway Council believes that the 1990 point-system review contained misinterpretations and omissions that should be cooperatively resolved prior to any decision on the use of this important harvest-management tool. Further, they stated that the process used for the handling of the updated review of the point system appeared to be a breach of the cooperative spirit and partnership approach to migratory bird management programs in the Central Flyway.

F. Zones and Splits

Council Recommendations: The Pacific Flyway Council recommended continuation of the Southern San Joaquin Valley Waterfowl Zone in California in 1994 and that this zone be made permanent. About 3,500 acres of Tulare Basin wetlands are managed as duck clubs, which represents a loss of about 1,500 acres of managed wetlands between 1971 and 1988. About 200 additional acres of wetlands had been flooded for waterfowl and other wetland-dependent wildlife in response to the creation of the zone. During 1991–93, this zone has allowed for a month delay in the opening date from the surrounding Balance-of-the-State and Southern California zones. This delay allows private wetland owners to take advantage of reduced electric pumping rates which become effective November 1, as well as reduced evapotranspiration rates which occur as temperatures decline. This results in an approximate 20 percent reduction in the cost of flooding. Any reductions in water cost provides an incentive for the continued flooding of private wetlands. The situation is not relieved by improvements in rainfall, because although surface water availability improves somewhat, ground water pumping costs are still high.

Establishment of the zone has not affected harvest. Estimated harvest of ducks from Kern, Kings and Tulare Counties constituted between 3.0 and 5.6 percent of the Statewide harvest in the periods 1961–1990. Since implementation of the zone in 1991, 2.5 percent of the State duck harvest has occurred in the zone. Pintail harvest in the zone declined from a high of 4.5 percent of the State harvest to 2.5 percent.

Written Comments: Two local sportsmen's organizations from Massachusetts requested continuation of zoning for their State.

G. Special Seasons/Species Management

i. Canvasback

Council Recommendations: The Atlantic Flyway Council recommended that an open season for canvasbacks be allowed with a 1-bird daily bag limit throughout the length of the 1994 season in the Atlantic Flyway.

The Central Flyway Council recommended that the Service adopt the alternative canvasback harvest management strategy developed by State representatives from all four flyways of the Adaptive Harvest Management Working Group.

The Central Flyway Council recommended that an open season for canvasbacks throughout the regular duck season be allowed for all four Flyways with a 1-bird daily bag limit beginning in 1994, contingent upon breeding population and habitat conditions.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that an open season for canvasbacks be allowed in the Mississippi Flyway with a 1-bird daily bag limit throughout the regular duck season.

The Pacific Flyway Council recommended adoption of an interim canvasback strategy that would allow harvest of that species throughout the regular duck season in all four Flyways, with a daily bag limit of 1 canvasback (either sex), when the 3-year running average of estimated May breeding population is at or above 480,000 birds. No season should be allowed when the average index is below that level.

Written Comments: The Michigan Department of Natural Resources supported the Service's strategy for canvasback harvest management. They recommended allowing a canvasback season in 1994 and continuing the season for at least 3 years.

The Wisconsin Department of Natural Resources opposed the reestablishment of closed areas for canvasback hunting, preferring instead that the season be open Flyway-wide.

3. Mergansers

Council Recommendations: The Central Flyway Council recommended that the hunting season for mergansers under the conventional regulation remain unchanged from last year and run concurrently with the duck season; the daily bag limit would remain at 5, of which no more than 1 may be a hooded merganser; the possession limit would be twice the daily bag limit.

The Central Flyway Council also recommended point value changes under the point system option in determining bag limits and framework dates that involve mergansers. See item **1. Ducks.**

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service amend the criteria for late special Canada goose seasons to require 2-year data collection for proposal submission. They also recommended a 3-year late experimental season in northeastern New Jersey for 1995-97. The Atlantic Flyway Council requested that the late special Canada goose season in Long Island, New York, be discontinued.

B. Regular Seasons

Council Recommendations: The Central Flyway Council recommended that the dark goose hunting regulations in the east tier States (Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas [Eastern Goose Zone]) be 86 days with a bag limit of 2 in North Dakota and 2 with no more than 1 white-fronted goose in Kansas, Nebraska, Oklahoma, South Dakota and the eastern goose zone of Texas. The white-fronted goose season in Texas should not exceed 72 days, and during the remaining 14 days of the season, the bag limit will be no more than 2 Canada geese.

The Central Flyway Council recommended that the bag limits for dark geese in the western tier States (Colorado [east of the Continental Divide], Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof], New Mexico [east of the Continental Divide except the Jicarilla Apache Indian Reservation], Texas [Western Goose Zone], and Wyoming [east of the Continental Divide]) remain unchanged from last year. The dark goose bag and possession limits would be 3 and 6, respectively, except in Montana. In Montana, excluding Sheridan County, dark goose bag and possession limits would be 4 and 8, respectively; and in Sheridan County they would be 2 and 4, respectively.

The Central Flyway Council recommended that the framework dates for dark geese hunting in the east tier States be unchanged from last year and remain as the Saturday nearest October 1 (October 1 in 1994) and end on January 31. The recommended dates for dark geese in the west tier States would be unchanged from last year as the Saturday nearest October 1 (October 1, 1994) through January 31, 1995.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs. The Upper-Region Regulations Committee also recommended that the Service allow seasons for geese to be split into 3 segments.

The Pacific Flyway Council recommended allowing cackling Canada geese to be taken outside their normal range in California, Oregon, and Washington as part of the prevailing limit on Canada geese. Within their normal range, the Council recommended that the bag limit would include not more than 1 cackling Canada goose. The 1-cackler limit would apply to the Southwestern Washington Goose Quota Area, all of Oregon, and a majority of California where the season would be concurrent with the restricted white-fronted goose season.

The Pacific Flyway Council recommended that for Oregon, the Malheur County Zone be incorporated into a Harney, Klamath, Lake, and Malheur Counties Zone, thereby allowing the season on dark geese to end on the Saturday closest to January 20 instead of the first Sunday in January and the dark goose limit increased from 3 to 4, including not more than 2 whitefronts. The adjacent Southwestern Zone in Idaho would be permitted similar frameworks to that recommended for Malheur County.

The Pacific Flyway Council sought a limited resumption of cackling Canada goose hunting throughout the population's range and recommended that the Service provide an expedited Section 7 Consultation review of their recommended changes in cackling Canada goose regulations for possible impacts on Aleutian Canada geese.

Written Comments: The Delaware Division of Fish and Wildlife requested that the Service review the Federal frameworks for hunting Canada geese on the DelMarva Peninsula. They believe that the existing frameworks are more liberal than can be justified based on the size of the population. They maintain that high harvest rates on adult birds are suppressing the population and preventing a recovery. During the 1993–94 hunting season, Delaware voluntarily restricted their seasons, but because these Canada goose populations move about the Peninsula, they believe that harvest pressure should be reviewed in parts of Delaware, Maryland, and Virginia and appropriate action taken to reduce harvest and protect these migrant Canada geese.

Representative Steve Gunderson (Wisconsin) requested that the Mississippi River Subzone in Wisconsin be declared a giant Canada goose harvest area and removed from Canada goose harvest-quota considerations for the State.

The Minnesota Department of Natural Resources requested a change in the boundary of their West-Central Goose Zone, as required by State legislation. They indicated that they had requested endorsement of the proposed change by the Upper-Region Regulations Committee of the Mississippi Flyway Council; however, the Committee did not endorse it.

5. White-fronted Geese

Council Recommendations: The Central Flyway recommendations regarding dark geese involve white-fronted geese. See item **4. Canada Geese.**

The Mississippi Flyway Council recommended no change in frameworks.

The Pacific Flyway Council recommended that: for Washington, the special bag restriction on white-fronted geese be removed, allowing them to be within the overall 4-dark goose limit; for Oregon, the season on white-fronted geese be allowed to open at the same time as the dark goose season, which would be approximately 1 week earlier than currently allowed; and for California, the white-fronted goose season would be extended by 2 weeks within the Sacramento Valley special goose closure portion of the "Balance-of-the-State" Zone.

The 1993 fall index of 295,300 geese represents a 28 percent increase from 1992. The current 3-year average is 254,300, with a population objective of 300,000. Favorable nesting conditions and the resulting good reproduction indicate an increase in the fall flight for 1994. Changes to be proposed in California, Oregon, and Washington would likely result in an increase in harvest of approximately 3,750 birds. This represents less than 2 percent of the current population index and

should continue to meet management plan objectives of 5–10 percent annual rates of increase. These changes would also simplify regulations in Washington while allowing Oregon and the Northeastern Zone of California seasons to open at the same time.

The Association of Village Council Presidents, representing Native American interests in the Yukon-Kuskokwim Delta area of Alaska, supported modest liberalizations of white-fronted goose seasons in Alaska and Washington. However, they did not support further liberalizations in Oregon or California, noting that liberalizations occurred during each of the preceding years and that it was difficult to measure the effects of these incremental changes.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 2-bird daily bag limit and a 50-day season length for brant.

The Central Flyway recommendations regarding dark geese involve brant. See item **4. Canada Geese.**

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the daily bag limit for brant be reduced to 2 birds to better conform with limits in other Flyways.

7. Snow and Ross' (Light) Geese

Council Recommendations: The Central Flyway Council recommended that the east and west tier States be allowed a light goose hunting season of 107 days, which is unchanged from last year. For east tier States, the Council recommended light goose bag and possession limits of 10 and 20, respectively, which is unchanged from last year. The Council recommended that for west tier States the light goose bag and possession limits would be unchanged from last year at 5 and 10, respectively, except in the Middle Rio Grande Valley (Socorro and Valencia Counties) of New Mexico, where the bag and possession limits would be 10 and 20, respectively, which are also unchanged from last year.

The Central Flyway Council recommended that the framework dates for the hunting of light geese in both the east and west tier States would be from the Saturday nearest October 1 (October 1, 1994) through the Sunday nearest February 15 (February 12, 1995), except in Colorado, New Mexico, Texas, Oklahoma, and Kansas where the closing framework date would be extended to February 28, 1995.

The Central Flyway Council recommended that the State of Kansas be allowed to modify its boundaries for light goose hunting as follows:

The zone boundary for Zone 1 (Light goose) be modified to include that portion of Kansas east of the Kansas Highway 99, and Zone 2 include the remainder of the State west of Highway 99.

The Mississippi Flyway Council recommended that the season length for light geese be increased from 80 to 107 days.

The Pacific Flyway Council recommended a season framework adjustment to extend the light goose closing date for Malheur County of Oregon and southwest Idaho from the first Sunday in January to the Sunday closest to January 20. Malheur County would become part of a Harney, Klamath, Lake, and Malheur Counties Zone. This adjustment aligns the framework of the affected area with the remainder of the Flyway.

Written Comments: The Texas Parks and Wildlife Department supported a change in the Federal frameworks that would extend the hunting of light geese until February 28. This change would allow for increased harvest of the mid-continent population of lesser snow geese which are at record high levels and, because of these increases, may be threatening their own breeding habitat.

8. Tundra swans.

Council Recommendations: The Central Flyway Council recommended that the experimental swan season in North Dakota be granted an additional year of experimental status with a final report due on June 1, 1995.

The Pacific Flyway Council recommended that the number of permits authorizing the take of 1 tundra swan per season be increased in Utah from 2,500 to 2,800 to compensate for lost hunting opportunity from a State-imposed early season closure. As an informational item, the Council recommends that Montana, Nevada, and Utah be more restrictive than Federal frameworks by: (1) implementing a monitoring program to assess the number of trumpeter swans, if any, taken accidentally during the tundra swan season, (2) Utah's season would end on or before December 15 and the Green River Area would be closed to swan hunting. The 3-year-average Midwinter population index of 79,406 tundra swans is well above the Flyway objective level of 38,000. Proposed frameworks will result in harvest levels within those prescribed in the 1989 Tundra Swan Hunt Plan endorsed by the Pacific Flyway Council. The changes are premised on the implementation of the State-Federal cooperative program for hazing trumpeter swans from winter concentration areas near Harriman State Park in Idaho to more favorable sites.

Written Comments: Mr. D. C. Carlton, representing the Biodiversity Legal Foundation (Foundation), commented on the management of the Rocky Mountain Population (RMP) of trumpeter swans. He detailed the status and perceived threats to these swans, reviewed past and current management actions, and concluded that leadership, actions, and funding by the Service are inadequate to assure the population's recovery and believes they warrant listing under the Endangered Species Act. Among many recommendations directed at improving the effectiveness of range-expansion efforts directed at benefiting these swans, those germane to hunting regulations included: (1) not allowing either a permitted or incidental take of trumpeter swans during a tundra swan season, (2) having no open seasons for hunting tundra swans in the most critical trumpeter swan range expansion areas, including all of Utah and Nevada, (3) modifying hunting regulations on National Wildlife Refuges in Montana, Utah, and Nevada to provide sanctuary for resting, reproduction, and rearing of cygnets, and (4) ending waterfowl hunting after October 20 at two sites on the Snake River in Idaho, at a site on the Green River, including Seedskadee National Wildlife Refuge in Wyoming, and in unspecified areas within the Tristate Yellowstone region.

Ms. Heidi Prescott, on behalf of The Fund for Animals, Inc., highlighted recent survey reports, reviewed portions of the Pacific Flyway Council's management plan and a report by Ms. Ruth Shea, a Service employee, and presented the group's views regarding management action pertaining to RMP trumpeter swans. The Fund for Animals, Inc., concurred with the recommendations of the Biodiversity Legal Foundation pertaining to migratory game bird hunting contained in the aforementioned letter from Mr. D. C. Carlton.

Mr. D. J. Schubert, also on behalf of the Fund for Animals, Inc., reiterated certain concerns and needed actions deemed necessary for successful range expansion of RMP trumpeter swans. He believed that a mandatory check of swans taken by hunters in Utah and Nevada is necessary to measure the level of accidental take. While the purposeful hazing of trumpeter swans to more favorable winter sites has merit, it put more trumpeter swans at risk in tundra swan hunt areas; and he therefore recommended a new management strategy. The Fund for Animals believes there are two possible management strategy changes that

would minimize excessive killing of trumpeter swans and still be consistent with the Migratory Bird Treaty Act: (1) prohibit hunting of tundra swans in Utah and Nevada; or, although less preferred, (2) prohibit hunting in certain critical areas in Utah. Under both options, security areas should be established in Idaho, and recreational activities such as waterfowl hunting and boating should be evaluated for possible negative impacts on trumpeter swan behavior and habitat use. Should intensive hazing be pursued to disperse birds to more favorable wintering sites, and if law enforcement policy is to be changed to facilitate the collection of information on the accidental take of trumpeter swans during the tundra swan season, the Fund for Animals recommended that: (1) both Idaho and Wyoming Game and Fish Departments provide sanctuaries in designated areas; (2) the Utah Division of Wildlife Resources, at the maximum, not hunt swans or, at the minimum, not hunt swans in Box Elder, Cache, and Rich Counties; (3) the Nevada Division of Wildlife close Stillwater Wildlife Management Area to swan hunting; (4) the Service close all National Wildlife Refuges in Utah and Nevada to the hunting of tundra swans; and (5) should the aforenamed States not exercise the recommended action, the Service should do so. Additionally, all States should enhance their hunter-education programs to emphasize proper identification of swans and waterfowl to minimize the accidental take of trumpeter swans as a result of other hunting seasons.

Mr. Michael Roy, on behalf of the National Wildlife Federation, expressed concern about the successful continuation of the RMP trumpeter swan range-expansion program, in part because of a perceived ineffective and confusing management structure that is not adequately represented by all interested parties, and in part by accidental take of trumpeter swans during tundra swan seasons in Utah. He believes certain recommendations provided by Ms. Ruth Shea, a Service employee, were reasoned and practical and, if implemented, would enhance range-expansion efforts. Premised on Ms. Shea's recommendations, he recommended that tundra swan hunting in Utah be discontinued from the southern boundary of the Bear River National Wildlife Refuge north and east to the Idaho and Wyoming borders for an initial 5-year period. This closure would be intended to minimize the accidental take of trumpeter swans during translocation activities and, hopefully, tundra swan hunting could be reinstated afterwards.

Ms. Louisa Willcox, representing the Greater Yellowstone Coalition, raised questions regarding the Service's role in managing RMP trumpeter swans and funding efforts to increase their numbers and expand their distribution. She asked how the Service will monitor the accidental take of trumpeter swans during tundra swan hunting seasons in Montana, Nevada, North Dakota, South Dakota, and Utah and what measures will be taken to minimize the potential losses. She also asked why the Service has not sought establishment of trumpeter swan wintering sites outside the Montana-Idaho-Wyoming region. She requested that the Service develop a long-term strategy to prevent wintering waterfowl, including trumpeter swans, from damaging vegetation and fish habitat at Harriman State Park in Idaho.

10. Coots

Council Recommendations: The Central Flyway Council recommended that the hunting season for coots remain unchanged from last year and would run concurrently with the duck season with the daily bag limit as 15 and the possession limit as twice the daily bag limit.

23. Other

Council Recommendations: The Atlantic Flyway Council recommended that the Service provide compensatory days for State-imposed Sunday-hunting prohibitions.

Written Comments: Two local sportsmen's organizations from Massachusetts suggested compensatory days for those days lost due to State-imposed Sunday-hunting prohibitions.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability of specific, reliable data on this year's status before mid-June for migratory shore and upland game birds and some waterfowl, and before late July for most waterfowl. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but a substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1993," which is available upon request.

Endangered Species Act Consideration

In August 1994, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—j)

Dated: August 18, 1994

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

Proposed Regulations Frameworks for 1994–95 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1994, and March 10, 1995.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, and brant.

Light geese - lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the September 22, 1992, **Federal Register** (at 57 FR 43876) are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 2 wood ducks, 2 redheads, 1 canvasback, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck or (b) 40 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their Statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an 8–day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16–day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental special season may be held in a designated area of Northeastern New Jersey from January 28 to February 11, 1995, with 5 geese per day.

New York:

Northeastern Zone - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East Zone - Suspended.

West Zone - Suspended.

Pennsylvania:

South Zone - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental season may be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

Remainder of State - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. A 4–day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a daily bag limit of 5 Canada geese per day.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay - Suspended.

Remainder - 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107–day season between October 1 and February 10, with 5 geese per day. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50–day season between October 1 and January 20, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 1 redhead or (b) 40 days and daily bag limit of 3 ducks, including no more than 2 mallards (no more than 1 of which may be a female), and the other restrictions shown above.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 1) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 1), and February 14. The daily bag limit is 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese, and 2 brant. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 109,600 birds.

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 39,800 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10

in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken. If any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.
2. 10 consecutive days of daily high temperatures less than 20 degrees F.
3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.
4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone - The season for Canada geese will close after 51 days or when 11,400 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken.

(c) Northern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 13,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(d) Central Illinois Quota Zone - The season for Canada geese will close after 51 days or when 22,400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(e) Remainder of the State - The season for Canada geese may extend for 51 days in the respective goose zones. The daily bag limit is 2 Canada geese.

Indiana: The total harvest of Canada geese in the State will be limited to 61,900 birds.

(a) Posey County - The season for Canada geese will close after 53 days or when 4,550 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 55 days in the respective duck-hunting zones and may open no earlier than October 8. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone - The season for Canada geese may extend for 53 days (66 days in Fulton County), and the harvest will be limited to 21,900 birds. Of the 21,900–bird quota, 14,300 birds will be allocated to the Ballard Reporting Area and 4,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 53–day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 53 days (66 days in Fulton County). The season in Fulton County may extend to February 13. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 107-day seasons for light geese and 70-day seasons for white-fronted geese and brant between the Saturday nearest October 1 (October 1) and February 14 in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese and 2 brant, except as noted below. In the Southwest Zone, a 9-day season for Canada geese may be held. During the Canada goose season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 63,100 birds.

(a) North Zone - The framework opening date for all geese is September 24 and the season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 53 days or when 400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 40 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 7 and February 5. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone the season will close after 30 days or when a harvest index of 4,000 birds has been reached, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days in the respective duck-hunting

zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuming Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee:

(a) Northwest Zone - The season for Canada geese will close after 75 days or when 8,100 birds have been harvested, whichever occurs first. The season may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 59 days, and the harvest will be limited to 1,000 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 76,800 birds.

(a) Horicon Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 41,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 1,300 birds. The season may not exceed 61 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is October 1. The harvest of Canada geese is limited to 30,000 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 70 days and the daily bag limit is 1 Canada goose. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days in each duck zone. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 29,500 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the Northwest and Kentucky/Barkley Lakes Zones in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: October 1 through January 20.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): Either (a) 51 days and daily bag limit of 4 ducks, including no more than 1 of which may be a female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 61 days and daily bag limit of 3, and the other restrictions shown above. Under both options, the last 12 days may start no earlier than the Saturday nearest December 10 (December 10).

(2) Remainder of the Central Flyway: Either (a) 39 days and daily bag limit of 4 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 49 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Merganser Limits: The daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 1), through January 31, for dark geese and the Saturday nearest October 1 (October 1), through the Sunday nearest February 15 (February 12), except in Colorado, Kansas, New Mexico, Oklahoma, and Texas, where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Kansas: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark and 5 light geese in Sheridan County and 4 dark and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, which may include no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 86 days, with a daily bag limit of 2.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: For the West Unit, no more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

For dark geese in the East Unit, no more than 86 days. The daily bag limit is 2, including no more than 1 white-fronted goose during the first 72 days; during the last 14 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese in the East Unit, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Either (a) Concurrent 59 days and daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 1 pintail, 2 redheads and 1 canvasback or (b) Concurrent 69 days and daily bag limit of 4 ducks, including no more than 3 mallards, and the other restrictions shown above.

In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between October 1 and January 20.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either Statewide or in each zone.

Colorado, Montana, New Mexico, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100–day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22), and the basic daily bag limits are 3 light geese and 3 dark geese, including no more than 2 white-fronted geese.

Brant Season - A 16–consecutive-day season may be selected in Oregon and Washington, and a 30–consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (Balance-of-the-State Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79–day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese and cackling Canada geese must end on or before November 30, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, including not more than 2 white-fronted geese, and 3 light geese.

Southwest Unit - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Southeastern Unit - The daily bag limit is 3 geese, including not more than 2 white-fronted geese.

Montana:

West of Divide Zone - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. White-fronted geese may not be taken before October 17 during the regular goose season.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese, but not more than 2 white-fronted geese, and 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 1 cackling Canada goose.

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued during the experimental season.

—In South Dakota, no more than 1,500 permits may be issued during the experimental season.

In the Pacific Flyway

—Except as subsequently noted, a 100–day season may be selected between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22). Seasons may be split into 2 segments. The States of Montana, Nevada, and Utah must implement a harvest-monitoring program to measure the extent of accidental harvest of trumpeter swans.

—In Utah, no more than 2,500 permits may be issued. The season must end on or before December 15.

—In Nevada, no more than 650 permits may be issued.

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued.

Area, Unit and Zone Descriptions

Geese

Atlantic Flyway

New Jersey:

Special Area for Canada Geese: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with the Pennsylvania State boundary; then north along the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

Mississippi Flyway

Illinois

North Goose Zone: Same as for ducks.

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Goose Zone: That portion of the State between the North and South Goose Zone boundaries.

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Goose Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Central Flyway

Kansas:

Light Geese

Unit 1: That portion of Kansas east of KS 99.

Dark Geese

Texas:

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth; northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Pacific Flyway

Harney, Klamath, Lake, and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Swans

Pacific Flyway

Utah:

Open Area: Statewide, except Cache, Daggett, Rich and Uintah Counties.

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Federal Register

Wednesday
August 24, 1994

Part VI

The President

Proclamation 6716—Classical Music Month, 1994

Federal Register
Vol. 59, No. 163
Wednesday, August 24, 1994

Presidential Documents

Title 3—

The President

Proclamation 6716 of August 22, 1994

Classical Music Month, 1994

By the President of the United States of America

A Proclamation

In the symphony halls of our great cities across America, in the community centers of our small towns, on radio and in recordings, a note is played that began centuries ago and resounds to this day. At the heart of classical music is continuity and tradition. What was heard in a Vienna opera house was heard again in a colonial theater in Charleston, South Carolina, was echoed at the inauguration of President Lincoln, was repeated in turn-of-the-century Chicago, and is played again today by a range of musicians from the most skilled of virtuosos to the youngest student struggling with the complexities of the violin.

Classical music is a celebration of artistic excellence. Great art endures through the ages, and in the United States we have embraced that great music and incorporated it into the American experience. Our best art reflects our Nation's spirit—that mixture of discipline and improvisation, the combination of strong individual voices working together at the same time, the bravado, the inventiveness, the dynamism of the American character. Classical music plays in harmony with that energy and spirit to become reinvigorated and reinvented with each new orchestra or chamber group, with every performance that rings out new and fresh.

This month we exalt the many talented composers, conductors, and musicians who bring classical music to our ears. These artists carry on a great tradition of musical achievement, and we are proud of their outstanding accomplishments. Whether in new American works or in the masterpieces of the great composers of old, music is a unifying force in our world, bringing people together across vast cultural and geographical divisions. Classical music speaks both to the mind and to the heart, giving us something to think about as well as to experience.

The Congress, by House Joint Resolution 239, has designated September 1994 as "Classical Music Month," and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 1994 as Classical Music Month. I urge all Americans to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of August, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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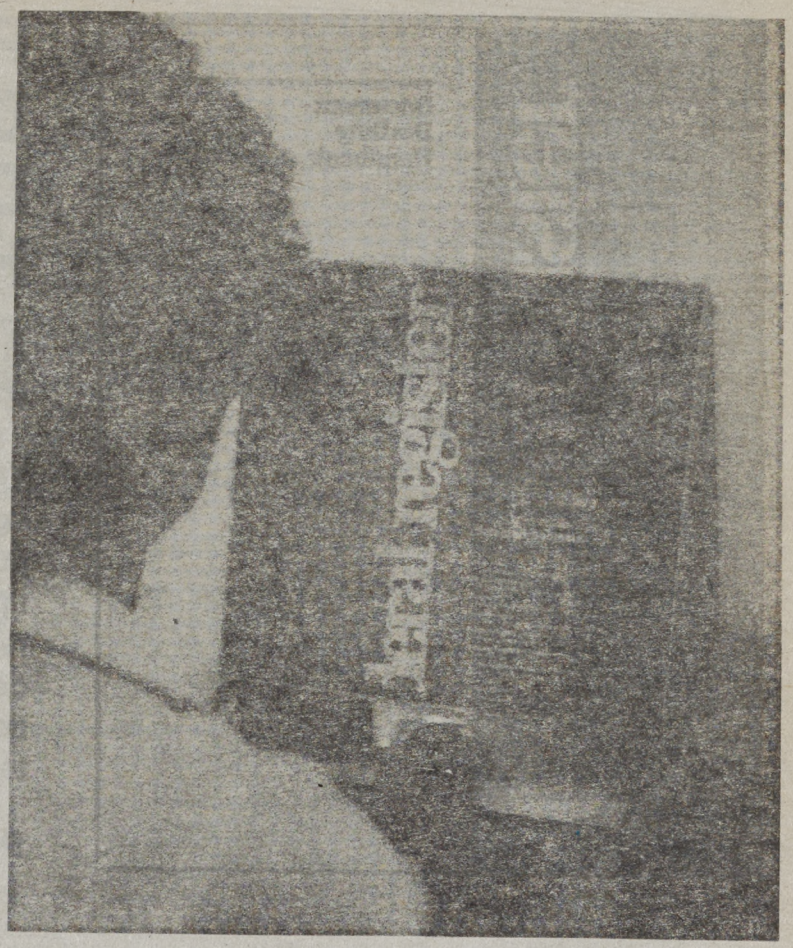
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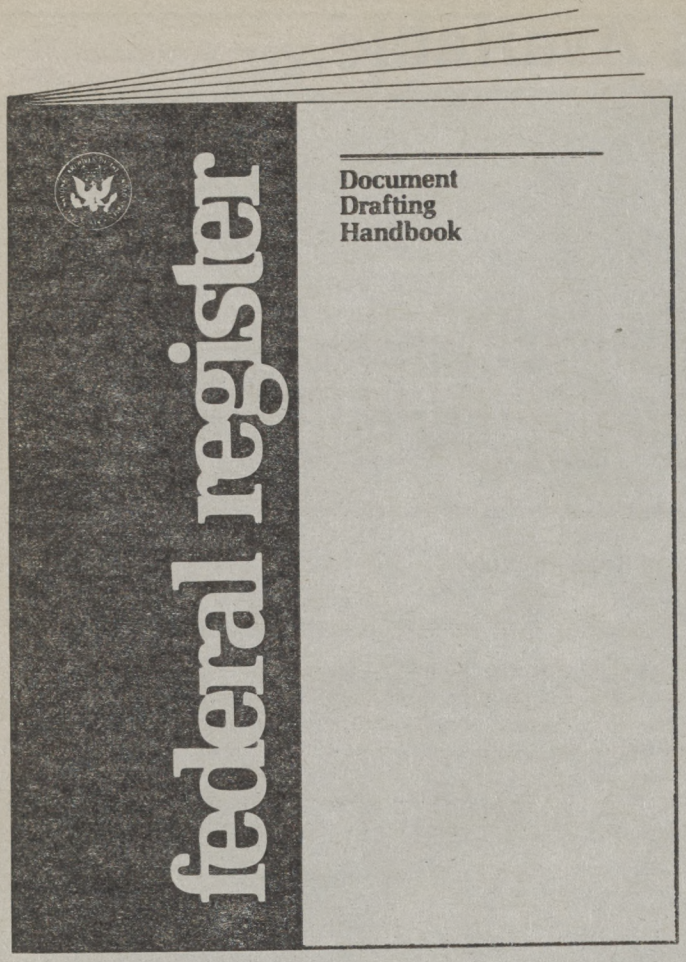
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in the Code of Federal Regulations (CFR)

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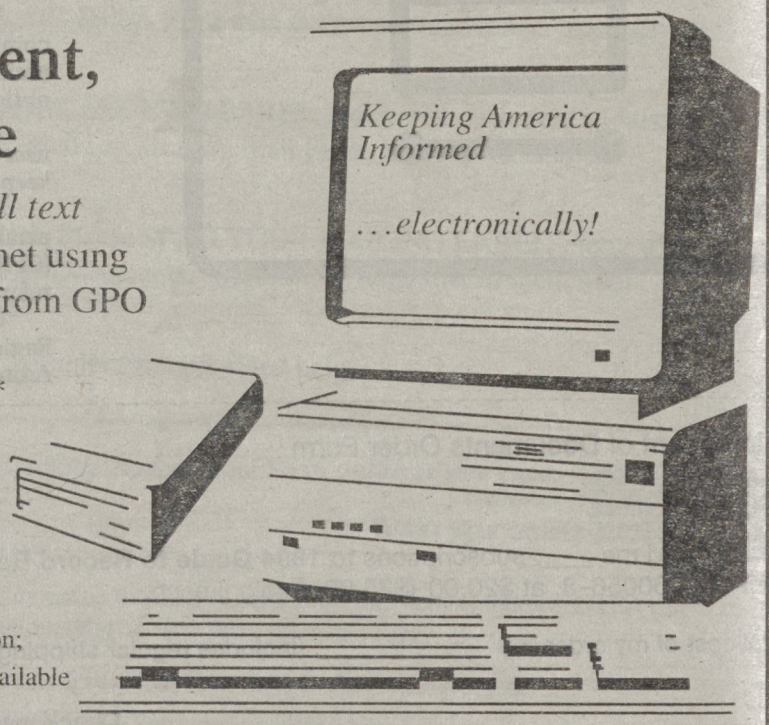
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