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# federal register

Tuesday
April 4, 1995

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 201

**[Docket No. 95–004–1]**

### Federal Seed Act Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Federal Seed Act regulations to remove the staining requirements for seed of alfalfa and red clover imported into the United States. The removal of the requirements is necessary to make the regulations conform to the amendment of the Federal Seed Act by the Uruguay Round Agreements Act. This action relieves a restriction on the importation of alfalfa and red clover seed into the United States.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, Operational Support, Plant Protection and Quarantine, APHIS, USDA, 4700 River Rd., Unit 133, Riverdale, MD 20737–1228, (301) 734–8896.

**SUPPLEMENTARY INFORMATION:**

#### Background

We are amending the Federal Seed Act Regulations in 7 CFR part 201 (referred to below as the regulations) by removing the provisions concerning staining of seed of alfalfa and red clover imported into the United States.

Legislation implementing the Uruguay Round of the General Agreements on Tariffs and Trade (referred to below as the Uruguay Round Agreements Act), Pub. L. 103–465, amended the Federal Seed Act by removing staining requirements in 7 U.S.C. 1581, 1582, 1585, and 1586 for seed imported into the United States. As a result, the Animal and Plant Health Inspection Service no longer has authority to require such staining under the regulations.

We are, therefore, amending the regulations by removing §§ 201.104 through 201.106, which contain provisions for staining. As a result of this action, no seeds of red clover and alfalfa imported into the United States for propagation will need to be stained prior to entry.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that good cause exists to publish this final rule without prior notice and opportunity for public comment.

The staining requirements for seed of alfalfa and red clover imported into the United States must be removed as a result of the statutory amendments discussed above.

This action relieves a restriction on the importation of alfalfa and red clover seed into the United States. Since prior notice and other public procedures with respect to this final rule are impracticable, unnecessary, and contrary to the public interest, and since this regulatory change is mandated by Congress, there is good cause under 5 U.S.C. 553 for making this final rule effective upon publication.

#### Executive Order 12866 and Regulatory Flexibility Act

This 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.

This final rule removes the staining requirement for alfalfa and red clover seed that is imported into the United States. This action will save importers of alfalfa seed and red clover seed from certain countries the relatively small cost of staining the seed.

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 12278

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

#### Paperwork Reduction Act

This 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 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

Accordingly, 7 CFR part 201 is amended as follows:

### PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 continues to read as follows:

**Authority:** 7 U.S.C. 1582.

### PART 201—[AMENDED]

2. Part 201 is amended by removing §§ 201.104, 201.105, and 201.106, and redesignating §§ 201.107, 201.108, and 201.109 as §§ 201.104, 201.105, and 201.106, respectively.

Done in Washington, DC, this 28th day of March 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–8096 Filed 4–3–95; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[Docket No. RM95–5–000; Order No. 577]**

### Release of Firm Capacity on Interstate Natural Gas Pipelines

Issued March 29, 1995.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is amending its capacity release regulations to make the capacity release mechanism operate more efficiently and reduce burden. The existing regulations establish the provisions under which shippers can release capacity without having to comply with the Commission's advance posting and bidding requirements. The Commission is extending the exception from posting and bidding to one full calendar month as well as exempting transactions at the maximum rate from the posting and bidding requirements. The revisions also change the provision regarding roll-overs of exempted releases by changing the period in which shippers cannot re-release capacity to the same shipper from 30 days to 28 days.

**EFFECTIVE DATE:** The final rule becomes effective May 4, 1995.

**ADDRESSES:** Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 208–2294.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington D.C. 20426.

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Under Federal Energy Regulatory Commission (Commission) regulations, firm holders of pipeline capacity can release that capacity to others. The Commission is modifying § 284.243(h) of its capacity release regulations.

The general rule under the regulations is that shippers must post their available capacity on the pipeline's Electronic Bulletin Board (EBB) for bidding by potential purchasers (replacement shippers). In § 284.243(h), the Commission permits an exception to the general rule by allowing shippers to release capacity for a period of less than one month without having to comply with the Commission's advance posting and bidding requirements. Shippers, however, cannot roll-over such releases and cannot re-release capacity to the same replacement shipper under the short-term release exception until 30 days after the first release period ends.

The Commission is revising § 284.243(h) to promote a more effective and efficient capacity release mechanism as well as reduce administrative burdens. The Commission is revising § 284.243(h)(1) to coordinate with the industry's monthly purchasing practices by extending to one full calendar month the exception from the advance posting and bidding requirements. The Commission also is exempting transactions at the maximum rate from the posting and bidding requirements.

The Commission is revising § 284.243(h)(2) to provide for a 28 (rather than a 30) day hiatus during which shippers that released capacity at less than the maximum rate under the exception cannot re-release that capacity to the same replacement shipper at less than the maximum tariff rate. This change accounts for the fact that February has only 28 days and will ensure that shippers entering into a full month's release in January will be able to begin another full month's release beginning March 1.

## I. Reporting Requirements

The final rule affects the information required to be maintained on pipeline EBBs. The public reporting burden for EBBs is contained in the information requirement FERC–549(B), ''Gas Pipeline Rates: Capacity Release Information.'' The rule will eliminate the need for the industry to continue the current practice of using two capacity release postings (a less-than-one month release coupled with a one-day release) to complete a full month release transaction. Under the rule, full month releases can be accomplished with only one such posting.

In the Notice of Proposed Rulemaking (NOPR), the Commission estimated that 1,500 paired release transactions occur per year and that the proposed rule would reduce burden by 1,500 hours. A survey conducted by INGAA and filed with their comments indicates there were 1,924 paired release transactions during the first three quarters of 1994. Both the staff estimate and the industry survey are based on historical data. However, the number of capacity release transactions has increased each quarter, as the industry has gained more experience with capacity release. Therefore, historical data are not an accurate indicator of the current level of capacity release activity.

The current rate of paired release transactions, when annualized, is about 3,500 per year. At one hour per transaction, the annual reduction in burden as a result of this rule is approximately 3,500 hours.

A copy of this final rule is being provided to the Office of Management and Budget (OMB). Interested persons may send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]. Comments on the requirements of this proposed rule may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

## II. Background

Under the current capacity release regulations, promulgated in Order No. 636,[1] holders of firm capacity on pipelines can reassign that capacity in two ways.[2] The releasing shipper can choose to have the pipeline post the notice of release on the pipeline's EBB so other shippers can submit bids for that capacity, with the capacity awarded to the highest bidder. Or, the releasing shipper can enter into a pre-arranged

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13,267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36,128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal re-docketed sub nom.*, United Distribution Companies, *et al.* v. FERC, No. 92–1485 (D.C. Cir. Feb. 8, 1995).

[2] 18 CFR 284.243(a)–(h).

deal with a replacement shipper for the release of capacity.

The regulations establish different requirements for pre-arranged releases depending on the length of the release. For pre-arranged releases of one calendar month or more, the release must be posted on the pipeline's EBB to permit other shippers to bid for that capacity.[3]

For pre-arranged releases of less than one calendar month, § 284.243(h) permits shippers to consummate the transaction without complying with the posting and bidding requirements.[4] Releases under this provision must be posted no later than 48 hours after the release transaction begins. Section 284.243(h)(2) provides that shippers cannot roll-over or extend releases covered by this exception unless they comply with the requirements for prior notice and bidding and cannot re-release to the same replacement shipper until thirty days after the first release period has ended.[5]

The Commission adopted the less-than-one calendar month exception to the posting and bidding requirements to balance two objectives of the capacity release mechanism.[6] The exception was designed to ensure that parties could quickly and efficiently consummate short-term deals in emergency situations, such as a power plant outage resulting in excess capacity, without the administrative complications resulting from the advance posting and bidding requirements. On the other hand, the restriction to less-than-one calendar month was intended to ensure that normal monthly transactions would have to comply with the advance posting and bidding requirements to ensure open and non-discriminatory access to the capacity release market. The Commission thought that the pipelines could design capacity release procedures to efficiently handle full calendar month transactions.

The capacity release mechanism has now been in effect for over a year and the Commission has begun the process of evaluating the mechanism's operation. In the course of this review, the staff of the Commission has conducted informal discussions about the operation of the capacity release mechanism and possible changes or modifications to improve the mechanism with all major segments of the gas industry, including pipelines, local distribution companies, marketers, producers, end-users, and others interested in the capacity release market, such as companies developing third-party bulletin boards.

Based on comments made in these meetings, on January 12, 1995, the Commission issued the NOPR in this docket which proposed to extend to one full calendar month the period in which firm shippers can release firm capacity without having to comply with the posting and bidding requirements.[7] Due to the broad support for the revision amongst all the industry groups involved in the staff meetings, the Commission proposed to make this one revision so that it could be implemented quickly. The Commission stated, however, that further adjustments to the capacity release mechanisms were still under consideration.

Forty-five comments on the NOPR were received, all supporting the proposed revision.[8]

## III. Discussion

The extension of the short-term exception to a full calendar month will promote a more effective capacity release market and eliminate administrative inefficiencies created by the less than one calendar month regulation. As the commenters point out, the change to a full calendar month better comports with the industry's purchasing practices. The industry generally conducts its gas purchases on a monthly basis, so that customers requiring capacity need to acquire a full month's capacity. Moreover, most monthly transactions occur during a very compressed time period known as bid week and this time pressure requires that shippers be able to obtain released capacity quickly with the certainty that the deal will go through as negotiated.

In addition, as the comments recognized, administrative burdens will be reduced significantly because the amendment will make unnecessary the previous industry practice of designing so-called ''29/1 day'' deals to arrive at full month releases. Under this practice, shippers release capacity under the § 284.243(h) exception for 29 days (or less than one calendar month) and then post a release offer for bidding for the remaining day of the month. This practice ensures that the designated replacement shipper can obtain a full month's capacity, since rarely do other shippers want to purchase capacity for one day or the one-day prearranged deal is posted at the maximum rate. While this procedure does permit full month releases, the practice is administratively cumbersome, doubling the administrative burden by requiring two EBB postings, two awards, two contracts, and two bills. According to INGAA, during the first three quarters of 1994, 14% of all capacity releases involved paired releases.[9]

The Commission's original reason for restricting the short-term exception to less-than-one calendar month deals was to limit the exception to emergency situations, so as to maximize the open bidding for capacity. However, the widespread use of 29/1 day deals demonstrates that bidding for one month deals is not taking place, and any attempt to limit or restrict the 29/1 practice in order to further promote bidding would seem only to create further inefficiencies. The commenters agree that, on balance, the increased speed and efficiency made possible by the extension of the short-term exception to a full calendar month outweighs any potential benefits from requiring bidding for monthly transactions. The commenters also point out that the Commission and the industry can still monitor one month deals for adherence to the Commission's policies against undue discrimination because all deals will be posted on the pipelines' EBBs within 48 hours.

Many commenters suggest that the Commission make changes in aspects of the capacity release regulations beyond this rule's limited focus on the short-term exception, such as elimination of bidding, removal of the maximum rate cap, and posting of pipeline interruptible deals, while others contend that such major structural

[3] If a shipper bids more than the pre-arranged release rate, the pre-arranged replacement shipper is given the opportunity to match that bid to retain the capacity.

[4] Releasing shippers, however, are free to post pre-arranged deals for less than one calendar month for bidding if they choose to do so. Section 284.243(h)(1), as originally promulgated, read: ''A release of capacity by a firm shipper to a replacement shipper for any period of less than one calendar month need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.''

[5] Section 284.243(h)(2), as originally promulgated, read: ''A firm shipper may not roll-over, extend, or in any way continue a release under this paragraph without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph until thirty days after the first release period has ended.''

[6] *See* Order No. 636–A, III FERC Stats. & Regs. Preambles ¶ 30,950 at 30,553–54; Order No. 636–B, 61 FERC ¶ 61,272 at 61,994–95.

[7] Release of Firm Capacity on Interstate Natural Gas Pipelines, 60 FR 3783 (Jan. 19, 1995), IV FERC Stats. & Regs. [Proposed Regulations] ¶ 32,513 (Jan. 12, 1995).

[8] The appendix lists all those filing comments.

[9] Northwest estimates that 80% of its transactions were paired releases.

changes should not be made.[10] The Commission is committed to its review of the capacity release mechanism and will be considering these issues, along with others, as part of that process. The Commission will address here only those comments directly bearing upon the short-term exception.

IOGA–PA contends that to ensure open and non-discriminatory access to released capacity, the Commission should require the posting of certain details of one month transactions on the pipelines' EBBs. IOGA–PA specifically lists price, delivery points, receipt points, recall status, and order of curtailment as items that should be disclosed.[11]

The Commission finds no need to impose additional reporting requirements, because the information listed by IOGA–PA already must be posted on pipeline EBBs. The Commission's EBB rulemaking in Docket No. RM93–4–000 [12] requires pipelines to post price, location of releases (receipt and delivery points or pipeline segments), and the recall status of the release.[13] Pipelines must also include in their tariffs provisions setting forth their curtailment priority.[14]

MichCon requests clarification that the rule will apply to 31 day months and suggests that the regulation refer to releases of 31 days, rather than to a calendar month. MichCon suggests that this change also will permit releases of 31 days spanning two calendar months (i.e., January 15 to February 15). The term ''calendar month,'' by definition, encompasses all months, including those of 31 days, and there is no need to substitute the phrase 31 days to add clarity. The term ''calendar month'' also better reflects the regulation's purpose, because it synchronizes the short-term exception with the industry's practice of purchasing gas and capacity during bid week when shippers need speed and certainty in their transactions. The substitution of the phrase 31 days is not needed to effectuate mid-month releases, as MichCon suggests. If shippers have an emergency requiring the release of capacity in the middle of a month, they can do so under the short-term exception for the remaining days in that month (i.e., January 15 to January 31), which will leave sufficient time to post the transaction for bidding for the next month.

Some commenters raise questions about the anti-rollover provision in § 284.243(h)(2). Louisville contends that the Commission should either improve the speed of the posting and bidding process, or, in the alternative, should permit roll-overs of one month deals. Natural similarly suggests that roll-overs of one month deals should be permitted.

The Commission is not removing the anti-rollover provision in this rule, because its removal could vitiate the bidding process for longer term releases; parties could effectuate long term releases simply by agreeing to a series of roll-overs of one month releases. The issue of whether bidding should be required for releases of more than one month is beyond the scope of this rule, but will be considered by the Commission in its continuing review of the capacity release mechanism.

If the anti-rollover provision is to be retained, PGT requests that the Commission clarify the criteria a pipeline should use to determine if a capacity release parcel falls within the roll-over provision. The provision now reads that a shipper ''may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate during the calendar month after the month in which the first release ends.'' Thus, any subsequent re-release to the same replacement shipper during the next calendar month is prohibited.

ANR/CIG suggest that the Commission amend the anti-rollover provision to permit re-release of capacity to the same shipper after one calendar month has passed, rather than the 30 days specified in the current regulation. ANR/CIG argue this change is consistent with the expansion of the short-term exception, in § 284.243(h)(1), to one calendar month and is more compatible with the month to month basis on which gas and capacity transactions take place.

The Commission will not modify the anti-rollover provision to one calendar month, because that could be more restrictive than the current regulation in certain circumstances. For example, under the current regulations, shippers entering into a one-week release under the short-term exception from January 1 to January 7 could enter into a second release under the exception beginning February 7. If, however, shippers had to allow a full calendar month to pass between releases, the second release could not begin until March 1.

The Commission, however, recognizes that the 30 day hiatus in the current regulations does not accord with monthly releases in one situation: because February has only 28 days, shippers entering into a full month's release ending January 31 cannot enter into a new release until March 2. To ensure that shippers can enter into full month releases in March, the Commission is amending § 284.243(h)(2) to permit re-releases to the same replacement shipper after 28 days.

FMA suggests that roll-overs should be permitted at the maximum rates without complying with the posting and bidding periods. In Order No. 636–B, the Commission clarified its policies regarding prearranged deals at the maximum rate.[15] The Commission required that pipelines adopt procedures so that bids at the maximum rate, meeting all the terms and conditions of the bid, would not be subject to the bidding procedures and would be implemented promptly. As the Commission found, when a prearranged deal is at the maximum rate, no other shipper can make a better bid for that capacity and, therefore, subjecting that release to the bidding requirements in the pipeline's tariff could unnecessarily delay implementation of the release. To ensure that the regulations reflect Commission policy, the Commission is modifying § 284.243(h)(1) to include all releases at the maximum rate, regardless of term, as releases that need not comply with the advance posting and bidding requirements.[16]

[10] Most commenters support and encourage the Commission's review of other aspects of the capacity release mechanism.

[11] Although IOGA–PA states it supports the rule as long as sufficient information about the deal is disclosed, it later states that it is of the opinion that all pre-arranged deals should be subject to bidding. Requiring bidding for all pre-arranged deals, however, would defeat the goal of the regulation by introducing the very delay and uncertainty into monthly transactions that the regulation is designed to eliminate.

[12] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[13] This information is to be posted on the pipelines' EBB sections dealing with capacity awards. *See* Standardized Data Sets and Communication Protocols, Version 1.2, Section III Firm Transportation and Storage Capacity Release Award Data Set, III.1, line 25 (recall indicator), Section III.1.1, lines 7–13 (price information), Section III.1.2, line 4 (location type indicator). These are all mandatory fields, meaning that all pipelines must provide the required information. This document is available at the Commission's Public Reference and Files Maintenance Branch.

[14] *See* 18 CFR 284.14(b) (requiring pipelines to include curtailment provisions in their filings to comply with Order No. 636).

[15] Order No. 636–B, 61 FERC at 61,994.

[16] In Order No. 636–B, the Commission stated that releases at the maximum rate must be posted immediately, rather than 48 hours after the transaction commences. Order No. 636–B, 61 FERC at 61,994. But there seems to be no need to continue that restriction. Posting within 48 hours is sufficient to provide the industry and the Commission with the ability to review and monitor transactions at the maximum rate.

Columbia requests that the Commission set an effective date for this rule that will provide sufficient time for pipelines to file revised tariff sheets and make computer programming changes to implement the change on their EBBs. The Commission wants to make this rule effective as soon as possible so that the industry can achieve the efficiencies from full month releases. The Commission concludes that making the rule effective 30 days from publication in the **Federal Register** should provide most pipelines with sufficient implementation time. If some pipelines need more time to make tariff filings to reflect the change, the Commission can waive the 30-day notice requirement to allow for consistent effective dates.[17] Columbia does not explain exactly what computer programming is needed to reflect this change. The Commission considers 30 days to be sufficient time in general to make whatever programming changes are needed to accommodate the minor change effected by this rule.

## IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[18] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[19] The action taken here falls within categorical exclusions provided in the Commission's regulations.[20] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

## V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[21] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Since the proposed regulations do not increase the burdens on any companies or entities, they will not have a significant impact on small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

## VI. Information Collection Requirement

OMB regulations require approval of certain information collection requirements imposed by agency rules.[22] The information requirements affected by this proposed rule are in FERC–549B, ''Gas Pipeline Rates: Capacity Release Information'' (1902–0169). The Commission is issuing the final rule, including the information requirements, to carry out its regulatory responsibilities under the Natural Gas Act (NGA) and Natural Gas Policy Act (NGPA) to promote a more effective capacity release market as instituted by the Commission's Order No. 636. The Commission's Office of Pipeline Regulation uses the data to review/monitor capacity release transactions as well as firm and interruptible capacity made available by pipelines and to take appropriate action, where and when necessary. The collection of information is intended to be the minimum needed for posting on EBBs to provide information about the availability of service on interstate pipelines.

The Commission is submitting to the Office of Management and the Budget a notification of the revision to the FERC–549B collection of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol street, NE; Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], FAX (202) 208–2425. Comments on the requirements of this rule can be sent to OMB's Office of Information and Regulatory Affairs; Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880, FAX (202) 395–5167].

## VII. Effective Date

The final rule will take effect May 4, 1995.

## List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.243, paragraph (h) is revised to read as follows:

### § 284.243 Release of firm capacity on interstate pipelines.

* * * * *

(h) (1) A release of capacity by a firm shipper to a replacement shipper for any period of one calendar month or less, or for any term at the maximum tariff rate applicable to the release, need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

(2) When a release under paragraph (h)(1) of this section is at less than the maximum tariff rate, a firm shipper may not roll-over, extend, or in any way continue the release at less than the maximum tariff rate without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate until twenty-eight days after the first release period has ended.

**Note**—The following appendix will not appear in the Code of Federal Regulations.

[17] 15 U.S.C. § 717c(d); 18 CFR 154.22.

[18] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles

[19] 18 CFR 380.4.

[20] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[21] 5 U.S.C. 601–612.

[22] 5 CFR 1320.13.

## APPENDIX—PARTIES FILING COMMENTS ON THE NOTICE OF PROPOSED RULEMAKING

[Docket No. RM95–5–000]

| Commenter | Abbreviation |
|---|---|
| American Gas Association | AGA. |
| American Public Gas Association | APGA. |
| ANR Pipeline Company and Colorado Interstate Gas Company | ANR/CIG. |
| Associated Gas Distributors | AGD. |
| Atlanta Gas Light Company and Chattanooga Gas Company | Atlanta/Chattanooga. |
| Baltimore Gas and Electric Company | Baltimore. |
| Brooklyn Union Gas Company | Brooklyn Union. |
| City of Hamilton, Ohio | Hamilton. |
| Columbia Gas Distribution Companies | Columbia Distribution. |
| Columbia Gas Transmission Corporation and Columbia Gulf Gas Transmission Company | Columbia. |
| Consolidated Edison Company of New York | Con Edison. |
| Consolidated Natural Gas Company | Consolidated. |
| Consumers Power Company | CPCo. |
| EnerSoft Corporation and New York Mercantile Exchange | EnerSoft/NYMEX. |
| Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, Florida Gas Transmission Company, and Black Marlin Pipeline Company) and Enron Capital & Trade Resources Corporation. | Enron. |
| Fuel Managers Association | FMA. |
| Hadson Gas Systems, Inc | Hadson. |
| Illinois Power Company | Illinois Power. |
| Independent Oil and Gas Association of Pennsylvania | IOGA–PA. |
| Independent Petroleum Association of America | IPAA. |
| Interstate Natural Gas Association of America | INGAA. |
| JMC Power Projects (Altersco-Pittsfield, L.P., MASSPOWER, Ocean State Power, Ocean State Power II, and Selkirk Cogen Partners, L.P. | JMC Power Projects. |
| K N Interstate Gas Transmission Company | KNI. |
| Louisville Gas and Electric Company | Louisville. |
| Michigan Consolidated Gas Company | MichCon. |
| MidCon Gas Services Corporation | MidCon Gas Services. |
| Mississippi River Transmission Corporation | MRT. |
| Natural Gas Pipeline Company of America | Natural. |
| Natural Gas Supply Association | NGSA. |
| Northern Illinois Gas Company | NI–Gas. |
| Northern Indiana Public Service Company | Northern Indiana. |
| Northwest Pipeline Corporation | Northwest. |
| Orange and Rockland Utilities, Inc | Orange/Rockland. |
| Pacific Gas and Electric Company | PG&E. |
| Pacific Gas Transmission Company | PGT. |
| Peoples Gas Light and Coke Company and North Shore Gas Company | Peoples Gas/North Shore. |
| Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group | Industrials. |
| Sacramento Municipal Utility District | SMUD. |
| Sonat Marketing Company | Sonat Marketing. |
| Southern California Edison Company | Edison. |
| Southern California Gas Company | SoCalGas. |
| Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Algonquin Gas Transmission Company, and Trunkline Gas Company. | PEC Pipeline Group. |
| Texas Gas Transmission Corporation | Texas Gas. |
| United Distribution Companies | UDC. |
| Wisconsin Distributor Group | WDG. |

[FR Doc. 95–8224 Filed 4–3–95; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 3500

**[Docket No. R–95–1688; FR–3255–N–07]**

### Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Announcement of Availability of Software To Calculate Aggregate Accounting Adjustment

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

**ACTION:** Notice of availability of software.

**SUMMARY:** On October 26, 1994, HUD published a final rule establishing escrow accounting procedures under the Real Estate Settlement Procedures Act. In the October 26 final rule the Department indicated that it would make available computer software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD–1 and HUD–1A. This notice describes the availability of this software on Internet or by requesting a diskette by mail or telephone.

**FOR FURTHER INFORMATION CONTACT:** William Reid, Research Economist, Office of Policy Development and Research, Room 8212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–0421 or (202) 708–0770 (TDD).

**SUPPLEMENTARY INFORMATION:** On October 26, 1994 (59 FR 53890), the Department published a final rule establishing escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(g) and 2609 (RESPA). This final rule was corrected on December 19, 1994 (59 FR 65442), and augmented on February 15, 1995 (60 FR 8811; correction published March 1, 1995, 60 FR 11194) by a further final rule that included commentaries, corrections, and illustrations. The February 15, 1995, rule also established an effective date of May 24, 1995, for both the October 26 and February 15 rules.

In the October final rule, at page 53895, the Department said it would make available software that could be used in calculating the numerical value of the aggregate accounting adjustment for a last line in the 1000 series of the HUD–1 and HUD–1A. The software is available at no charge over Internet by accessing the ''HUD Gopher'' (see instructions below). Alternatively, a diskette containing the two files included on the Internet may be obtained by sending a request, with a check payable to HUD USER for $15 for each diskette ordered, to: HUD USER, P.O. Box 6091, Rockville, MD 20850. HUD USER also may be reached by telephone at 1–800–245–2691 to answer inquiries about this software or to order diskettes when the cost of the diskettes is being charged to a VISA or MasterCard account. All inquiries, whether by mail or telephone, should reference ''Notice FR–3255, Escrow Accounting Software.''

#### Access via Internet

To access the software using the HUD Gopher, follow these procedures:

- Access the Internet;
- Select the Gopher option from the Internet utilities menu;
- Type the address: ''huduser.aspensys.com 73'' (depending on the user's Gopher convention, the selection of port 73 may be signaled by typing a different character (such as an underline, colon, or backslash) instead of the space);
- At the main menu of options, select ''Policy Development and Research Publications'';
- Then select ''Homeownership''; and
- Select the two Lotus 1–2–3 format files: ''biweekly mortgage aggregate adjustment'' and ''monthly mortgage aggregate adjustment''.

Dated: March 27, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 95–8148 Filed 4–3–95; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

**[IN–111–FOR; Amendment 94–1]**

### Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with exceptions, a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Indiana's Surface Coal Mining and Reclamation Statutes concerning bond forfeiture procedures, underground mine subsidence control, permit revocation procedures, administrative orders and procedures, and conflict of interest. The amendment is intended to revise the Indiana Code (IC) to implement statutory changes.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

#### I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

#### II. Submission of the Amendment

By letter dated March 21, 1994 (Administrative Record Number IND–1341), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment consisting of three sets of changes to the Indiana program. The first set of changes involve statutes enacted by Indiana under SEA 408 from the 1994 Indiana Legislative Session. The amendments concern bond forfeiture procedures, underground mine subsidence control, and permit revocation procedures. The second set of amendments are contained in SEA 319 (Pub. L. 7–1987). These amendments primarily concern the substitution of the citation of the then-

repealed IC 4–22–1 with IC 4–21.5 concerning administrative orders and procedures. The third amendment is contained in HEA 1516 (Pub. L. 13–1987). This amendment changes the Indiana conflict of interest provisions. OSM announced receipt of the proposed amendment in the April 18, 1994, **Federal Register** (59 FR 18330), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 18, 1994.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

*1. IC 13–4.1–6–9 Forfeiture of Bond*

Indiana is adding new subsection 9(b) to provide that an order issued under IC 13–4.1–6–9(a) is governed by IC 4–21.5–3–6 and becomes an effective and final order without a proceeding if a request for review of the order is not filed within 15 days after the order is served upon: (1) the permittee; and (2) the person that executed the permittee's bond or other performance guarantee, if the permittee filed a bond or other performance guarantee under IC 13–4.1–1.

The Director finds the proposed language is substantively identical to and no less effective than the Federal regulations at 30 CFR 800.50(b)(1) concerning forfeiture of bond.

*2. IC 13–4.1–9–2.5 Subsidence—Repair or Compensation*

This new section is added as a counterpart to SMCRA section 720 which was added by the Energy Policy Act of 1992 (Pub. L. 102–486 [H.R. 776]; October 24, 1992). Subsection 2.5(a) provides that as used in subsection 2.5(d)(1), ''repair'' includes rehabilitation, restoration, or replacement. This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that repair of damage shall include rehabilitation, restoration, or replacement.

New subsection 2.5(b) provides that as used in subsection 2.5(d)(1), ''compensate'' means to provide compensation in an amount equal to the full amount of the diminution of value resulting from the subsidence referred to in subsection 2.5(d)(1). This proposed language is substantively identical to SMCRA subsection 720(a)(1) which provides that compensation shall be provided in the full amount of the diminution in value resulting from the subsidence.

New subsection 2.5(c) provides that for the purposes of subsection 2.5(d)(1), compensation may be accomplished through the purchase, before the commencement of mining operations, of a noncancellable premium-prepaid insurance policy. This proposed language is substantively identical to SMCRA section 720(a)(1) which provides that compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

New subsection 2.5(d) provides that the operator of an underground coal mining operation conducted after June 30, 1994, shall do the following: (1) Promptly repair or compensate for material damage resulting from subsidence caused to: (A) any occupied residential dwelling and any structure related to the occupied residential dwelling; or (B) any noncommercial building; due to the operator's underground coal mining operation. (2) Promptly replace any drinking, domestic, or residential water supply from a well or spring that: (A) was in existence before the filing of the operator's application for a surface coal mining and reclamation permit; and (B) has been affected by contamination, diminution, or interruption resulting from the operator's underground coal mining operation. This proposed language is substantively identical to SMCRA section 720(a), except that the Indiana provision applies only to underground coal mining operations which occur after June 30, 1994. SMCRA section 720(a) provides that underground coal mining operations conducted after the date of enactment of new section 720 (October 24, 1992) shall comply with the requirements of section 720. Therefore, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994, the Director finds that IC 13–4.1–9–2.5 is no less stringent than SMCRA section 720(a).

The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994). The Federal subsidence regulations which will implement SMCRA section 720(a) have been finalized and will be published shortly. Within 120 days after the publication of the new Federal subsidence regulations, OSM intends to published for each State with a regulatory program, including Indiana, final rule notices concerning the enforcement of the provisions of the Energy Policy Act in those States.

*3. IC 13–4.1–11–6 Suspension or Revocation of Permit*

Indiana is amending subsection 6(a)(1)(B) by deleting the term ''commission'' and adding the words ''adopted under IC 13–4.1–2–1.'' Indiana is also relating the words ''the violations.'' As amended, IC 13–4.1–11–6(a)(1)(B) reads as follows: ''the rules adopted under IC 13–4.1–2–1.'' Since IC 13–4.1–2–1 is the provision which establishes the authority for the Indiana Natural Resources Commission (the commission) to adopt rules, the change does not render the provision less effective. A similar amendment at subsection 6(a)(2)(A)(ii) also does not render the provision less effective.

Indiana is adding the words ''permit conditions'' at subsection 6(a)(2)(A)(iii) to provide a counterpart to SMCRA section 521(a)(4).

Subsection 6(a) is amended to provide that if the director of the IDNR determines that the criteria at subsections 6(a) (1) and (2) apply, the director shall issue an order of permit suspension or revocation and provide an opportunity for a public hearing. The provision formerly provided for an order ''to the permittee to show cause why the permit should not be suspended or revoked.'' The amendment does not render the provision less stringent than SMCRA section 521(a)(4) because section 6 in its entirety still provides for a hearing at which the permittee could show cause why the permit should not be suspended or revoked.

Subsection 6(b) is amended by relocating the existing language to new subsection 6(e). New language is added to subsection 6(b) to provide that an order issued under the pattern of violations criteria at subsection 6(a) is governed by IC 4–21.5–3–6 concerning required notice, and becomes an effective and final order of the commission without a proceeding if a request for review of the order is not filed within 30 days after the order is served upon the permittee. The Director finds the revision to be no less stringent than SMCRA at section 521(a)(4).

Subsection 6(c) is amended by replacing a citation of ''IC 4–21.5–3'' with ''IC 4–21.5.'' This change appropriately expands the citation to the entire Indiana administrative orders and procedures at IC 4–21.5. A block of

language concerning a written decision following the hearing is deleted from subsection 6(c) and added to new subsection 6(g).

New subsection 6(d) is added to provide that in a hearing requested under IC 4–21.5–3–7, the director of the IDNR has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The burden shall be satisfied if the director establishes a *prima facie* case that the criteria of subsection 6(a) have been met. This proposed language is consistent with and no less stringent than SMCRA at section 521(a)(4).

The language in new subsection (e) is relocated from subsection 6(b).

New subsection 6(f) provides that if the director of the IDNR determines in a hearing requested under IC 4–21.5–3–7 that the permit in question should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director of the IDNR. The Director finds that the proposed language is substantively identical to and no less stringent than SMCRA at section 521(a)(4).

New subsection 6(g) contains language deleted from subsection 6(c) and concerns the 60-day requirement to issue a final written decision following a hearing. The Director finds the proposed language is not inconsistent with SMCRA at section 521(a)(4) and is substantively identical to and no less effective than 30 CFR 843.13(c).

Based on the discussion above, the Director is approving the amendment to IC 13–4.1–11–6.

*4. IC 13–4.1–2–4 Petition Procedures for Rules*

This section is amended in two locations by deleting reference to IC 4–22–1 and adding in its place a reference to IC 4–21.5 concerning administrative orders and procedures. IC 4–21.5 is Indiana's current statute controlling administrative orders and procedures and replaces the repealed IC 4–22–1. The Director finds the change does not render the Indiana program less effective.

Indiana is making similar citation changes in several provisions. Most of these changes involve replacing reference to the repealed IC 4–22–1 with IC 4–21.5 concerning administrative orders and procedures. At IC 13–4.1–4–3 Indiana is deleting reference to IC 14–4–2 which was repealed by Indiana in 1986 by Pub. L 115–1986, at section 22. The following provisions contain citation changes which do not render the Indiana program less stringent than SMCRA:

IC 13–4.1–2–4; IC 13–4.1–4–3; IC 13–4.1–4–5; IC 13–4.1–6–7; IC 13–4.1–11–6; IC 13–4.1–11–8; IC 13–4.1–11–12; IC 13–4.1–12–1; IC 12–4.1–13–1; and IC 13–4.1–15–9.

*5. IC 13–4.1–2–3 Conflict of Interest*

This provision is amended to provide that an employee of the IDNR who has any duty under IC 13–4.1 may not have a direct or indirect financial interest in any surface coal mining operation. A member of the commission who has such an interest shall file annually with the State Board of Accounts. Any person who knowingly violates this provision commits a Class A misdemeanor.

Upon review of this provision, the Director has determined that this version of IC 13–4.1–2–3 predates and is superseded by the version which was the subject of a finding by the Director published in the **Federal Register** on December 15, 1989 (54 FR 51388). In that finding, the Director determined that IC 13–4.1–2–3 is not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and did not approve the amendments (see Finding 1, pages 51388 and 51389 of the December 15, 1989, **Federal Register**). In addition, the Director required at 30 CFR 914.16(b) that Indiana amend IC 13–4.1–2–3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal regulations at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA. That requirement still stands. Therefore, the Director is not acting on this earlier, superseded version of IC 13–4.1–2–3.

## IV. Summary and Disposition of Comments

*Federal Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received concerning the proposed amendments to the Indiana program.

*Public Comments*

The public comment period and opportunity to request a public hearing was announced in the April 18, 1994, **Federal Register** (59 FR 18330). The comment period closed on May 18, 1994. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Mr. Rabb Emison, an attorney, submitted a comment on behalf of five operators of publicly regulated pipelines in Indiana which carry petroleum products and natural gas. The following comments were made.

The commenters welcomed the proposed language concerning subsidence but stated that the amendment is not complete. Specifically, the comment stated that the proposed language specifies certain surface structures for protection, but may be interpreted to deny equal protection to commercial structures such as pipelines. This, they asserted, would seem to limit the protection Congress intended in section 516(b)(1) of SMCRA.

The comment stressed that protection of pipelines from unplanned subsidence is needed to prevent rupture of the pipelines and potential damage to property and the environment and loss of life. Protection should be given to surface structures equally, they stated.

In response, the Director notes that the proposed language is substantively identical to the counterpart language in SMCRA at section 720. The language of section 720(a) of SMCRA provides for the repair or compensation for material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations.

In response to SMCRA section 720(b), OSM published proposed rules intended to implement SMCRA section 720(a) (58 FR 50174; September 24, 1993). In that notice, OSM specifically solicited comments on whether a need exists for nationwide rules that go beyond those required by SMCRA section 720(a). Comments received in response to that proposed rule are being reviewed.

*Environmental Protection Agency (EPA)*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Number IND–1221). By letter dated June 21, 1994 (Administrative Record Number IND–1372), EPA concurred without comment.

## V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving the program amendment submitted by Indiana on March 21, 1994. As discussed in Finding 2, the Director is approving IC 13–4.1–9–2.5 to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. In addition, the Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994). As discussed above in Finding 5, the Director is not acting on IC 13–4.1–2–3.

The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 1995.

**Ronald C. Recker,**

*Acting Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In Section 914.15, paragraph (ggg) is added to read as follows:

### § 914.15 Approval of regulatory program amendments.

* * * * *

(ggg) The following amendment (Program Amendment Number 94–1) to the Indiana program as submitted to OSM on April 18, 1994, is approved, except as noted below, effective April 4, 1995:

IC 13–4.1–6–9 Forfeiture of bond

IC 13–4.1–9–2.5 Subsidence repair or compensation, to the extent that the proposed amendment meets the requirements of SMCRA section 720(a) from June 30, 1994. The Director is deferring decision on the enforcement of the provisions of SMCRA section 720(a) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

IC 13–4.1–11–6 Suspension or revocation of permits

IC 13–4.1–2–4 Petition procedures for rules

IC 13–4.1–2–4 Rule petition procedures

IC 13–4.1–4–3 Necessary permit findings

IC 13–4.1–4–5 Hearing on permit approval/disapproval

IC 13–4.1–6–7 Release of bond or deposit

IC 13–4.1–11–6 Suspension or revocation of permit

IC 13–4.1–11–8 Temporary relief

IC 13–4.1–11–12 Hearings; intervention

IC 13–4.1–12–1 Civil penalties

IC 13–4.1–13–1 Review of action of the director/commission

IC 13–4.1–15–9 Hearings; use or disposition of acquired lands

The Director is not acting on IC 13–4.1–2–3, Conflict of interest.

[FR Doc. 95–8115 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–05–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[OH69–1–6680a; FRL–5175–2]**

## Approval and Promulgation of Air Quality Implementation Plans Ohio; Enhanced Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** The USEPA is giving full approval through a direct final procedure of the Vehicle Inspection and Maintenance (I/M) program as a revision of the State Implementation Plan (SIP) for ozone for the Cleveland-Akron-Lorain, the Dayton-Springfield, and Cincinnati moderate ozone nonattainment areas in the State of Ohio. The revision and subsequent related material was submitted by the State on November 12, 1993, March 15, 1994 and May 26, 1994. The SIP revision establishes and requires the implementation of an enhanced I/M program in three (3) nonattainment areas consisting of fourteen (14) counties in the State, and enables the development of a basic program in one (1) other area consisting of two (2) counties. The Cleveland-Akron-Lorain, the Dayton-Springfield, and Cincinnati areas are designated moderate nonattainment for ozone and have opted to implement enhanced I/M. The I/M program is designed to be contract operated, and the State has taken the necessary steps to get the program up and running within the timeframe required in the USEPA regulations. The Toledo area was also included as part of the I/M submittal. This area is undergoing review for redesignation to attainment for ozone. As such, the USEPA will take no action at this time regarding the submittal of an I/M program in the Toledo area. The USEPA is approving the legislation and rules for the Toledo area but will rulemake on the need for an I/M program in the Toledo area at a later date. This I/M SIP action is being taken under section 110 of the Clean Air Act (the Act).

In the proposed rules section of this **Federal Register**, USEPA is proposing approval of this I/M program and SIP revision and solicits public comments on the action. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule based on the proposed rule.

**EFFECTIVE DATES:** This action will be effective June 5, 1995 unless by May 4, 1995, someone submits adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents related to this action are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation, Docket and Information Center, Room M1500, U.S. Environmental Protection Agency, 401 M Street, S.W. Washington D.C., 20460.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, Regulation Development Section, Air Enforcement Branch (AE–17J), U. S. Environmental Protection Agency, Chicago, Illinois 60604 (312) 886–6084.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Motor vehicles are a major contributor of volatile organic compounds (VOC), carbon monoxide (CO), and nitrogen oxide ($NO_X$) emissions. The motor vehicle inspection and maintenance program is an effective means of reducing these emissions. Despite improvements in emission control technology in past years, mobile sources in urban areas continue to remain responsible for roughly half of the emissions of VOC causing ozone, and most of the emissions of CO. They also emit substantial amounts of nitrogen oxides and air toxics. This is because the number of vehicle miles traveled has doubled in the last 20 years to $20x10^{12}$ (20 trillion) miles per year, offsetting much of the technological progress in vehicle emission control over the same period. Projections indicate that the steady growth in vehicle miles will continue.

Under the Act, the USEPA is pursuing a three-point strategy to achieve emission reductions from motor vehicles. The development and commercialization of cleaner vehicles and cleaner fuels represent the first two elements of the strategy. These developments will take many years before cleaner vehicles and fuels dominate the fleet and favorably impact the environment. This Notice deals with the third element of the strategy, inspection and maintenance, which is aimed at the reduction of emissions from the existing fleet by ensuring that vehicles are maintained to meet the emission standards established by USEPA. Properly functioning emission controls are necessary to keep pollution levels low. The driving public is often unable to detect a malfunction of the emission control system. While some minor malfunctions can increase emissions significantly, they do not affect drivability and may go unnoticed for a long period of time. Effective I/M programs can identify excessive emissions and assure repairs. The USEPA projects that sophisticated I/M programs such as the one being proposed in this rulemaking in Ohio will identify emission related problems and prompt the vehicle owner to obtain timely repairs thus reducing emissions.

The Act requires that polluted cities adopt either a ''basic'' or ''enhanced'' I/M program, depending on the severity of the pollution and the population of the area. Moderate ozone nonattainment areas, plus marginal ozone areas with existing or previously required I/M programs in Census-defined urbanized areas, fall under the ''basic'' I/M requirements. Basic and enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions, and requiring them to be repaired. An ''enhanced'' I/M program covers more vehicles in operation in the fleet, employs inspection methods which are better at finding high emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired. The Act directed USEPA to establish a minimum performance standard for enhanced I/M programs. The standard is based on the performance achievable by annual inspections in a centralized test program. States have flexibility to design their own programs if they can show that their program is as effective as the model program used in the performance standard. Naturally, the more effective the program the more credit a State will get towards the emission reduction requirement. An effective program will help to offset growth in vehicle use and allow for industrial and/or commercial growth.

The USEPA and the States have learned a great deal about what makes an I/M program effective since the Clean Air Act of 1977 first required I/M programs for polluted areas. There are three major keys to an effective program:

(1) Given the advanced state of current vehicle design and anticipated technology changes, the ability to accurately fail problem vehicles and pass clean ones requires improved test equipment and test procedures;

(2) Comprehensive quality control and aggressive enforcement is essential to assuring the testing is done properly;

(3) Skillful diagnostics and capable mechanics are important to assure that failed cars are fixed properly.

These three factors are missing in most older I/M programs. Specifically, the idle and 2500 RPM/idle short tests and anti-tamper inspections used in current I/M programs are not as effective in identifying and reducing in-use emissions from the types of vehicles in the current and future fleet. Also, covert audits by USEPA and State agencies typically discover improper inspection and testing 50 percent of the time in test-and-repair stations indicating poor quality control. Experience has shown that quality control at high-volume test-only stations is usually much better. And, finally, diagnostics and mechanics training are often poor or nonexistent.

On November 5, 1992 (57 FR 52950), USEPA established a high-tech emission test for high-tech cars. This I/M test, known as the IM240 test, is so effective that biennial test programs yield almost the same emission reduction benefits as annual programs. The test can also accurately measure $NO_X$ emissions where $NO_X$ is important to address an ozone problem. Adding the pressure and purge test increases the benefit even more resulting in lower testing costs and consumer time demands. The pressure test is designed to find leaks in the fuel system, and the purge test evaluates the functionality of the vapor control system.

## II. Background

There are four (4) areas in the State of Ohio which are required to implement an I/M program. They are: the Cleveland-Akron-Lorain, the Dayton-Springfield, Cincinnati, and Toledo areas. All are classified moderate nonattainment for ozone.

On September 13, 1993, the State submitted a request for redesignation to attainment for the Toledo area. The State analysis shows that the ozone standard can be maintained in the Toledo area without an I/M program. This request is still pending. The USEPA will rulemake on this issue at a later date.

On November 12, 1993, December 12, 1993, March 15, 1994, and May 26, 1994, the State of Ohio submitted material which comprised the State's I/M SIP revision for the areas in the State required to implement basic I/M. The November 12, 1993, submittal contained the program plan, emission inventory, legislation, draft rules, and draft request for proposal (RFP) along with demographic material for the areas of concern. The December 12, 1993, I/M submittal contained the official request from the Director, Ohio Environmental Protection Agency (OEPA) asking USEPA for approval. On March 15, 1994, the State submitted the final RFP and additional support material for three (3) of the areas (referred to as ''zones'' in the State SIP) in which enhanced I/M will be implemented. The May 26, 1994, submittal contained final approved rules, public notice material, proceedings from the public hearings, written comments and certification materials. Finally, in a letter dated June 22, 1994, the Director provided assurances to the USEPA that the State has completed an RFP for the Toledo Metropolitan area which will be released promptly should the State's request for redesignation to attainment be disapproved.

On January 21, 1994, the USEPA notified the State that the November 12, 1993, I/M revision submittal was not complete and that the sanctions clock had started. Upon receipt of the additional material noted above on July 22, 1994, the USEPA notified the OEPA that the State's I/M implementation plan revision was complete and the sanctions clock started in January had been stopped for all of the affected areas. While the State did not issue a request for proposal (RFP) for the Toledo area, it did have an RFP ready to issue in the event the redesignation to attainment failed.

The program also included rules which give the Director of the OEPA authority to implement a centralized basic I/M program in any area designated moderate nonattainment. The USEPA considered the SIP submittal complete in part because it contained all the required authority to readily implement an I/M program without any additional action on the part of the State legislature.

The Ohio I/M program was enabled by Senate Bill 18, which was signed into law by Governor Voinovich on June 27, 1993, and became effective on September 27, 1993. The bill gives the Director of OEPA authority to implement the I/M program, and defines the geographic boundaries of the program in each nonattainment area based on county boundaries. The bill authorizes I/M for the following Ohio counties which have Census-defined urbanized areas: In the Cleveland-Akron-Lorain CMSA, the counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit; in the Dayton-Springfield CMSA, the counties of Clark, Greene, and Montgomery; in the Cincinnati CMSA, the counties of Butler, Clermont, Hamilton and Warren; and in the Toledo MSA, the counties of Lucas and Wood. Basic I/M is required in all Census-defined urbanized areas designated as moderate nonattainment. The legislation also established a process under which local governments in an area classified as moderate nonattainment can ask the Director of the OEPA to implement and supervise an enhanced I/M program instead of the required basic program. With the exception of the Toledo area, the other three nonattainment areas have opted, through the legislatively prescribed process, to implement enhanced I/M. The March 15, 1994, submittal contained the State's RFP which describes in detail the requirements for a contractor to develop and operate the enhanced I/M program in these three areas.

The USEPA has determined that the Ohio enhanced I/M program meets the requirements of USEPA's performance standard and other requirements contained in the Federal I/M rule promulgated on November 5, 1992 (57 FR 52950). The biennial, centralized, test only program, is required to begin testing in September 1995, two years after the legislation became effective. Testing will be conducted by a contractor and supervised by the Ohio EPA, Air Division. Additional aspects of the program include: IM240 testing of 1981 and newer vehicles; two-speed idle test of pre-1981 vehicles to 1975; pressure and purge testing; a test fee to ensure the State has adequate resources to supervise the program; enforcement by registration denial; opacity testing of diesel powered vehicles; waiver limits set at $100 for 1975–1980 model year, and $200, actual expenditures, for 1981 and later model year vehicles; compilation of a list of repair facilities which can repair a vehicle to pass the tailpipe inspection; data collection; repair effectiveness program; inspector training and certification; penalties for inspectors and contractors; and emission recall enforcement. In addition to the above, the Director of the Ohio EPA provided assurances in his letter of June 22, 1994, to the USEPA Regional Administrator that in the event the Toledo redesignation to attainment is not approved, the State will immediately obtain a contractor to operate a basic I/M program in that area. An analysis of how the Ohio program meets the Federal program requirements is provided below.

*A. Applicability*

Under the requirements of the Clean Air Act, basic inspection and maintenance programs are required in a number of areas classified as moderate nonattainment for ozone. These areas include: Cleveland-Akron-Lorain CMSA including the counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit; Dayton-Springfield CMSA including the counties of Clark, Greene, and Montgomery; Cincinnati CMSA including the counties of Butler, Clermont, Hamilton and Warren; and the Toledo MSA containing the counties of Lucas and Wood. The State excluded some smaller urbanized areas in the CMSAs based on population. However, because the I/M program is implemented on a county-wide basis, exclusion of these areas is offset by the inclusion of non-urban residents in the I/M counties. Ashtabula and Miami counties are excluded from the I/M testing program because these counties contain no urban areas. In the Cleveland-Akron-Lorain CMSA, 96.5 percent of the population is in the program. In the Dayton-Springfield CMSA, 90.3 percent of the population is in the program. All of the counties in the Cincinnati CMSA are included in the program.

*B. Enhanced I/M Performance Standard*

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard. The minimum performance standard in this case is a basic I/M program which is required in all four (4) moderate nonattainment areas of the State. Areas are required to meet the performance standard for the pollutants which cause them to be subject to I/M requirements. Emission levels are calculated using the most recent version of USEPA mobile source emission factor model. In Ohio the performance standard must be met for volatile organic compounds (VOC). The performance standard is established using the model I/M program inputs and local characteristics, such as vehicle mix and local fuel controls, and model I/M program parameters for the following: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. Ohio used the USEPA model known as MOBILE5a to calculate the emission levels from the program design. The Ohio I/M program target design includes: centralized test, 1983 start date, biennial frequency, 1970 and newer model year coverage, vehicle types include LDGV, LDGT1, LDGT2 and HDGV up to 10,000 pounds, IM240 for 1981 and newer vehicles, and a steady-state loaded test for pre-1981 vehicles, five (5) element visual inspection and pressure purge on all vehicles, stringency rate for all vehicles will be 20 percent, waiver rate will be 3 percent and a 96 percent compliance rate. The performance standard is based on a basic I/M program for all areas in the State because the areas are classified as moderate nonattainment areas and are required to implement a basic I/M program.

The emission levels achieved by the State were modeled using MOBILE5a. The demonstration was performed correctly, using local characteristics and shows that the program design will exceed the minimum required I/M performance standard. The State exempts a number of alternatively powered vehicles from the I/M program. The USEPA believes these exemptions for electric, hydrogen powered, compressed natural gas, methanol, ethanol and propane, which are intended to encourage the use of renewable and alternative energy sources, will have little or no impact on emissions in the immediate future.

*C. Network Type and Program Evaluation*

Three of the four Ohio ozone nonattainment areas are opting into the enhanced I/M program. In these enhanced areas a contractor will operate a test-only centralized network for inspections and reinspection. All vehicles included in the emission reduction demonstration will be tested by a contractor in centralized I/M test facilities. The contract specifies that the contractor is barred from involvement in motor vehicle-related business with the exception of vehicle testing equipment fabrication and sales. Authority for this program is established in Senate Bill 18. The Ohio legislation specifies inspections and reinspection under an enhanced program shall be conducted by a centralized contractor.

The Ohio I/M program plan calls for the Ohio EPA to institute an ongoing evaluation of the enhanced I/M program consistent with USEPA regulations to quantify the emissions reductions benefits of the program to verify that it is meeting the requirements of the Clean Air Act. The evaluation will consist of monitoring the performance of IM240 on a random, representative sample of at least 0.1 percent of the vehicles subject to inspection and covering a 25 model-year rolling window. Evaporative system purge (1981 and newer) and pressure tests (all model years) will be performed on those vehicles subject to the test requirements. The State program plan describes the manner in which the State will perform the evaluation: using Ohio EPA auditors, visiting each lane at every station, choosing vehicles at random at different times of the day, performing calibration checks, and ensuring the selected vehicles represent the fleet mix in the test area. The evaluation program includes surveys conducted by the State to assess the effectiveness of repairs performed on vehicles which fail any of the required tests. Tampering rates will be measured for changes during the life of the program, and deterrent effects will be evaluated. Ohio law prohibits the sale of any tampered vehicle in the State.

Lane inspectors employed by the contractor will be evaluated using undercover audit vehicles and State personnel. The mission of the auditors will be to conduct surveys for inspector effectiveness in identifying vehicles in need of repair. Ohio EPA will submit biennial reports on the results of the evaluations. The report will assess whether the program is meeting the emission reduction target.

*D. Adequate Tools and Resources*

The Federal regulation requires the State to demonstrate that there is adequate funding of the program functions including quality assurance, data analysis and reporting, holding hearings and adjudication of cases. The Ohio I/M program will be funded through a per-vehicle inspection fee which will be set following award of the centralized contracts in each of the ozone nonattainment areas. Legislation gives the director of the Ohio EPA the authority to establish an annual or biennial test fee sufficient to cover all costs associated with implementation, administration and operation of the program. The fee is capped in the State's legislation at twenty-five (25) dollars per test for an enhanced biennial program. Approximately $1.25 from each test will be paid to the Ohio EPA for administrative oversight activities. This will result in sufficient funding during the year for the State to administer the program and provide oversight, management, and enforcement. The Ohio EPA will use leased vehicles of a variety of makes and model years for the covert auditing program. Arrangements are made with the Ohio Bureau of Motor Vehicles (BMV) which provides cover registrations and license plates.

The contractor(s) selected to perform the testing will be required to provide administrative support for Ohio EPA

staff at the three area headquarters, along with a supply of calibration gas and hardware to perform quality assurance audits. The Ohio BMV will provide program oversight of the registration denial portion of the enforcement program.

*E. Test Frequency and Convenience*

The Federal I/M rule requires test systems to be designed in such a way to provide convenient service. The Ohio enhanced program test frequency is biennial for all subject vehicles. New vehicles are not tested until two (2) years after the initial registration. In the biennial program even model years will be tested on the even calendar year and odd numbered model years will be tested in the odd numbered calendar year. The State will require that test facilities are located such that eighty (80) percent of all motorists in urban areas do not have to drive more than five (5) miles to a test facility, and one-hundred (100) percent in urban area will not have to drive more than ten (10) miles, and one-hundred (100) percent of the affected population in rural areas will be within 15 miles of a test facility. The State RFP specifies at least fifty-eight (58) hours of operation of a test facility per week.

*F. Vehicle Coverage*

The Federal rule for enhanced I/M programs assumes coverage of all 1968 and newer model year light duty vehicles and light duty trucks up to 8,500 pounds gross vehicle weight rating (GVWR), and includes vehicles operating on all fuel types. The Ohio I/M program requires all gasoline and diesel powered light duty passenger cars, light duty trucks, and heavy duty vehicles up to 10,000 pounds, up to and including twenty-five (25) years old and newer are subject to the program. The BMV data available on the current fleet does not include vehicles owned by the U.S. General Services Administration or vehicles owned by the State BMV. These government vehicles are required to be tested but are not currently part of the State data base. The OEPA is working with these organizations to establish a testing routine and schedule for these vehicles, which are not presently licensed by the BMV. The State also exempts vehicles including historical vehicles (older than 25 years), licensed collectors vehicles (which have use restrictions), parade and exhibition vehicles (which receive temporary road permits), motor cycles, recreational vehicles over 10,000 pounds, and alternative fueled vehicles. The USEPA agrees with the State that these vehicles do not make up a significant portion of the total motor vehicle fleet in the tested area and most are not included in the modeling for the performance standard. Additional information and other statistical information regarding the fleet, required to manage the program, will become available following the first test cycle.

*G. Test Procedures and Standards*

Written test procedures and pass/fail standards are required to be established and followed for each model year and vehicle type included in the program. Federal test procedures and standards are found in 40 CFR 51.357 and in the draft USEPA document entitled ''High-Tech I/M Test Procedures, Equipment Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, finalized in April 1994. The Director of OEPA has the authority to establish test procedures according to the needs of the program. The test procedures are listed in the Ohio EPA RFP and correspond to the USEPA procedures. The Ohio procedure for the evaporative system functional test uses non-invasive helium in place of nitrogen as called for in the USEPA procedure. The contractor will work with the USEPA to obtain approval for use of this gas. All vehicles will be tested in an as-received condition and vehicle owners will have an opportunity to view the test from an area at the test site that affords an unobstructed view. Each vehicle will be inspected prior to the emissions test and rejected from testing if any unsafe condition exists or if the exhaust is leaking or missing. In the event of an emission failure of any kind, all components are retested after repairs. The State will use the same emission standards set forth in section 85.2205(a) of the technical guidance published by USEPA in July 1993. The State also uses the evaporative test standards published in the same document, and a clause in the RFP allows the State to change the standards in the event emission cutpoints need to be changed to adjust failure rates in the program. The State has established a twenty-five (25) year ''rolling window'' for vehicles subject to the emission standards in the I/M program. This concept has been taken into account in the modeling the State performed to determine emission reduction benefits. A vehicle with a switched engine is required to meet the emission standards of the chassis model year as listed on the vehicle registration. If the engine is newer than the chassis, the State's tamper provisions apply and the vehicle will be evaluated on that basis. For the tamper inspection, such a vehicle must match a light-duty certified configuration of chassis model year or of a newer vehicle if it had originally been a light-duty configuration.

The State permanently exempts a number of vehicles. The State exempted alternatively-fueled vehicles in order to promote clean burning fuels. Dual-fueled vehicles are not subject to this exemption. Dual-fueled vehicles will be tested to meet the requirements of the program while being fueled with gasoline. Exempted vehicles fall into a select category defined as ''limited use'' and are not normally found in common use on the highway. These include historic, parade, and collector's vehicles, electric vehicles, vehicles over ten thousand (10,000) pounds, vehicles with salvage certificates, and any vehicle over twenty-five (25) years old. Temporary exemptions and extensions to the exemptions are also available for a range of criteria. Motor vehicles owned by military personnel stationed outside the State, out-of-State students, owner's with a temporary medical condition, and vehicles undergoing repair are eligible for temporary exemptions. Owners of these vehicles are required to submit documentation to prove status and are tracked in the State's data base to ensure the vehicle eventually gets tested.

*H. Test Equipment*

The Federal regulation requires computerized test systems for performing any measurement on subject vehicles. The Ohio EPA lists the details of the technical specification of the test equipment in the RFP, and make reference to the requirements of the Federal regulations and the technical guidance document. Computerized test systems are required for performing any measurements on subject vehicles. According to the requirements in the RFP, these systems must conform to Federal requirements. Each of the State's test lanes shall be equipped with a dynamometer, constant volume sampler, non-dispersive infrared analyzers to measure carbon monoxide, carbon dioxide, and hydrocarbons, and an analyzer for measuring NOx, and non-invasive helium pressure and purge test equipment. All of this equipment must pass an acceptance test before it is approved by the State. The State's contract will require the contractor(s) to update emission test equipment to accommodate new technology vehicles and any changes to the program. All test systems will be linked by a real-time data link in order to prevent unauthorized multiple initial tests on the same vehicle in the same test cycle.

*I. Quality Control*

Quality control measures will ensure that emission measurement equipment are calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. The Ohio EPA prepared the RFP to require the contractor to implement quality control procedures which comply with 40 CFR 51.359. The compliance document, the inspection certificate, that Ohio EPA will issue to motorists that comply with inspection requirements are only valid once a computer generated check redundancy code (CRC) is printed on each document. The CRC is analyzed by the Bureau of Motor Vehicles (BMV), and vehicle registration renewals can only be generated by the BMV computer if the code is valid. The CRC is only printed on a compliance document, which contains test results, once a vehicle passes all parts of the emission inspection. The security of compliance documents for the Ohio program focuses on the CRC rather than the number of compliance documents issued to inspection stations. However, inspection certificates shall be stored in a locked container at the inspection station at all times when not in use, and the contractor is held responsible for accountability of all certificates. The RFP states that the contractor's quality control procedures shall ensure that emission measurement equipment is properly calibrated and maintained. Analyzers will automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances that impact quality control.

*J. Waivers and Compliance via Diagnostic Inspection*

The I/M program allows the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria are met. The State program plan contains elements in this section which generally follow the waiver issuance criteria listed in the Federal I/M regulation. In modeling the emission reduction benefits, Ohio used MOBILE5a and assumed a maximum waiver rate of 2 percent for 1980 and older model year vehicles and 3 percent for 1981 and newer vehicles. In the event the actual waiver rate exceeds the planned maximum used for estimating the emission reduction benefit, the State has commited to remodel to assess the emission reduction benefits based on the actual waiver rate.

Legislation gives the Director of the Ohio EPA the authority to issue waivers, set and adjust cost limits, and administer the waiver system. Following a test failure, the subsequent reinspection must show a thirty (30) percent improvement in measured concentrations of each pollutant that exceeded the standards in the first test and the minimum waiver limit amount has been spent on emission related repairs. A vehicle is eligible for a waiver when proof is provided that the vehicle has received all repairs and adjustments for which it is eligible under any emissions performance warranty. The costs associated with repair of any tampering is not considered valid towards a waiver. When proof is provided to the inspection station manager that appropriate repairs have been performed on the vehicle, such vehicle will be eligible for a waiver. The inspection station manager is responsible for verifying repairs and reviewing repair receipts. The station manager, assistant manager or an Ohio EPA auditor are authorized to determine waiver eligibility. Waivers are valid for one (1) year and are not renewable. The minimum expenditure made on emission repairs is one-hundred ($100) dollars for 1980 and older vehicles and two-hundred ($200) dollars for 1981 and newer. While the Clean Air Act requires a minimum waiver repair expenditure for enhanced I/M programs of $450, basic areas such as in Ohio which are opting up to enhanced I/M do not have to meet this requirement.

The State allows exemptions to the inspection requirement and extensions if a vehicle is undergoing extensive repair at the time of its registration or registration renewal. The requirements for an extension or exemption are sufficient to allow the State full understanding of the need by the consumer for the extension or exemption, and places a burden on the consumer to prove to the State that such an extension or exemption is needed.

The Federal I/M rules also allow the use of compliance via diagnostic inspection following repairs after a test failure. The State of Ohio has chosen not to allow compliance via diagnostic repair.

*K. Motorist Compliance Enforcement*

The Federal regulations require the use of registration denial to ensure compliance with the requirements of the I/M program. The Ohio EPA, along with the Ohio Bureau of Motor Vehicles (BMV), will continue to implement a registration denial enforcement program. Vehicle owners who do not renew vehicle registrations, and continue to drive an unregistered vehicle in the State, will be subject to enforcement action by any law enforcement officer in the State. Local governments are responsible for establishing policies for the mandatory fines of all traffic violations including failing to comply with registration requirements. Owners of all vehicles registered in the State are required to affix a sticker to the lower right hand corner of the rear license plate. This sticker identifies the month and year of the registration renewal date. If an owner or driver fails to comply with I/M or registration requirements, he or she will be unable to legally drive that automobile and be subject to enforcement action. Vehicle owners who move their residence into an Ohio I/M testing area will be required to have an emission test prior to registering the vehicle in the area. Motorists are permitted thirty (30) days to register the vehicle after moving to a new address. Vehicle owners who fail to complete the registration process after relocating may be ticketed by law enforcement agencies for driving with a registration violation.

*L. Motorist Compliance Enforcement Program Oversight*

The Federal rule requires the State to audit the enforcement program on a regular basis and the State shall follow effective program management practices, including adjustments to improve operation when necessary. A quality assurance program shall be implemented to insure effective overall performance of the enforcement system. Ohio Senate Bill 18 authorizes the Director of Ohio EPA to promulgate, adopt, amend and rescind rules for motorist compliance with the I/M program. The contractors are responsible for in-house accounting of documents and compliance certificates. Documents in the Ohio I/M program are valid only if a CRC is present. Missing or unaccounted certificates do not pose a threat of fraudulent activity because each CRC is unique for each certificate at the time the certificate is issued.

The I/M contractor is held responsible for certificate accountability. In the event the contractor employees or inspectors tamper with the records or documents, the state will take action to have the employee terminated. Exemption records will be analyzed together with the registration database to determine changes in registration data. Where it is determined that an unusually high number of vehicles are unexplainably not in the registration area or not being tested, provisions will

be made to identify and take action on the anomalous condition. The procedures may include methods for performing covert and overt audits, preparation of enforcement documents, I/M test equipment operation, public relation materials and other applicable information. The Bureau of Motor Vehicles (BMV) will issue material containing procedures for performing specific operations associated with I/M inspection and registration requirements. The BMV materials will be issued to the Deputy Registrars and will include information explaining the evaluation process. Each Deputy Registrar is evaluated biannually. In cases where enforcement personnel fail to follow established procedures, action may be taken to discipline, retrain, or remove the employee. In establishing an information base to be used in evaluating and enforcing the I/M program, the State uses actual vehicle population data obtained from the BMV and test results from I/M contractors.

The I/M contractors will have access to the BMV database, but in a ''read only'' format to prevent accidental or intentional data modifications.

Both the State and the contractors will be able to perform periodic audits of the testing database. Reports from these audits will be used to evaluate program effectiveness. Test data will be analyzed to determine if facilities are operating according to procedures. Outlying data will trigger investigations of the facilities. If necessary, enforcement action will be taken against test facilities found violating State or Federal regulations.

*M. Quality Assurance*

The USEPA rule requires an ongoing quality assurance program in order to discover, correct and prevent fraud, waste, and abuse, and to determine whether procedures being followed are adequate, whether equipment is measuring accurately, and whether other problems may exist which would impede program performance. The procedures shall be periodically evaluated to assess their effectiveness in achieving program goals. Scheduled State audits are to ensure that all facilities are randomly audited on a regular basis. Directed audits will be conducted to investigate specific situations. Any valid consumer complaint will trigger a directed audit of a centralized facility. If a problem appears to exist at a specific station, a directed audit will be conducted. Covert audits will be conducted annually by State staff and equal in number to the number of inspectors employed by the contractors. Vehicles presented for audit testing will be in a range of manufacturers, models and age to replicate the current fleet, and will be leased on a six month basis to ensure that a variety of vehicles are presented to the inspection process.

The covert audit will include a gas audit using gases of known concentrations that are as accurate as those used for routine quality control checks. The audit will include a check for tampering and general serviceability of equipment, critical flow in the constant volume sampler (CVS), CVS flow calibration, leak check and gas tolerances. There will be a functional check of the dynamometer for roll speed and distance, coast-down, inertia weight selection and power absorption. The pressure and purge equipment will also be checked. The OEPA auditors are expected to receive formal training in the use of analyzers, basics of air pollution control, basic engine repair, State administrative procedures, quality assurance practices, covert procedures and program rules and regulations.

*N. Enforcement Against Contractors, Stations and Inspectors*

The Federal I/M regulation requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. Senate Bill 18 of the Ohio Revised Code gives Ohio EPA authority to enter into a contract to implement and maintain an inspection and maintenance program. This contract allows the State to impose penalties when violations occur that adversely affect the operation of the inspection network. A penalty schedule, listing a variety of rules infractions, will be used for violations discovered at an inspection facility as a result of overt and covert audits conducted by Ohio EPA staff. Penalties range from 100 dollars up to 10,000 dollars to termination of employment and breech of contract. In cases of inspector incompetence, Ohio EPA will require the contractor retrain the inspector according to the requirements listed in the contract. Inspectors will be prevented from conducting tests until retraining is complete.

Ohio EPA will maintain field offices and employ auditors in each of the zones in which I/M is required to be implemented. The primary function of the auditors will be to conduct audits of the contractor facilities. These audits will determine the ability of the contractor and inspectors to conduct a proper inspection and identify cases of bribery or fraud. Funding for this enforcement program will come from a rotary fund established under section 3704.14 of the Ohio Revised Code.

*O. Data Collection*

In order to manage, evaluate and enforce the program requirements an effective I/M program requires accurate data collection. The Ohio I/M program RFP requires the contractor to design the program to include all of the elements of data collection listed in the Federal rule. The contractor is also required to conduct quality control checks and report data from those checks.

*P. Data Analysis and Reporting*

Data analysis and reporting are required in order to monitor and evaluate the program by the State and the USEPA. The Federal rule requires annual reports submitted to the USEPA following a performance period by a specific time. The Ohio I/M program requires the contractor to provide the information to the State in order to meet the submittal requirements of the Federal rule. The statistics required are consistent with those listed in the Federal rule and are expected to be submitted on time.

*Q. Inspector Training and Licensing or Certification*

The Federal rule requires all inspectors receive formal training and be licensed or certified to conduct inspections. Ohio Senate Bill 18 authorizes the Ohio EPA to develop rules which establish provisions for inspector training and certification requirements. The Ohio EPA requires the contractor to enter into an arrangement with local vocational schools, technical schools or training organizations to conduct inspector training. All trainees are required to pass a comprehensive hands-on and written examination which requires inspectors to demonstrate an understanding of Ohio's rules, regulations, test procedures, equipment usage, quality control procedures and safety and health issues as used in the enhanced test. The Ohio EPA has committed to evaluating and monitoring the development of the I/M inspector training program. Recertification is required on a biennial basis and inspectors are required to attend training for updated information and new program developments.

*R. Public Information and Consumer Protection*

The Ohio implementation plan must include a program for informing the public on an ongoing basis for the life of the program about the air quality,

requirements of State and Federal laws, the role of motor vehicles in the air quality problem, and the benefits of an I/M program. Information must be made available to the motorist, whose vehicle fails the test, to provide knowledge of repair facilities and the relative quality of repairs performed. The Ohio EPA assigned some public awareness efforts to the contractor with State oversight. These efforts include a toll-free hotline, sending reminder notices to motorists in advance of testing deadlines, producing brochures and participating in public speaking activities. The State will carry out its responsibilities by publishing fact sheets, issuing press releases, publishing a newsletter for the repair industry, and participating in special events. The Ohio I/M consumer protection plan will include components to protect the consumer from fraud and abuse. Both Ohio EPA and the contractors will perform quality assurance to ensure integrity of the inspection process. The State's approach in this regard will focus on the use of undercover audits of the inspection and test procedure. Consumers who believe their vehicles should not have failed will be able to appeal the test results directly to the Ohio EPA by scheduling an appeal inspection within 14 days of the initial test. Citizens who report incidents of fraud, theft or other violations are protected by the State which will grant confidentiality to encourage such disclosure. The contractor will operate a toll-free hotline to provide to motorists answers to questions about the program. The contractor is required by the State to swiftly resolve complaints over which the contractor has control or forward the complaint to the State for disposition. The State will periodically audit the process to ensure complaints are resolved. The State will also intervene on behalf of a consumer in the event of a conflict with an automobile dealer for warranty repairs for a vehicle which fails the I/M test.

*S. Improving Repair Effectiveness*

Inspection and maintenance program goals are achieved through effective repairs of vehicles which have failed the initial test. The State will provide the repair industry with information and assistance on vehicle inspection diagnosis and repair. Ohio EPA will provide technical assistance to repair facilities which are in the business of repairing emission failures.

These facilities will receive publications which include I/M test procedures, common problems with specific model year vehicles, diagnostic tips, training and other I/M related issues. A technician's hotline also will be available to respond to specific I/M repair questions. The State will monitor the performance of individual motor vehicle repair facilities, and provide to the public a summary of the performance of repair facilities so the consumer has a choice of locations to seek repairs. The repair statistics also will be available to the repair facilities. The State plans to evaluate the availability of repair technician training in the I/M areas. If sufficient training is not available the State commits to work with public and private automotive training institutions to develop a training program.

*T. Compliance With Recall Notices*

States are required to establish a method to ensure that vehicles subject to enhanced I/M and that are included in either a voluntary emissions recall as defined at 40 CFR 85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Act, receive the required repairs. The Ohio EPA, at the time of submittal, did not have a specific plan developed but included provisions in its RFP for the contractor to follow to ensure subject vehicles receive all required recall repairs. Emissions tests will not be conducted on a vehicle that has an unresolved recall notice until all of the work is done. Vehicles with unresolved recall work will be identified as noncomplying by the contractor's system. An owner is required to provide proof that the repairs have been performed before a test is allowed. The contractor shall have the ability to resolve situations where the repairs have been performed but the database has not yet been updated. The State OAC rule 3745–26–12 requires documented proof that the repairs have been performed. The cost of these repairs are not counted towards the amount needed for a waiver. Unresolved recall reports from the contractor to the State are required on an annual basis. The State requires the contractor to provide detailed information in the annual report sufficient for the State to inform the USEPA of the status of operations of the program.

*U. On-Road Testing*

On-road testing is required in enhanced I/M areas and is an option for basic I/M areas. The Ohio nonattainment areas at issue are all moderate areas requiring basic I/M. Since the enhanced I/M program is an option in the nonattainment areas of Ohio, on-road testing is not required. Accordingly, the State did not plan for conducting on-road testing.

*V. State Implementation Plan Submission*

The State submitted a committal SIP to USEPA on November 12, 1993. The committal included: a schedule of events leading up to the implementation of the I/M program, mobile modeling which shows that the program meets the performance standard, a description of the geographic area, a detailed discussion of the design elements, final copy of the legal authority, regulations, and funding and resources. Additional information was submitted through May 26, 1994. On July 22, 1994, the USEPA notified the State that the submittal was complete. This notification stopped the sanctions clock which was started on January 21, 1994, because at that time the State's submittal was not complete.

## III. Comments and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision amendment and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on June 5, 1995, unless USEPA receives adverse or critical comments by May 4, 1995.

If USEPA receives comments adverse or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. The USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action.

Any parties interested in commenting on this action should do so at this time. If no comments are received, USEPA hereby advises the public that this action will be effective on June 5, 1995.

## IV. The USEPA's Analysis of the Ohio I/M Program Submittal

A complete USEPA analysis of the program submittal is detailed in the Agency's technical support document (TSD) which is available in the docket. A copy of the TSD can be obtained by contacting the person listed in the **ADDRESSES** portion of this notice. The TSD summarizes the requirements of the Federal I/M regulations and address

whether the elements of the State's submittal comply with the Federal rule. Interested parties are encouraged to examine the TSD for additional detailed information about the Ohio I/M program.

*Final Action*

The USEPA is approving the I/M SIP for the Cleveland-Akron-Lorain, Cincinnati, and Dayton-Springfield areas and takes no action on the I/M SIP for the Toledo area.

*Precedential Effect*

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.

*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. The OMB has exempted this regulatory action from E.O. 12866 review.

*Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA should 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 limited 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 CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its final limited approval of Ohio's I/M on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 10, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart KK 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.

2. Section 52.1870 is amended as follows by adding paragraph (c)(101) to read as follows:

### § 52.1870 Identification of plan.

* * * * *

(c) * * *

(101) On November 12, 1993 the Ohio Environmental Protection Agency submitted a vehicle inspection and maintenance program in accordance with section 110 of the Clean Air Act as amended in 1990. The new program replaces I/M programs in operation in the Cleveland and Cincinnati areas and establishes new programs in Dayton and any area designated moderate nonattainment or any area where local planning authorities have requested the State to implement a program.

(i) Incorporation by reference.

(A) Ohio Administrative Code Amended Rules 3745–26–01, 3754–26–02, 3745–26–10, and rules 3745–26–12, 3745–26–13, and 3745–26–14, all made effective on June 13, 1994.

(ii) Other material.

(A) Certification letter from the Director of the Ohio Environmental Protection Agency regarding the State process in developing the I/M rules and the I/M program.

(B) Letter dated June 22, 1994, from the Director of OEPA regarding implementation of an I/M program in the Toledo area in the event the State's request for redesignation to attainment for that area is not approved by USEPA.

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[FR Doc. 95–8221 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Parts 52 and 81

**[IL116–1–6792a; FRL–5182–3]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Illinois

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** The USEPA is approving a November 10, 1994 State Implementation Plan (SIP) revision request to redesignate two sulfur dioxide ($SO_2$) nonattainment areas in the State of Illinois to attainment and approving the accompanying maintenance plans as SIP revisions because they satisfy the requirements of the Clean Air Act (Act). The redesignation requests and maintenance plans were submitted by the Illinois Environmental Protection Agency (IEPA) for the following $SO_2$ nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The redesignation requests are based on ambient monitoring data and modeling demonstrations that show no violations of the $SO_2$ National Ambient Air Quality Standard (NAAQS). In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comments on these requested redesignations and SIP revisions. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Adverse comments received concerning a specific geographic area, Peoria or Tazewell Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

**DATES:** This final rule is effective June 5, 1995, unless notice is received by May 4, 1995, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Fayette Bright at (312) 886–6069 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation

Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Fayette Bright, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6069.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The redesignation requests and maintenance plans considered in this rulemaking were submitted by IEPA on November 10, 1994 for the following $SO_2$ nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The following discussion represents a historical summary of Illinois' $SO_2$ SIP.

On March 3, 1978 (43 FR 8962), ten townships in Peoria and Tazewell Counties in Illinois were designated by USEPA as not in attainment of the primary $SO_2$ NAAQS. The determination, which included Hollis and Peoria Townships in Peoria County and Groveland Township in Tazewell County, was based on monitoring data furnished to USEPA by IEPA, and was to have included the entirety of both counties. However, an accompanying IEPA dispersion modeling demonstration justified limiting the nonattainment designation to ten townships.

Further, on January 30, 1980 (45 FR 6786) as a result of IEPA dispersion modeling studies, all ten townships were also designated as not in attainment of the secondary $SO_2$ NAAQS. Nine of these townships continued to be designated as not in attainment of the primary NAAQS.

Even before the 1978 nonattainment designation, Illinois had adopted regulations to control $SO_2$ emissions in the Peoria area; however, a 1974 decision of an Illinois Appellate Court invalidated Illinois' $SO_2$ emissions limitations for coal-fired boilers. Such boilers account for over ninety-five percent of the area's $SO_2$ emissions. Also, in 1977, the Illinois Air Pollution Control Board (Board) revalidated the $SO_2$ emission limitations for coal-fired boilers; however, the revalidations were also determined to be invalid by an Illinois Court, (Ashland Chemical vs. Illinois Pollution Control Board, 64 Ill. App. 3rd 169, 381 N.E. 2nd 56 (3d District. 1978)).

On March 28, 1983, most of the emission limits pertaining to Peoria were revalidated by the Board. These Board regulations were submitted to USEPA and incorporated into the Illinois $SO_2$ SIP on August 8, 1984 (49 FR 31685 and 49 FR 31587). This SIP revision redesignated all Peoria area Townships except Groveland, Hollis, and Peoria Townships to attainment for $SO_2$. (Hollis Township is classified as nonattainment of the primary and secondary standards).

On June 9, 1986, IEPA submitted Final Order R84–28 (35 Illinois Administrative Code 214 (35 IAC 214); Sulfur Limitations) as a SIP revision request revising the $SO_2$ emission limits for the remaining solid fuel emission sources in the Peoria and Tazewell areas. The SIP revision request could not be approved until the enforcement deficiencies were corrected. However, due to USEPA's approval of 35 IAC 214; Measurement Methods for the Emission of Sulfur Compounds dated June 26, 1992 (57 FR 28617), the enforcement deficiencies previously identified by USEPA were corrected. On September 2, 1992 (57 FR 40126), USEPA approved the June 9, 1986 SIP revision request completing the State's part D plan for the Peoria and Tazewell areas.

The State's part D plan as required by the Act must contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment, or interfere with the maintenance of the NAAQS. Illinois' SIP includes a compliance test methodology which allows most sources to demonstrate compliance with their emission limits through either a stack test or a 2 month average of the sulfur content of their fuel supply.

## II. USEPA Redesignation Policy

The Act's requirements for redesignation to attainment are contained in section 107(d)(3)(E) of the Act, and discussed in a September 4, 1992, memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions.

As outlined in this memorandum, section 107(d)(3)(E) of the Act requires that the following conditions be met for redesignation to attainment:

1. The USEPA must determine that the areas subject to the redesignation request have attained the NAAQS;
2. The USEPA must have fully approved the applicable SIP for the areas under section 110(k) of the Act;
3. The USEPA must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal air pollution control regulations, and other federally enforceable emission reductions;
4. The USEPA must have fully approved maintenance plans for the areas as meeting the requirements of section 175A of the Act. Section 175A of the Act sets forth the maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year maintenance period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of air quality problems that might develop; and,
5. The State must have met all requirements applicable to the areas under section 110 and part D of the Act.

## III. Summary of State Submittal

The following discussion addresses Illinois' redesignation request for Peoria and Tazewell counties, how the State met the five Act requirements in section 107(d)(3)(E) listed above, and a more detailed discussion of USEPA policy.

### *A. Attainment of the NAAQS*

USEPA has determined that the Peoria and Tazewell areas have attained the $SO_2$ NAAQS. The modeling analysis submitted by the state along with the SIP revision that USEPA approved on September 4, 1992, demonstrated attainment of the $SO_2$ NAAQS through air dispersion modeling. In addition to the modeled attainment demonstration, ambient air monitoring data shows that no violations have occurred since 1977 in Peoria and Tazewell Counties.

USEPA redesignation policy requires that at least eight consecutive quarters with no violations be achieved before an area can be redesignated to attainment. For $SO_2$, an area must show no more than one exceedance annually.

The most recent violation of any $SO_2$ standard in the Peoria and Tazewell

areas occurred in 1977, 1988 was the most recent year in which a single exceedance of $SO_2$ occurred. This exceedance occurred at the monitoring station located at 272 Derby Street in Pekin in Tazewell County. Inasmuch as the area's other monitoring station, at Hurlburt and MacArthur Streets in Peoria, has no recorded exceedances or violations of the primary or secondary $SO_2$ NAAQS, Illinois has met the above requirement.

*B. Fully Approved SIP*

The SIP for the area must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the area. These requirements include new requirements added by the 1990 Act amendments. The State must meet all requirements of section 110 and part D of the Act that were applicable prior to the submittal of the complete, finally adopted redesignation request. (It should be noted that, based on section 175A of the Act, other requirements of part D of the Act remain in effect until the USEPA approves the maintenance plan and the redesignation to attainment). A SIP which meets the pre-redesignation request submittal requirements (the State's nonattainment SIP) must be fully approved by the USEPA prior to USEPA's approval of the redesignation of the area to attainment of the NAAQS. The requirements of Title I of the Act, which includes section 110 and part D of the Act, are discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992).

On May 31, 1972 (37 FR 10861), USEPA approved Illinois $SO_2$ Rule 204(c)(1)(A), which established a 1.8 lbs (pounds $SO_2$ per million British Thermal Units)/MMBTU emission limit for existing fuel combustion sources in the Peoria, East St. Louis, and Chicago major metropolitan areas. This rule was to serve as the State's part D SIP control strategy for the Peoria and Tazewell nonattainment areas. However, Rule 204(c)(1)(A) was invalidated by the Illinois Appellate Court on September 27, 1978. Through several SIP actions (see 47 FR 9479—March 5, 1983: 49 FR 31412, August 7, 1984; and 49 FR 31687, August 8, 1984), $SO_2$ emission limits have been reestablished for all sources in the Peoria area with the exception of six boilers.

On June 9, 1986, the State submitted Final Order R84–28 which revised emission limits contained in Part 214 Subpart C. The State submittal satisfied an outstanding condition related to federal approval of Illinois' part D $SO_2$ SIP for the Peoria and Tazewell nonattainment areas which reestablished emission limits for the remaining six sources mentioned above. As previously discussed, USEPA took rulemaking action on this SIP revision request on September 2, 1992 (57 FR 40126). This action was taken in light of the USEPA approval of a SIP revision request from IEPA revising the State's compliance methodology which satisfactorily corrected several defects in the 1972 SIP. The part D plan for the Peoria and Tazewell $SO_2$ nonattainment areas is now considered by USEPA to be complete and has been fully approved.

*C. Permanent and Enforceable Air Quality Improvement*

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.

Implementation of $SO_2$ emission controls in the Peoria and Tazewell areas which are contained in Illinois' part D $SO_2$ SIP has led to permanent, enforceable emission reductions in the ambient $SO_2$ levels in the Peoria and Tazewell areas. In addition, there are three source closures in Peoria County: Westinghouse Air Brake (WABCO); Celotex; and Midland Coal Mine. Although Bemis Company (Peoria County) is still operating, this source no longer emits $SO_2$; it only emits volatile organic compounds. Cilco-Wallace Station in Tazewell County has also closed. These sources can only be reopened under the State's Prevention of Significant Deterioration (PSD) program and the State must demonstrate that the sources will not violate the $SO_2$ NAAQS. Although there is a possibility that Midland Coal Mine may reopen, there will be no increase, in $SO_2$ emissions.

Actual $SO_2$ emissions in 1993 from point sources remained at less than twenty-three percent of the allowable emissions that were modeled in the attainment demonstration in the 1986 Illinois SIP submittal. The 1986 attainment demonstration and SIP revision showed that, if $SO_2$ emissions were low enough to meet the 24-hour primary attainment standard in both Peoria and Tazewell Counties, the 3-hour secondary standards as well as the annual primary standards would also be maintained.

In addition, there has been an overall reduction of thirty-two percent in allowable $SO_2$ emissions at the four Caterpillar plants attributable to the shut-down of various emission units. Thus, the emission reductions achieved are the result of the above mentioned federally enforceable rules and permanent source closures.

*D. A Fully Approved Maintenance Plan*

Section 175A of the Act sets forth the maintenance plan requirements for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year maintenance period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of air quality problems that might develop.

There are five provisions that USEPA believes need to be considered in an acceptable maintenance plan. The following is a description of how the State's request has fulfilled each of these five requirements.

1. Attainment Inventory

The State is required to develop an attainment inventory to identify the level of emissions in the area at the time of attainment. The plan submitted by IEPA lists the actual emissions for the thirteen sources emitting 25 tons/year or more of $SO_2$ in the Peoria and Tazewell areas for 1989 through 1993. As previously discussed, the actual emissions in 1993 from point sources remained at less than twenty-three percent of the allowable emissions that were modeled in the attainment demonstration in the 1986 Illinois SIP revision request.

Further, actual emissions may decrease even more significantly should implementation of the Title IV, Act Acid Deposition Control Program reductions be employed by Commonwealth Edison at its Powerton electric generating station and by Central Illinois Light Company at its Edwards Station. Even small percentage reductions at these stations will result in large overall percentage reductions, as the two stations account for approximately sixty-eight percent of the nonattainment area's $SO_2$ emissions from stationary sources.

2. Maintenance Demonstration

The State is required to demonstrate future maintenance of the NAAQS by either showing that (a) future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory or (b) by modeling, that the future mix of sources and emission rates will not cause a violation of the NAAQS. This demonstration will

require the State to project emissions for the 10 year period following the redesignation.

Illinois' plan projects that the emissions will not change substantially from the attainment inventory within the next ten years. The modeling analysis submitted by IEPA with the 1986 SIP revision request sufficiently demonstrates maintenance of the NAAQS for 10 years following the redesignation. The actual emissions from point sources are less than twenty-three percent of allowable emissions modeled in the 1986 submittal and, emissions cannot increase due to the restrictions of 35 IAC part 214, Sulfur Limitations and Part 203, Major Stationary Source Construction Modification contained in the SIP. Also, Illinois predicts that, due to the implementation of Title IV of the Act, actual emissions are expected to decrease. Further, new stationary sources will be subject to the Prevention of Significant Deterioration (PSD) requirements. IEPA was delegated authority to administer the USEPA PSD regulations on January 29, 1981, at 46 FR 9584.

3. Ambient Monitoring

In accordance with 40 CFR part 58, once an area has been redesignated, the State must continue to operate an appropriate air quality network to verify the attainment status of the area.

The IEPA operates two National Air Monitoring Stations (NAMS) $SO_2$ monitors at two sites in the nonattainment areas. The Peoria monitoring station is located at Hurlburt and MacArthur Streets in Peoria County and the Tazewell County monitoring station is located at 272 Derby Street in Pekin in Tazewell County. Since their incorporation into the NAMS Network, these sites have been annually approved by USEPA in accordance with the requirements of 40 Code of Federal Registers (CFR) 58 Subpart D. Because of USEPA's SIP requirements regarding the maintenance of an adequate network, the IEPA will continue operation of these monitors and cannot shut down either monitor without USEPA concurrence of a revision to the NAMS program.

4. Verification of Continued Attainment

Each State must ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. IEPA has authority, through the Illinois Environmental Protection Act, to ascertain information from any air containment source which may cause or contribute to air pollution. In addition, IEPA developed administrative rules which require annual reporting of $SO_2$ emissions as well as all other regulated contaminants from all sources required to have permits (35 IAC Sections 254.204 and 254.403).

Illinois' primary means for updating the emissions inventory is the conducting of periodic source inspection by the IEPA's Field Operations Section (FOS). FOS inspects all major sources and many minor sources with a frequency that depends on the amount of emissions emitted by the source and its history of compliance with emission limitations. Major sources are inspected at least annually and all permitted sources at a lower frequency. If inspections indicate a need for enforcement or for more stringent emission limits, the IEPA refers such matters to the Board, which has the authority to execute enforcement actions.

Because of this ongoing procedure, the emission inventory is updated more frequently than annually. In fact, it is updated each time an inspection indicates the need for a revision and entered into the Aerometric Information Retrieval System (AIRS).

5. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are implemented expediently once they are triggered.

In Illinois, all $SO_2$ monitoring data are read daily, and IEPA continues its ongoing practice of routine source inspection for emission compliance status at a frequency determined by emissions magnitude, taking prompt actions should any exceedance, or near exceedance, i.e. ninety percent of the $SO_2$ NAAQS in the area. (The primary $SO_2$ NAAQS is 0.14 parts per million (ppm) and the secondary NAAQS is 0.50 ppm. These standards are not to be exceeded more than once per year.) These actions include a determination of the source(s) causing such an exceedance or near exceedance based on the meteorological conditions prevailing at the time of the exceedance or near exceedance. In such a case, the IEPA will immediately contact the affected source(s) to ascertain the possible causes, including whether malfunctions or other unusual operating conditions have occurred.

The results of such contact will dictate what further actions IEPA will then take, such as an inspection leading to enforcement action as authorized by Section 4 of the Illinois Environmental Protection Act, requiring stack testing as authorized by 35 IAC Section 201.282 and Measurement Methods in accordance with Section 201.282, or proposing to the Board that more stringent $SO_2$ emission limitations may be necessary.

*E. SIP Meets Relevant Requirements Under Section 110 and Part D*

Before the Peoria and Tazewell areas may be redesignated to attainment, they must have fulfilled the applicable requirements of section 110 and part D. USEPA interprets section 107(d)(3)(E)(v) to mean that, for a redesignation request to be approved, the State must have met all requirements that became applicable to the subject area prior to or at the time of the submission of the redesignation request. As the redesignation requests were submitted to USEPA in November 1994, requirements that came due prior to that time must be met for the request to be approved. Any requirements of the Act that come due subsequent to the submission of the redesignation requests continue to be applicable to the area (*see* section 175A(c)) and, if the redesignation is disapproved, the State remains obligated to fulfill those requirements.

USEPA has determined that the State has met the requirements of section 110 and Part D that were applicable prior to submittal of the complete redesignation request.

i. *Part D Plan.* As noted above, in section III(b) of this document, USEPA approved the Illinois $SO_2$ SIP for the Peoria and Tazewell areas on September 2, 1992. As previously discussed, this action was approved after Illinois revised its compliance methodology satisfactorily correcting several defects in the 1972 $SO_2$ SIP (57 FR 2817, June 26, 1992). Illinois' SIP includes enforceable emission limitations and provides for the operation of air quality monitors and a program to provide for the enforcement of the emission limits. Approval of this plan also means that the State has a SIP satisfying the applicable requirements of section 110.

ii. *New Source Review.* Section 172(c)(5) of the Act requires the State to submit a SIP revision to require source permits in accordance with section 173 of the Act for the construction and operation of each new or modified major source.

Illinois has submitted a SIP revision request to comply with the requirements of section 172(c)(5). The USEPA has reviewed this SIP revision request and has proposed to approve it (September

23, 1994, 59 FR 48839). Although the USEPA has not taken final rulemaking action on this SIP revision, it should be noted that USEPA does not consider compliance with these requirements to be a prerequisite to the redesignation of an area to attainment of the sulfur dioxide NAAQS.

USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. For more information, refer to the memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment. The rationale for this view is described fully in that memorandum, and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed above, the State of Illinois has demonstrated that the Peoria and Tazewell areas will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation requests for those areas.

iii. *Conformity.* Section 176(c) of the Act requires the States to revise their SIPs to establish criteria and procedures to ensure that before Federal actions are taken, they conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by the States be consistent with Federal conformity regulations that the Act required USEPA to promulgate. Congress provided for the State revisions to be submitted 1-year after the date for promulgation of final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed the States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557, April 16, 1992).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188). The transportation conformity regulations do not apply to the $SO_2$ pollutant because $SO_2$ is not emitted by transportation sources. However, the general conformity regulations do encompass $SO_2$ nonattainment and maintenance areas.

The USEPA promulgated final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity regulations require the States to adopt general conformity provisions in the SIPs for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to section 51.851 of the general conformity rule, the State of Illinois is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadline for this submittal did not become due until after the Peoria and Tazewell redesignation request (November 10, 1994), it is not an applicable requirement under section 107(d)(3)(E)(V) and, thus does not affect approval of the redesignation request. It should be noted, however, that regardless of the attainment status of Peoria and Tazewell Counties, Illinois is obligated under the general conformity rule to submit the conformity SIP revision, including covering Peoria and Tazewell Counties by the deadlines discussed here, because they will be maintenance areas. Therefore, the attainment status of Peoria and Tazewell Counties should not be an issue in this case. It is further noted that the Illinois redesignation request for Peoria and Tazewell Counties indicates that the State of Illinois will submit a SIP revision to meet USEPA's conformity requirements after Illinois has had sufficient time to review and act on USEPA's final conformity regulations.

## IV. Final Rulemaking Action

The State of Illinois has met the requirements of the Act. The USEPA approves the redesignation of Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township) to attainment of the $SO_2$ primary and secondary NAAQS.

Because USEPA considers this action to be noncontroversial and routine, the USEPA is approving it without prior approval. This action will become effective on June 5, 1995. However, if the USEPA receives adverse comments by May 4, 1995, then the USEPA will publish a document that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

The comment period will not be extended or reopened. This withdrawal will be done on a geographic basis if the adverse comments received do not concern the two geographic areas.

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 (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., 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 economic 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 SIP approvals under section 110 and subchapter I, part D, of the Act 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 small entities affected. 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

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 June 5, 1995. 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 Parts 52 and 81**

Environmental protection, Air pollution control, Sulfur dioxide.

Dated: March 22, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7402–7671q.

## Subpart O—Illinois

2. Section 52.724 is amended by adding paragraph (h) to read as follows:

**§ 52.724 Control strategy: Sulfur dioxide.**

* * * * *

(h) Approval—On November 10, 1994, the Illinois Environmental Protection Agency submitted a sulfur dioxide redesignation request and maintenance plan for Peoria and Hollis Townships in Peoria County and Groveland Township in Tazewell County to redesignate the townships to attainment for sulfur dioxide. The redesignation request and maintenance plan meet the redesignation requirements in section 107(d)(3)(d) of the Clean Air Act (Act) as amended in 1990.

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7871q.

2. In § 81.314 the Illinois $SO_2$ table is amended by revising the entries for Peoria County and Tazewell County to read as follows:

**§ 81.314 Illinois.**

* * * * *

ILLINOIS—$SO_2$

| Designated area | Does not meet primary standards | Does not meet secondary standard | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| * * * * * * * | | | | |
| Peoria County | | | | X |
| Tazewell County | | | | X |
| * * * * * * * | | | | |

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[FR Doc. 95–8213 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 260

**[FRL–5183–5]**

## Hazardous Waste Management System; Testing and Monitoring Activities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations under subtitle C of the Resource Conservation and Recovery Act (RCRA) for testing and monitoring activities. This amendment clarifies the temperature requirement for pH measurements of highly alkaline wastes and adds Method 9040B (pH Electrometric Measurement) and Method 9045C (Soil and Waste pH) to ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. This amendment will provide a better and more complete analytical technology for RCRA testing in support of hazardous waste identification under the corrosivity characteristic (40 CFR 261.22).

**EFFECTIVE DATE:** April 4, 1995. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of April 4, 1995.

**ADDRESSES:** The official record for this rulemaking (Docket No. F–95–W2TF–FFFFF) is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (room M–2616), and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW–846 as amended by Updates I, II, IIA, and IIB are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. New subscriptions to SW–846 may be ordered from GPO at a cost of $319.00 (subject to change). There is a 25% surcharge for foreign subscriptions and renewals.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 920–9810; or, for hearing impaired, call TDD (800) 553–7672 or (703) 486–3323. For technical information, contact Oliver Fordham, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–4761.

**SUPPLEMENTARY INFORMATION:**

### I. Authority

These regulations are being promulgated under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

## II. Background and Regulatory Framework Summary

EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. Use of some of these methods is required by some of the hazardous waste regulations under subtitle C or RCRA. In other situations, SW–846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in satisfying RCRA-related sampling and analysis requirements. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance. Update IIB (Methods 9040B and 9045C) represents such an incorporation.

## III. Overview of Proposal

On August 31, 1993 (58 FR 46052), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by adding Update II to SW–846 and incorporating the Third Edition as amended by Updates I and II, in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA. In section III.D of the proposed rule, the Agency also proposed the addition of language to SW–846 Methods 9040A and 9045B to clarify regulatory requirements as to the temperature for pH measurements of highly alkaline wastes during corrosivity characteristic testing.

On January 13, 1995 (60 FR 3089), the Agency published a final rule which added Update II to SW–846. As noted in that final rule, the Agency was still responding to public comments regarding the pH temperature clarification issue and, therefore, took no action on that topic in the January 13, 1995 Final Rule. The Agency did not want to delay promulgation of Update II as a result of its ongoing deliberations on the temperature clarification. Therefore, Methods 9040A and 9045B were finalized as part of Update II without the technical clarification regarding temperature control during the pH measurement of highly alkaline materials.

## IV. Public Comments Regarding Section III.D of the Proposed Rule

The majority of the commenters were in favor of specifying a temperature of 25±1 °C in Method 9040A instead of specifying that the pH test be performed at a temperature relevant to the waste management site temperature. Only one commenter supported a requirement that the testing temperature be relevant to the waste management site. A few commenters were against the addition of any temperature clarification at this time.

This section summarizes several of the most significant comments on the proposal, and EPA's responses. Detailed Agency responses to all significant comments are provided in the background document, entitled ''Responses to Public Comments Submitted in Response to Section III.D, pH Testing, 58 FR 46054, August 31, 1993'', which is located in the official record for this rulemaking (Docket No. F–95–W2TF–FFFFF).

One commenter argued that a scientific basis does not exist for a temperature clarification only for alkalinity determinations. The Agency believes that a valid scientific basis does exist to include a temperature clarification which applies only when pH approaches the upper corrosivity characteristic limit. An inverse, non-linear, relationship exists between temperature and pH whereby pH readings at the basic end significantly increase as temperature levels decrease. At high pH levels, a physical difference exists in relation to ion dissociation which cannot be compensated by pH meters, and which requires additional temperature control if the objective is to obtain an accurate, and comparable, pH measurement at that end of the scale.

The Agency did not propose a temperature clarification for acidic wastes because the temperature effect on pH is not sufficiently significant at the acidic end of the scale to warrant such a clarification. It is highly unlikely that a pH change at the low end of the scale due to temperature variation will affect the regulatory status of the waste. Therefore, a specification that wastes with pH levels at the acidic end of the scale must be analyzed at a standard temperature is unnecessary.

One commenter stated that, if a standard must be set, it should be 24 °C because that is the closest practical temperature which will yield a 0 to 14 pH scale (and a $pK_W$ of 14.0). Another commenter claimed that 25 °C, and not 24 °C, is the closest practical temperature for a pH scale of 0 to 14 with a $pK_W$ of 14.0. Both commenters referenced scientific literature in support of their position. [Note: Water must be present to measure pH, and water affects the pH measurement by ionizing into hydrogen (H+) and hydroxyl (OH−) ions. The ''$pK_W$'' is the negative log of the ionization constant ($K_W$) for this reaction: $pK_W = pH + pOH$. Neutral water has a pH of 7 and a pOH of 7, and thus a $pK_W$ of 14.]

The Agency recognizes that some inconsistencies exist between some literature regarding whether 24 °C or 25 °C is the closest practical temperature for a pH scale of 0 to 14 with a $pK_W$ of 14.0. However, based on public comment, it appears that 25 °C is the most accepted standard temperature for the pH scale of 0 to 14. Also, as explained in the background document [1] to this rule, based on certain calculations and a work published in 1981 on pH theory,[2] 25 °C and not 24 °C appears to be the closest practical temperature for a $pK_W$ of 14.0.

One commenter claimed that the Agency always contemplated that pH be taken at environmental or field temperatures because Method 9040A employs language which refers to ''field pH measurements''. The commenter also claimed that Method 9040A endorses the common approach of pH testing at site temperatures because it requires that the temperature be noted at measurement.

The Agency agrees that pH testing in the field is common, but disagrees with any finding that EPA intended that all pH measurements in support of the corrosivity characteristic be taken at site temperatures just because Method 9040A refers to field measurements and the recording of temperature. By use of the phrase ''field pH measurements'', the Agency simply recognizes that pH measurements are often taken in the field, and that in most cases (e.g., all except those limited cases where the waste is both being tested for corrosivity and its pH is above 12.0), field test results are adequate. The field measurement reference in no way precludes laboratory pH measurements at a specific temperature, nor does it

[1] ''Responses to Public Comments Submitted in Response to Section III.D, pH Testing, 58 FR 46054, August 31, 1993'', located in the official record for this rulemaking (Docket No. F–95–W2TF–FFFFF).

[2] Marshall and Franck, ''Ion Product of Water Substance, 0–1000 °C, 1–10,000 Bars: New International Formulation and its Background'', *Journal of Physical and Chemical Reference Data, 10(2),* pp. 295–304, 1981.

implicitly or otherwise mean that all measurements by the method must be done at site temperatures.

The Agency believes that a standard temperature of 25 °C offers a consistent way to measure pH and thus assures consistent environmental protection. Without a standard temperature for testing the pH of at least highly alkaline wastes, test data may not be directly comparable, because, as explained above, the effect of temperature on pH is particularly pronounced at the alkaline end of the scale.

## V. Overview of Final Rule

Based on the public comments and the reasons summarized below, the Agency is adding the following language to section 7.1.2 of Method 9040A (now revised Method 9040B of Update IIB):

(* * * also, for corrosivity characterization, the sample must be measured at 25±1 °C if the pH of the waste is above 12.0)

The Agency believes that the addition of this language to Method 9040A is appropriate based on:

(1) A demonstrated need to clarify the analytical procedures for pH determinations of highly alkaline materials in order: To facilitate consistent application of the procedures during corrosivity characteristic determinations; and to remove any confusion on the part of the regulated community when making such determinations;

(2) Scientific facts regarding the effect of temperature on pH, including the effect of temperature on pH readings at the alkaline end of the pH scale;

(3) Agency actions during promulgation of the corrosivity characteristic, particularly with respect to the exclusion of otherwise nonhazardous lime wastes, and the public's interpretation of those actions based on the majority of the public comments; and

(4) Historical practices by the Agency during enforcement of the characteristic.

The Agency notes that the technical change in Method 9040B only applies to pH determinations for wastes with pH levels above 12.0 (which is explicit in the added language). To avoid imposing an unnecessary analytical burden, pH determinations for the corrosivity characteristic (when analysis is chosen by the generator) can be performed at a temperature other than 25±1 °C for wastes with pH levels less than 12.

Although Method 9045B (Soil and Waste pH) is not used for corrosivity characteristic determinations, it involves a pH measurement procedure similar to that found in Method 9040A. Therefore, the Agency is adding similar, although not identical, language to Method 9045B. Specifically, the Agency is adding the following language to section 7.1.2 of Method 9045B (now revised Method 9045C of Update IIB):

If an accurate pH reading based on the conventional pH scale [0 to 14 at 25 °C] is required, the analyst should control sample temperature at 25±1 °C when sample pH approaches the alkaline end of the scale (e.g., a pH of 11 or above).

This rule makes final the addition of Methods 9040B and 9045C as Update IIB to SW–846, and incorporates the Third Edition of SW–846 as amended by Updates I, II, IIA, and IIB into 40 CFR § 260.11(a) for use in complying with the requirements of subtitle C of RCRA.

## VI. State Authority

Today's rule promulgates standards that are not effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. See RCRA Section 3006. Therefore, this rule is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law. Procedures and deadlines for State program revisions are set forth in 40 CFR 271.21. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

## VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA amended section 3010 of RCRA to allow rules to become effective in less than six months when, among other things, the Agency finds that the regulated community does not need six months to come into compliance. Since today's rule provides a clarification for the regulated community regarding the testing and monitoring of solid waste, the Agency believes the regulated community does not need six months to come into compliance. For that same reason, the Agency believes that good cause exists under the Administrative Procedure Act, 5 U.S.C. 553(d), for not delaying the effective date of this rule. Therefore, this rule is effective April 4, 1995.

## VIII. Regulatory Analyses

### *A. Executive Order 12866*

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], EPA must determine whether a 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.

This regulation will not have an adverse economic impact on industry since its effect will be to provide clarification to all of the regulated community. This rule does not require the purchase of new instruments or equipment and does not require new reports beyond those presently required. Thus, this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### *B. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector.

### *C. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. sections 601–612, Public

Law 96–354, September 19, 1980), whenever an agency publishes a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) 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 a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. This rule will not have an adverse economic impact on small entities since its effect will be to provide clarification to all of the regulated community, including small entities. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act). Thus, the regulation does not require an RFA.

*D. Paperwork Reduction Act*

There are no additional reporting, notification, or recordkeeping provisions in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### List of Subjects in 40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

Dated: March 29, 1995.

**Elliott P. Laws,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations is amended as set forth below:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

## Subpart B—Definitions

2. Section 260.11 (a) is amended by revising the ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' reference to read as follows:

**§ 260.11 References.**

(a) * * *

''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I (July, 1992), II (September, 1994), IIA (August, 1993), and IIB (January, 1995)]. The Third Edition of SW–846 and Updates I, II, IIA, and IIB (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

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[FR Doc. 95–8207 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Part 300

**[FRL–5182–2]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Deletion of the Wilson Concepts Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of the Wilson Concepts Superfund Site (the Site) in Pompano Beach, Florida, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Florida have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Olga Perry, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–2643, or Rose Jackson, Community Relations Coordinator, at the same address and phone number as noted above.

**ADDRESSES:** Comprehensive information on this Site is available at the following addresses:

EPA Region IV Public Docket, U.S. Environmental Protection, Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365,
and
Broward County Main Library, 100 South Andrews Ave., NE., Fort Lauderdale, Florida 33301.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Wilson Concepts Superfund Site, Pompano Beach, Florida.

A Notice of Intent to Delete for this Site was published February 10, 1995 (60 FR 7934). The closing date for comments on the Notice of Intent to Delete was March 13, 1995. EPA received no substantive letters or comments during the comment period which opposed the deletion of this Site from the NPL. A letter of support for the deletion was received and has been included in the EPA, Region IV, Deletion Docket for the Site.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Hazardous waste.

Dated: March 15, 1995.

**Joe R. Franzmathes,**

*Acting Regional Administrator, USEPA Region 4.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351.

## Appendix B to Part 300—[Amended]

2. Table 1 of Appendix B to part 300 is amended under Florida by removing the Site for ''Wilson Concepts Site, Florida''.

[FR Doc. 95–8087 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

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## 40 CFR Parts 720, 721, and 723

**[OPPTS–50597; FRL–4947–1]**

**RIN 2070–AC14**

## Premanufacture Notification Rule Amendments; Notice of Seminar

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rules; Notice of seminar.

**SUMMARY:** EPA will hold a seminar on the final revisions of the Toxic Substances Control Act (TSCA) section 5 premanufacture notification (PMN) regulations, the expedited process to issue Significant New Use Rules (SNURs), the exemptions for chemicals manufactured in quantities of 10,000 kilograms or less and substances with low environmental releases and low human exposures, and the exemption for polymers, all of which were published in the **Federal Register** on March 29, 1995 (60 FR 16298–16351). EPA is conducting the seminar to provide an opportunity for interested persons to become familiar with the procedural and technical requirements of the regulations which will affect the manufacture of new chemical substances.

**DATES:** The procedural and technical seminar will be held on May 4, 1995 from 9:15 a.m. to 4:30 p.m. in Washington, DC.

**ADDRESSEES:** The seminar will be held at the Regional Office Building Auditorium, Room 1041, first floor, National Capital Region, General Services Administration, 7th and D St., SW., Washington, DC 20407. Persons wishing to attend the seminar should contact the TSCA Assistance Information Service as shown below.

**FOR FURTHER INFORMATION CONTACT:** James Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551. Persons wishing to attend the seminar should call (202) 554–1404 or fax to (202) 554–5603, and provide their name, organization, and a daytime phone number.

**SUPPLEMENTARY INFORMATION:** EPA published its final amendments to the PMN regulations (OPPTS–50593B), the exemptions for chemicals manufactured in quantities of 10,000 kilograms or less and substances with low environmental releases and low human exposures (OPPTS–50596B), the exemption for polymers (OPPTS–50594B), and an amendment to the expedited process for issuing SNURs (OPPTS–50595B), on March 29, 1995 (60 FR 16298–16351). EPA is conducting the seminar to provide an opportunity for interested persons to become familiar with the procedural and technical requirements of the regulations which will affect the manufacture of new chemical substances.

Dated: March 29, 1995.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–8212 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–F

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

**[Docket No. FEMA–7614]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the

communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State/location | Community No. | Effective date of eligibility | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region I** | | | | |
| Maine: Phillips, town of, Franklin County | 230060 | Oct. 23, 1975, Emerg.; June 18, 1980, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Apr. 17, 1995. |
| **Region III** | | | | |
| Pennsylvania: Springhill, township of, Fayette County. | 421639 | June 15, 1976, Emerg.; March 18, 1991, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| **Region IV** | | | | |
| Mississippi: Coahoma County, unincorporated areas. | 280038 | Aug. 9, 1974, Emerg.; Feb. 1, 1980, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Tennessee: Ripley, town of, Lauderdale County | 470100 | Jan. 3, 1975, Emerg.; May 19, 1987, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| **Region V** | | | | |
| Minnesota: | | | | |
| Dover, city of, Olmsted County | 270566 | Mar. 15, 1982, Emerg.; Apr. 15, 1982, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Eyota, city of, Olmsted County | 270329 | Dec. 3, 1981, Emerg.; Dec. 15, 1981, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Oronoco, city of, Olmsted County | 270330 | July 3, 1974, Emerg.; Nov. 4, 1981, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Stewartville, city of, Olmsted County | 270332 | May 7, 1975, Emerg.; Sept. 2, 1982, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Ohio: Richwood, village of, Union County | 390549 | July 11, 1975, Emerg.; Apr. 17, 1995, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| **Region VII** | | | | |
| Missouri: | | | | |
| Clarkton, city of, Dunklin County | 290126 | May 6, 1975, Emerg.; Jan. 29, 1980, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |
| Independence, city of, Clay & Jackson Counties. | 290172 | Oct. 15, 1971, Emerg.; Feb. 1, 1979, Reg.; Apr. 17, 1995, Susp. | 4–17–95 | Do. |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: March 27, 1995.

**Frank H. Thomas,**

*Deputy Associate Director, Mitigation Directorate.*

[FR Doc. 95–8182 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–21–P

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Energy.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 F 19367, 3 CFR, 1979 Comp. p. 376.

### § 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alaska: Unorganized Borough (FEMA Docket No. 7117). | Municipality of Anchorage. | July 11, 1994, July 18, 1994, *Alaska Journal of Commerce.* | The Honorable Tom Fink, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519–6650. | June 17, 1994 ... | 020005 |
| Alaska: Unorganized Borough (FEMA Docket No. 7121). | City of Petersburg ... | July 21, 1994, July 28, 1994, *Petersburg Pilot.* | Ms. Linda Snow, City Manager, City of Petersburg, P.O. Box 329, Petersburg, Alaska 99833. | June 30, 1994 ... | 020074 |
| California: Contra Costa (FEMA Docket No. 7117). | City of Antioch ..... | Sept. 22, 1994, Sept. 29, 1994, *Ledger-Post Dispatch.* | The Honorable Joel Keller, Mayor, City of Antioch, P.O. Box 130, Antioch, California 94509. | Sept. 9, 1994 .... | 060026 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Colorado: Arapahoe (FEMA Docket No. 7121). | Unincorporated Areas. | Oct. 6, 1994, Oct. 13, 1994, *Little Sentinel Independent*. | The Honorable John J. Nicholl, Chairperson, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166. | Sept. 26, 1994 .. | 080011 |
| Colorado: El Paso (FEMA Docket No. 7121). | City of Colorado Springs. | Oct. 4, 1994, Oct. 11, 1994, *Gazette Telegraph*. | The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901. | Sept. 7, 1994 .... | 080060 |
| Colorado: El Paso (FEMA Docket No. 7121). | City of Colorado Springs. | Oct. 28, 1994, Nov. 4, 1994, *Gazette Telegraph*. | The Honorable Robert M. Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901. | Oct. 20, 1994 .... | 080060 |
| Colorado: Jefferson (FEMA Docket No. 7121). | Unincorporated Areas. | Nov. 15, 1994, Nov. 22, 1994, *Golden Transcript*. | The Honorable Betty J. Miller, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419. | Nov. 2, 1994 ..... | 080087 |
| Colorado: Boulder (FEMA Docket No. 7117). | City of Longmont .... | Oct. 6, 1994, Oct. 13, 1994, *Longmont Times Call*. | The Honorable Leona Stoecker, Mayor, City of Longmont, 829 Panorama Circle, Longmont, Colorado 80501. | Sept. 1, 1994 .... | 080027 |
| Hawaii, Honolulu (FEMA Docket No. 7121). | City and County of Honolulu. | Nov. 15, 1994, Nov. 22, 1994, *Honolulu Advertiser*. | The Honorable Jeremy Harris, Mayor, City and County of Honolulu, Office of the Mayor, 530 South King Street, Honolulu, Hawaii 96813. | Oct. 21, 1994 .... | 150001 |
| Idaho: Ada (FEMA Docket No. 7117). | Unincorporated Areas. | Sept. 22, 1994, Sept. 29, 1994, *Valley News*. | The Honorable Vern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702. | Sept. 15, 1994 .. | 160001 |
| Idaho: Ada (FEMA Docket No. 7117). | City of Meridian ..... | Sept. 22, 1994, Sept. 29, 1994, *Valley News*. | The Honorable Grant P. Kingsford, Mayor, City of Meridian, 33 East Idaho Avenue, Meridian, Idaho 83642. | Sept. 15, 1994 .. | 160180 |
| Kansas: Johnson (FEMA Docket No. 7121). | City of Overland Park. | Oct. 19, 1994, Oct. 26, 1994, *Johnson County Sun*. | The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, Kansas 66212. | Sept. 28, 1994 .. | 200174 |
| Kansas: Sedgwick (FEMA Docket No. 7121). | City of Wichita ..... | Oct. 19, 1994, Oct. 26, 1994, *Wichita Eagle*. | The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202. | Oct. 6, 1994 ..... | 200328 |
| Oklahoma: Comanche (FEMA Docket No. 7121). | City of Lawton ..... | Aug. 5, 1994, Aug. 12, 1994, *Lawton Constitution*. | The Honorable John T. Marley, Mayor, City of Lawton, City Hall, 103 SW 4th Street, Lawton, Oklahoma 73501. | July 13, 1994 .... | 400049 |
| Texas: Montgomery (FEMA Docket No. 7117). | City of Conroe ..... | Sept. 23, 1994, Sept. 30, 1994, *Conroe Courier*. | The Honorable Carter Moore, Mayor, City of Conroe, P.O. Box 3066, Conroe, Texas 77305. | Sept. 6, 1994 .... | 480484 |
| Texas: Dallas (FEMA Docket No. 7121). | City of Dallas ..... | Oct. 7, 1994, Oct. 14, 1994, *Dallas Commercial Record*. | The Honorable Steve Bartlett, Mayor, City of Dallas, 1500 Marilla Street, Room 5E North, Dallas, Texas 75201. | Sept. 16, 1994 .. | 480171 |
| Texas: El Paso (FEMA Docket No. 7121). | City of El Paso ..... | Nov. 4, 1994, Nov 11, 1994, *El Paso Times*. | The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901. | Oct 14, 1994 ..... | 480214 |
| Texas: Tarrant (FEMA Docket No. 7117). | City of Fort Worth ... | Sept. 23, 1994, Sept. 30, 1994, *Fort Worth Star Telegram*. | The Honorable Kay Granger, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311. | Sept. 6, 1994 .... | 480596 |
| Texas: Dallas (FEMA Docket No. 7121). | City of Garland ..... | Oct. 6, 1994, Oct. 13, 1994, *Garland News*. | The Honorable Jamie Ratcliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002. | Sept. 16, 1994 .. | 485471 |
| Texas: Dallas (FEMA Docket No. 7121). | City of Garland ..... | Nov. 10, 1994, Nov. 17, 1994, *Garland News*. | The Honorable Jamie Ratcliff, Mayor, City of Garland, P.O. Box 469002, Garland, Texas 75046–9002. | Oct. 24, 1994 .... | 485471 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Texas: Harris (FEMA Docket No. 7121). | City of Houston ..... | Oct. 28, 1994, Nov 4, 1994, *Houston Post*. | The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251–1562. | Oct. 11, 1994 .... | 480296 |
| Texas: Dallas (FEMA Docket No. 7121). | City of Mesquite ..... | Oct. 27, 1994, Nov. 3, 1994, *Mesquite News*. | The Honorable Cathye Ray, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, Texas 75185–0137. | Oct. 11, 1994 .... | 485490 |
| Texas: Collin (FEMA Docket No. 7121). | City of McKinney ..... | Oct. 21, 1994, Oct. 28, 1994, *Courier Gazette*. | The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069. | Oct. 14, 1994 .... | 480135 |
| Texas: Collin (FEMA Docket No. 7121). | City of McKinney ..... | Oct. 26, 1994, Nov. 2, 1994, *Courier Gazette*. | The Honorable John Gay, Mayor, City of McKinney, P.O. Box 517, McKinney, Texas 75069. | Oct. 13, 1994 .... | 480135 |
| Texas: Bexar (FEMA Docket No. 7121). | City of San Antonio . | Aug. 31, 1994, Sept. 7, 1994, *San Antonio Express News*. | The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | April 21, 1994 ... | 480045 |
| Texas: Bexar (FEMA Docket No. 7121). | City of San Antonio . | Oct. 5, 1994, Oct. 12, 1994, *San Antonio Express News*. | The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966. | Sept. 9, 1994 .... | 480045 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8181 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–M

## 44 CFR Part 65

**[Docket No. FEMA–7133]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| California: Contra Costa | Unincorporated Areas. | Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times*. | The Honorable Gayle Bishop, Chairperson, Contra Costa County Board of Supervisors, 651 Pine Street, Martinez, California 94553. | Jan. 27, 1995 .... | 060025 |
| California: San Diego ... | City of Escondido .... | Mar. 1, 1995, Mar. 8, 1995, *Times Advocate*. | The Honorable Sid Hollins, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025. | Feb. 9, 1995 ..... | 060290 |
| California: Contra Costa | City of Lafayette ..... | Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times*. | The Honorable Gayle Uilkema, Mayor, City of Lafayette, P.O. Box 1968, Lafayette, California 94549. | Jan. 27, 1995 .... | 065037 |
| California: Merced ..... | City of Merced ..... | Mar. 1, 1995, Mar. 8, 1995, *Merced Sun Star*. | The Honorable Richard Bernasconi, Mayor, City of Merced, City Hall, 678 West 18th Street, Merced, California 95340. | Feb. 10, 1995 ... | 060191 |
| California: Merced ..... | Unincorporated Areas. | Mar. 1, 1995, Mar. 8, 1995, *Merced Sun Star*. | Mr. Clark Channing, County Administrator, Merced County, 2222 M Street, Merced, California 95340. | Feb. 10, 1995 ... | 060188 |
| California: Contra Costa | City of Walnut Creek | Feb. 23, 1995, Mar. 2, 1995, *Contra Costa Times*. | The Honorable Ed Dimmick, Mayor, City of Walnut Creek, 1666 North Main Street, Walnut Creek, California 94596. | Jan. 27, 1995 .... | 065070 |
| Iowa: Story ..... | City of Ames ..... | Feb. 21, 1995, Feb. 28, 1995, *Daily Tribune*. | The Honorable Larry R. Curtis, Mayor, City of Ames, P.O. Box 811, Ames, Iowa 50010. | Feb. 8, 1995 ..... | 190254 |
| Kansas: Coffey ..... | City of Burlington .... | Feb. 1, 1995, Feb. 8, 1995, *Coffey County Today*. | The Honorable Rocky L. Alford, Mayor, City of Burlington, P.O. Box 207, Burlington, Kansas 66839. | Jan. 6, 1995 ..... | 200063 |
| Kansas: Sedgwick ..... | Unincorporated Areas. | Mar. 16, 1995, Mar. 23, 1995, *Wichita Eagle*. | The Honorable Mark F. Schroeder, Chairman, Sedgwick County, Board of Commissioners, 525 North Main Street, Wichita, Kansas 67203. | Feb. 17, 1995 ... | 200321 |
| Kansas: Sedgwick ..... | City of Wichita ..... | Mar. 16, 1995, Mar. 23, 1995, *Wichita Eagle*. | The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, First Floor, 455 North Main Street, Wichita, Kansas 67202. | Feb. 17, 1995 ... | 200328 |
| Maryland: Montgomery | City of Gaithersburg | Feb. 1, 1995, Feb. 8, 1995, *Gaithersburg Gazette*. | The Honorable W. Edward Bohrer, Jr., Mayor, City of Gaithersburg, 31 South Summit Avenue, Gaithersburg, Maryland 20877–2098. | Jan. 13, 1995 .... | 240050 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Missouri: Pemiscot ..... | City of Hayti ..... | Feb. 16, 1995, Feb. 23, 1995, *Democrat Argus*. | The Honorable Herbert DeWeese, Mayor, City of Hayti, P.O. Box X, Hayti, Missouri 63851. | Jan. 31, 1995 .... | 290276 |
| New Mexico: Bernalillo | Unincorporated Areas. | Feb. 15, 1995, Feb. 22, 1995, *Albuquerque Tribune*. | The Honorable Eugene M. Gilbert, Chairman, Bernalillo County, Board of Commissioners, One Civic Plaza, NW., Albuquerque, New Mexico 87102. | Jan. 26, 1995 .... | 350001 |
| Texas: Dallas, Denton, Collin, Rockwall, and Kaufman. | City of Dallas ..... | Feb. 24, 1995, Mar. 3, 1995, *Daily Commercial Record*. | The Honorable Steve Bartlett, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Room 5E, Dallas, Texas 75201. | Feb. 6, 1995 ..... | 480171 |
| Texas: Tarrant ..... | City of Euless ..... | Mar. 2, 1995, Mar. 9, 1995, *Mid Cities News*. | The Honorable Mary Lib Faleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039–3595. | Feb. 14, 1995 ... | 480593 |
| Texas: Gillespie ..... | City of Fredericksburg. | Feb. 15, 1995, Feb. 22, 1995, *Fredericksburg Standard*. | The Honorable Linda Langerhans, Mayor, City of Fredericksburg, P.O. Box 111, Fredericksburg, Texas 78624. | Feb. 7, 1995 ..... | 480252 |
| Texas: Collin ..... | City of Plano ..... | Feb. 15, 1995, Feb. 22, 1995, *The Dallas Morning News*. | The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358. | Sept. 15, 1994 .. | 480140 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8180 Filed 4–3–95; 8:45 am]

**BILLING CODE 6718–03–P**

## 44 CFR Part 65

**[Docket No. FEMA–7129]**

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: Hartford County .. | Town of Berlin ..... | Feb. 6, 1995, Feb. 13, 1995, *The Herald.* | The Honorable Robert J. Peters, Mayor of the Town of Berlin, 240 Kensington Road, Berlin, Connecticut 06037. | Jan. 30, 1995 .... | 090022 D |
| Tennessee: Shelby County ..... | Unincorporated Areas. | Jan. 27, 1995, Feb. 3, 1995, *Daily News.* | Mr. James Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103. | Jan. 20, 1995 .... | 470214 E |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8179 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community

eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

**PART 65—[AMENDED]**

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Florida: Unincorporated Areas (FEMA Docket No. 7115). | Pasco County ..... | Aug. 19, 1994, Aug. 26, 1994, *West Pasco Press*. | Mr. John Gallagher, Pasco County Administrator, 7530 Little Road, New Port Richey, Florida 34654. | Aug. 12, 1994 ..... | 120230 D |
| Maryland: Unincorporated Areas (FEMA Docket No. 7119). | Prince George's County. | May 13, 1994, May 31, 1994, *Prince George's Journal*. | Ms. Malinda Steward, M.E., Section Head, Flood Management Section, Division of Environmental Management, Prince George's County Department of Environmental Resources, 9400 Peppercorn Place, Sixth Floor, Landover, Maryland 20785. | Nov. 16, 1994 ..... | 245208 C |
| North Carolina: Haywood County (FEMA Docket No. 7119). | Town of Waynesville | Sept. 9, 1994, Sept. 16, 1994, *The Mountaineer*. | The Honorable Henry B. Foy, Mayor of the Town of Waynesville, 106 South Main Street, Waynesville, North Carolina 28786–0100. | Sept. 1, 1994 ..... | 370124 B |
| North Carolina: Unincorporated Areas (FEMA Docket No. 7119). | Dare County ..... | Sept. 20, 1994, Sept. 27, 1994, *The Coastland Times*. | Mr. Terry Wheeler, Dare County Manager, P.O. Box 1000, Manteo, North Carolina 27954. | Dec. 26, 1994 ..... | 375348 C |
| Ohio: Fairfield & Franklin Counties (FEMA Docket No. 7115). | City of Columbus ..... | Aug. 24, 1994, Aug. 31, 1994, *The Columbus Dispatch*. | The Honorable Greg S. Lashutka, Mayor of the City of Columbus, 99 North Front Street, Columbus, Ohio 43215–2838. | Feb. 16, 1995 ..... | 390170 B |
| Ohio: Unincorporated Areas (FEMA Docket No. 7115). | Franklin County ..... | Aug. 24, 1994, Aug. 31, 1994, *The Columbus Areas*. | Ms. Dorothy Teater, President of the Franklin County, Board of Commissioners, 373 South High Street, Columbus, Ohio 43215. | Feb. 16, 1995 ..... | 390167 B |
| Virginia: Unincorporated Areas of Rockingham County (FEMA Docket No. 7111). | Rockingham County . | July 19, 1994, July 26, 1994, *Daily News Record*. | Mr. William G. O'Brien, Rockingham County Administrator, 20 East Gay Street, Harrisonburg, Virginia 22801. | July 12, 1994 ..... | 510133 B |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8184 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

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**44 CFR Part 67**

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

## National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

## Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

## Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

## Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

## Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

## List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **ARKANSAS** | |
| **Poinsett County (unincorporated areas) (FEMA Docket No. 7122)** | |
| *Brushy Creek Ditch:* | |
| Approximately 0.66 mile downstream of Swan Pound Road | *242 |
| Approximately 1.06 miles upstream of Swan Pound Road | *245 |
| *Weiner Outlet Ditch:* | |
| Approximately 1.0 mile downstream of Sewage Lagoon Road | *233 |
| At White Slough Road | *236 |
| Approximately 1.6 miles upstream of Sewage Lagoon Road | *241 |
| **Maps are available for inspection** at Poinsett County Courthouse, 401 Market Street, Harrisburg, Arkansas. | |
| **Weiner (city), Poinsett County (FEMA Docket No. 7122)** | |
| *Brushy Creek Ditch:* | |
| Approximately 0.3 mile downstream of Swan Pound Road | *243 |
| At Swan Pound Road | *244 |
| Approximately 0.6 mile upstream of Swan Pound Road | *245 |
| *Weiner Outlet Ditch:* | |
| At White Slough Road | *236 |
| Approximately 0.2 mile upstream of White Slough Road | *237 |
| **Maps are available for inspection** at the City of Weiner, 101 Washington, Weiner, Arkansas. | |
| **CALIFORNIA** | |
| **Merced (city), Merced County (FEMA Docket No. 7070)** | |
| *Bear Creek (between levees):* | |
| Downstream of U.S. Highway 99 | *163 |
| **Maps are available for inspection** at Merced City Hall, Department of Public Works, 678 West 18th Street, Merced, California. | |
| **Merced County (unincorporated areas) (FEMA Docket No. 7070)** | |
| *Bear Creek (with levees):* | |
| At the confluence of Black Rascal Creek | *163 |
| Approximately 200 feet downstream of U.S. Highway 99 | *163 |
| *Canal Creek (with levee):* | |
| At the confluence with Black Rascal Slough | *150 |
| At Landram Avenue | *150 |
| At Elliot Avenue | *150 |
| *Black Rascal Slough (without levee):* | |
| Southeast of the south levee and north of State Route 140 across from Buhach Road | *142 |
| *Shallow Flooding:* | |
| South of Merced Municipal Airport and north of Mission Avenue | *#1 |
| South of Childs Avenue and north of Mission Avenue between Coffee Avenue and State Route 59 | *#1 |
| **Maps are available for inspection** at the Merced County Planning Department, 2222 M Street, Merced, California. | |
| **COLORADO** | |
| **Adams County (unincorporated areas) (FEMA Docket No. 7122)** | |
| *Gay Reservoir Channel North Tributary:* | |
| Approximately 2,100 feet upstream of confluence with Gay Reservoir Channel | *5,321 |
| Approximately 3,000 feet upstream of confluence with Gay Reservoir Channel | *5,345 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 3,600 feet upstream of confluence with Gay Reservoir Channel | *5,346 |
| *Clear Creek:* | |
| 100 feet upstream of confluence with the South Platte River | *5,104 |
| Approximately 80 feet upstream of Washington Street | *5,135 |
| 100 feet upstream of the Colorado and Southern Railroad | *5,190 |
| Just upstream of Lowell Boulevard | *5,228 |
| Just downstream of Sheridan Boulevard | * 5,225 |
| *Clear Creek Street Overflow:* | |
| At confluence with Clear Creek | *5,120 |
| At divergence from Clear Creek | *5,123 |
| *West Lake Channel:* | |
| Approximately 1,900 feet upstream of Lowell Boulevard | *5,293 |
| Approximately 2,270 feet upstream of Lowell Boulevard | *5,299 |
| *Gay Reservoir Channel:* | |
| 360 feet upstream of Lowell Boulevard | *5,255 |
| 200 feet upstream of the Tom Frost Reservoir Dam | *5,263 |
| 1,050 feet upstream of the Tom Frost Reservoir Dam | *5,264 |
| *Big Dry Creek:* | |
| Just upstream of Huron Street | *5,170 |
| 60 feet downstream of West 128th Avenue | *5,185 |
| Approximately 1,950 feet upstream of Zuni Street | *5,195 |
| Approximately 2,900 feet downstream of confluence of Ranch Creek | *5,202 |
| **Maps are available for inspection** at Adams County Planning Department, 450 South Fourth Avenue, Brighton, Colorado. | |
| **Brighton (city), Adams County (FEMA Docket No. 7122)** | |
| *South Platte River:* | |
| Approximately 200 feet upstream of Union Pacific Railroad | *4,955 |
| Intersection of Brighton Street and Miller Avenue | *4,957 |
| At the intersection of Miller Avenue and East 160th Avenue | *4,961 |
| **Maps are available for inspection** at City Hall, 22 South Fourth Avenue, Brighton, Colorado. | |
| **Englewood (city), Arapahoe County (FEMA Docket No. 7122)** | |
| *South Platte River:* | |
| 1,550 feet downstream of Dartmouth Avenue | *5,263 |
| Just downstream of Dartmouth Avenue | *5,267 |
| *West Harvard Gulch:* | |
| 640 feet downstream of South Raritan Street | *5,288 |
| 10 feet upstream of South Tejon Street | *5,313 |
| At centerline of South Zuni Street | *5,345 |
| **Maps are available for inspection** at the City of Englewood, Engineering Services Department, 3400 South Elati Street, Englewood, Colorado. | |
| **Thornton (city), Adams County (FEMA Docket No. 7122)** | |
| *Tanglewood Creek:* | |
| Approximately 750 feet downstream of Interstate 25 | *5,160 |
| 140 feet downstream of Interstate 25 | *5,172 |
| **Maps are available for inspection** at City Hall, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado. | |
| **IDAHO** | |
| **Coeur d'Alene (city), Kootenai County (FEMA Docket No. 7118)** | |
| *French Gulch:* | |
| Approximately 1,300 feet downstream of French Gulch Road | *2,163 |
| Approximately 1,650 feet upstream of French Gulch Road | *2,172 |
| *Nettleton Gulch:* | |
| At 15th Street downstream of Anne Avenue | *2,185 |
| At 15th Street upstream of Anne Avenue | *2,187 |
| **Maps are available for inspection** at the City of Coeur d'Alene, Engineering Department, 710 Mullan Street, Coeur d'Alene, Idaho. | |
| **MISSOURI** | |
| **Black Jack (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Coldwater Creek:* | |
| At Old Jamestown Road | *480 |
| 900 feet upstream of Old Jamestown Road | *482 |
| At Cleola Hills Circle | *482 |
| 300 feet downstream of Old Halls Ferry Road | *489 |
| At Old Halls Ferry Road | *490 |
| **Maps are available for inspection** at City Hall, City of Black Jack, 4655 Parker Road, Black Jack, Missouri. | |
| **Clayton (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Black Creek:* | |
| At centerline of Clayton Road | *484 |
| 200 feet upstream of Clayton Road | *488 |
| **Maps are available for inspection** at City Hall, City of Clayton, 10th North Bemington, Clayton, Missouri. | |
| **Columbia (city), Boone County (FEMA Docket No. 7122)** | |
| *Mill Creek:* | |
| Approximately 2,000 feet downstream of Sinclair Street | *621 |
| Approximately 1,000 feet upstream of Sinclair Street | *638 |
| Approximately 3,300 feet upstream of Sinclair Street | *649 |
| Approximately 2,750 feet downstream of Bethel Street | *680 |
| Just downstream of Bethel Street | *697 |
| **Maps are available for inspection** at the Public Works Department, Third Floor, City of Columbia, 701 East Broadway, Columbia, Missouri. | |
| **St. Louis County (unincorporated areas) (FEMA Docket No. 7118)** | |
| *Northeast Branch River Des Peres:* | |
| At the intersection of Teal Avenue and Ruddy Lane | *541 |
| *Paddock Creek (Backwater from Coldwater Creek):* | |
| 700 feet downstream of Lindbergh Boulevard | *504 |
| *Shallow Flooding:* | |
| Approximately 2,000 feet south along the City of Bridgeton corporate limits from its crossing of Cowmire Creek | #2 |
| **Maps are available for inspection** at the St. Louis County Department of Planning, 41 South Central Avenue, Clayton, Missouri. | |
| **Sunset Hills (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Meramec River:* | |
| 1,000 feet upstream of Gravois Road | *422 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| 500 feet upstream of State Highway 30 | *423 |
| 800 feet upstream of Interstate Highway 44 | *525 |
| **Maps are available for inspection** at City Hall, City of Sunset Hills, 3939 South Lindbergh, Sunset Hills, Missouri. | |
| **University City (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Northeast Branch River Des Peres:* | |
| 800 feet downstream of Julian Avenue | *502 |
| 100 feet downstream of Julian Avenue | *503 |
| 500 feet upstream of Ferguson Avenue | *511 |
| **Maps are available for inspection** at City Hall, City of University City, 6801 Delmar Boulevard, University City, Missouri. | |
| **Wellston (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Engelholm Creek:* | |
| At the confluence with North Tributary of Engelholm Creek | *518 |
| 70 feet upstream of the St. Louis Belt and Terminal Railroad | *518 |
| 10 feet upstream of the Norfolk and Western Railway | *522 |
| **Maps are available for inspection** at City Hall, City of Wellston, 1804 Kienlen Avenue, Wellston, Missouri. | |
| **Winchester (city), St. Louis County (FEMA Docket No. 7118)** | |
| *Grand Glaize Creek:* | |
| Just downstream of Manchester Road | *513 |
| **Maps are available for inspection** at City Hall, City of Winchester, 109 Lindy Boulevard, Winchester, Missouri. | |
| **NEBRASKA** | |
| **Blair (city), Washington County (FEMA Docket No. 7118)** | |
| *Cauble Creek:* | |
| At confluence of Cauble Creek East Tributary | *1,033 |
| Approximately 100 feet upstream of U.S. Highway 73 | *1,063 |
| Just downstream of College Drive | *1,064 |
| *Cauble Creek East Tributary:* | |
| Approximately 930 feet upstream of confluence of Cauble Creek | *1,038 |
| Approximately 30 feet upstream of Baronage Drive | *1,057 |
| Approximately 60 feet upstream of College View Drive | *1,062 |
| **Maps are available for inspection** at City Hall, City of Blair, 218 South 16th Street, Blair, Nebraska. | |
| **NEVADA** | |
| **Clark County (unincorporated areas) (FEMA Docket No. 7118)** | |
| *Middle Branch Blue Diamond Wash:* | |
| At the intersection of Pollock Drive and East Windmill Lane | #1 |
| Just upstream of Bermuda Road | *2,178 |
| At Giles Street | *2,231 |
| 100 feet upstream of Interstate 15 | *2,266 |
| At the intersection of Industrial Road and Blue Diamond Road | #1 |
| At South Valley View Boulevard | #1 |
| At South Decatur Boulevard | #1 |
| At South Lindell Road | #2 |
| Just downstream of the Union Pacific Railroad | #3 |
| *North Branch Blue Diamond Wash:* | |
| At the intersection of Goldilocks Avenue and South Maryland Parkway | #1 |
| Just downstream of Amigo Street | *2,135 |
| At Rancho Destino Road | *2,205 |
| Approximately 100 feet upstream of Interstate 15 | *2,271 |
| At the intersection of West Mesa Verde Lane and South Valley View Boulevard | #1 |
| Approximately 350 feet south of the intersection of West Moberly Avenue and South Decatur Boulevard | #2 |
| Just downstream of the Union Pacific Railroad | #3 |
| *Blue Diamond Fan:* | |
| At the intersection of West Russell Road and Cameron Street | #1 |
| At the intersection of South Rainbow Boulevard and West Robindale Road | #1 |
| At the intersection of South Buffalo Drive and West Windmill Lane | #2 |
| Approximately 1,000 feet north of the intersection of South Cimarron Road and West Camero Avenue | #4 |
| Approximately 1,000 feet north of the intersection of Gagnier Boulevard and West Wigwam Avenue | #5 |
| *Central Branch Tropicana Wash:* | |
| At confluence with Flamingo Wash | *2,001 |
| Just upstream of East Harmon Avenue | *2,068 |
| At Industrial Road | *2,155 |
| Just upstream of West Hacienda Avenue | *2,241 |
| At West Oquendo Road | *2,356 |
| Approximately 500 feet downstream of South Rainbow Boulevard | *2,438 |
| *North Branch Tropicana Wash:* | |
| At confluence with Central Branch Tropicana Wash | *2,234 |
| At South Jones Boulevard | *2,312 |
| At South Torrey Pines Drive | *2,346 |
| Approximately 430 feet downstream of South Rainbow Boulevard | *2,381 |
| *South Branch Tropicana Wash:* | |
| At confluence with Central Branch of Tropicana Wash | *2,274 |
| At West Oquendo Road | *2,310 |
| 50 feet upstream of South Jones Boulevard | *2,371 |
| Approximately 500 feet upstream of West Sunset Road | *2,405 |
| *Duck Creek:* | |
| Approximately 200 feet upstream of East Pebble Road | *2,165 |
| At South Las Vegas Boulevard | *2,252 |
| Approximately 800 feet upstream of Interstate 15 | *2,287 |
| *Duck Creek Tributary:* | |
| At confluence with Duck Creek | *2,242 |
| At South Las Vegas Boulevard | *2,255 |
| Approximately 300 feet downstream of Interstate 15 | *2,282 |
| *Duck Creek South Channel:* | |
| At convergence with Duck Creek | *2,189 |
| At divergence from Duck Creek | *2,231 |
| *Unnamed Fan:* | |
| At the intersection of West Eldorado Lane and South Fort Apache Road | #1 |
| Approximately 1,000 feet south of the intersection of South Fort Apache Road and West Eldorado Lane | #2 |
| *Hemenway Wash:* | |
| Approximately 1,000 feet downstream of Pacific Way | *1,965 |
| Approximately 700 feet downstream of Pacific Way | *1,979 |
| **Maps are available for inspection** at the Office of the Director of Public Works, Clark County, Bridger Building, 225 East Bridger Avenue, Las Vegas, Nevada. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **North Las Vegas (city), Clark County (FEMA Docket No. 7118)** | |
| *Las Vegas Wash:* | |
| At East Lake Mead Boulevard | *1,821 |
| At North Las Vegas Boulevard | *1,848 |
| Approximately 500 feet east of the intersection of East Evans Avenue and North Las Vegas Boulevard | #2 |
| At East Cheyenne Avenue | *1,864 |
| At East Gowan Road | *1,875 |
| Just upstream of the Union Pacific Railroad | *1,913 |
| Just upstream of East Lone Mountain Road | *1,940 |
| *Unnamed Channel:* | |
| At confluence with Las Vegas Wash | *1,872 |
| At East Gowan Road | *1,879 |
| Just upstream of Berg Street | *1,890 |
| Between Union Pacific Railroad and Interstate 15 | *1,900 |
| *Union Pacific Railroad Overflow:* | |
| Approximately 125 feet upstream of confluence with Unnamed Tributary to Las Vegas Wash | *1,901 |
| At confluence with unnamed channel | *1,907 |
| At divergence from Las Vegas Wash | *1,915 |
| **Maps are available for inspection** at the Public Works Department, 2200 Civic Center Drive, North Las Vegas, Nevada. | |
| **OKLAHOMA** | |
| **Goldsby (town), McClain County (FEMA Docket No. 7122)** | |
| *Canadian River:* | |
| Approximately 23,200 feet downstream of Interstate 35 at the Town of Goldsby Corporate Limits | *1,085 |
| At the intersection of State Highways 9 and 74 | *1,105 |
| Approximately 2,000 feet upstream of the intersection of State Highways 9 and 74, at the Town of Goldsby Corporate Limits | *1,107 |
| **Maps are available for inspection** at Town Hall, Town of Goldsby, Route 1, near the intersection of Center Street and Main Street, Goldsby, Oklahoma. | |
| **OREGON** | |
| **Fairview (city), Multnomah County (FEMA Docket No. 7114)** | |
| *Fairview Creek:* | |
| Just upstream of Fairview Lake | *17 |
| Just upstream of Sandy Boulevard | *42 |
| Just upstream of Bridge Street | *125 |
| **Maps are available for inspection** at City Hall, City of Fairview, Planning Department, 300 Harrison Street, Fairview, Oregon. | |
| **TEXAS** | |
| **Comal County (unincorporated areas) (FEMA Docket No. 7118)** | |
| *Post Oak Creek:* | |
| At confluence with Cibolo Creek | *1,260 |
| Approximately 3,900 feet upstream of confluence with Cibolo Creek | *1,266 |
| *Cibolo Tributary:* | |
| At confluence with Cibolo Creek | *1,250 |
| Approximately 2,400 feet upstream of confluence with Cibolo Creek | *1,254 |
| *Kelley Creek:* | |
| At confluence with Cibolo Creek | *1,115 |
| At Bartels Road | *1,140 |
| *Cibolo-Kelley Creek Overflow:* | |
| At convergence with Kelley Creek | *1,134 |
| At divergence from Cibolo Creek | *1,155 |
| *Indian Creek:* | |
| Approximately 200 feet upstream of confluence with Cibolo Creek | *1,074 |
| Approximately 2,600 feet upstream of confluence with Indian Creek Tributary A | *1,092 |
| *Indian Creek Tributary A:* | |
| Approximately 200 feet upstream of confluence with Indian Creek | *1,083 |
| Approximately 900 feet upstream of confluence with Indian Creek | *1,085 |
| Approximately 1,750 feet upstream of confluence with Indian Creek | *1,088 |
| *Indian Creek Tributary B:* | |
| At confluence with Indian Creek | *1,083 |
| Approximately 2,900 feet upstream of confluence with Indian Creek | *1,092 |
| Approximately 4,000 feet upstream of confluence with Indian Creek | *1,094 |
| *Bracken Tributary:* | |
| At confluence with Cibolo Creek | *771 |
| Approximately 2,000 feet upstream of confluence with Cibolo Creek | *772 |
| *Garden Ridge Tributary:* | |
| At confluence with Bracken Tributary | *772 |
| Approximately 830 feet upstream of confluence with Bracken Tributary | *772 |
| *Cibolo Creek:* | |
| Just upstream of Missouri-Kansas-Texas Railroad | *771 |
| Approximately 21,000 feet upstream of Missouri-Pacific Railroad | *840 |
| Approximately 35,000 feet upstream of Missouri-Pacific Railroad | *880 |
| Approximately 14,800 feet downstream of F.M. 1864 (downstream crossing) | *930 |
| Just downstream of F.M. 1863 (upstream crossing) | *965 |
| At confluence of Lewis Creek | *994 |
| Just upstream of Smithson Valley Road | *1,017 |
| Just downstream of U.S. Route 281 | *1,061 |
| At confluence of Museback Creek | *1,104 |
| At Blanco Road | *1,130 |
| Approximately 16,900 feet upstream of confluence with Pleasant Valley Creek | *1,200 |
| Approximately 8,900 feet downstream of confluence with Cibolo Tributary | *1,230 |
| Approximately 200 feet upstream of Balcones Creek | *1,274 |
| **Maps are available for inspection** at Comal County Road Department, 4931 State Highway 46 West, New Braunfels, Texas. | |
| **Denison (city), Grayson County (FEMA Docket No. 7118)** | |
| *Shawnee Creek:* | |
| At Randell Lake | *625 |
| Approximately 950 feet downstream of U.S. Highway 84 | *629 |
| Approximately 1,850 feet upstream of U.S. Highway 84 | *644 |
| Approximately 3,000 feet downstream of County Road | *656 |
| *Iron Ore Creek:* | |
| Approximately 500 feet downstream of Business U.S. Highway 75 northbound | *618 |
| Approximately 1,500 feet downstream of Flowers Drive | *620 |
| Approximately 2,600 feet upstream of Park Avenue | *627 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 5,000 feet upstream of Park Avenue | *631 |
| Approximately 2,200 feet downstream of Spur 503 Access Ramp | *633 |
| Approximately 1,400 feet downstream of Spur 503 Access Ramp | *636 |
| Approximately 100 feet upstream of Spur 503 Access Ramp | *640 |
| Approximately 600 feet upstream of Spur 503 Access Ramp | *643 |
| Approximately 4,600 feet upstream of State Highway 131 | *668 |
| *Loy Creek below Loy Lake:* | |
| Approximately 900 feet downstream of Spur 503 Main Lane | *626 |
| Approximately 400 feet downstream of Spur 503 Main Lane | *626 |
| Approximately 100 feet downstream of Spur 503 Main Lane | *626 |
| Approximately 2,800 feet upstream of Spur 503 Main Lane | *633 |
| Approximately 800 feet downstream of Polaris Drive | *645 |
| Just downstream of Polaris Drive | *668 |
| Approximately 700 feet upstream of Loy Lake Road | *668 |
| *Loy Creek above Loy Lake:* | |
| Approximately 300 feet downstream of Cathey Drive | *698 |
| Just upstream of State Highway 131 | *701 |
| Approximately 300 feet upstream of State Highway 131 | *703 |
| *Waterloo Creek:* | |
| Approximately 8,200 feet downstream of Missouri, Kansas and Texas Railroad at the confluence with Iron Ore Creek | *620 |
| Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad | *620 |
| Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad | *621 |
| At Missouri, Kansas and Texas Railroad | *645 |
| Approximately 3,200 feet upstream of Missouri, Kansas and Texas Railroad | *661 |
| *Ellsworth Branch Tributary A:* | |
| Approximately 40 feet upstream of Theresa Drive | *658 |
| Just upstream of State Highway 691 | *671 |

**Maps are available for inspection** at the City of Denison, Planning and Zoning Department, 108 West Main, Denison, Texas.

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**Grayson County (unincorporated areas) (FEMA Docket No. 7118)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Shawnee Creek:* | |
| Approximately 950 feet downstream of U.S. Highway 84 | *629 |
| Approximately 1,850 feet upstream of U.S. Highway 84 | *644 |
| Approximately 3,000 feet downstream of County Road | *656 |
| At County Road | *676 |
| *Iron Ore Creek:* | |
| Approximately 100 feet upstream of Interurban Road | *608 |
| Approximately 500 feet downstream of Business U.S. Highway 75 northbound | *618 |
| Approximately 1,500 feet downstream of Flowers Drive | *620 |
| Approximately 200 feet upstream of Park Avenue | *624 |
| Approximately 2,600 feet upstream of Park Avenue | *627 |
| Approximately 5,000 feet upstream of Park Avenue | *631 |
| Approximately 2,200 feet downstream of Spur 503 Access Ramp | *633 |
| Approximately 1,400 feet downstream of Spur 503 Access Ramp | *636 |
| Approximately 100 feet upstream of Spur 503 Access Ramp | *640 |
| Approximately 600 feet upstream of Spur 503 Access Ramp | *643 |
| At Loy Lake Road | *654 |
| Approximately 4,600 feet upstream of State Highway 131 | *668 |
| Approximately 50 feet downstream of Preston Road | *677 |
| Approximately 5,500 feet upstream of Preston Road | *695 |
| Approximately 50 feet upstream of Davy Lane | *712 |
| *Loy Creek below Loy Lake:* | |
| Approximately 900 feet downstream of Spur 503 Main Lane | *626 |
| Approximately 400 feet downstream of Spur 503 Main Lane | *626 |
| Approximately 800 feet downstream of Polaris Drive | *645 |
| Just downstream of Polaris Drive | *668 |
| *Loy Creek above Loy Lake:* | |
| Approximately 3,700 feet downstream of Cathey Drive | *678 |
| Approximately 300 feet downstream of Cathey Drive | *698 |
| *Ellsworth Branch:* | |
| Approximately 9,800 feet downstream of State Highway 691 at the confluence with Iron Ore Creek | *626 |
| Approximately 300 feet downstream of State Highway 691 | *650 |
| At County Road | *681 |
| Approximately 7,500 feet upstream of County Road | *728 |
| *Ellsworth Branch Tributary A:* | |
| Approximately 60 feet downstream of Missouri, Kansas and Texas Railroad | *643 |
| Approximately 40 feet upstream of Theresa Drive | *658 |
| *Waterloo Creek:* | |
| Approximately 7,450 feet downstream of Missouri, Kansas and Texas Railroad | *620 |
| Approximately 7,100 feet downstream of Missouri, Kansas and Texas Railroad | *621 |
| *Post Oak Creek:* | |
| Approximately 5,800 feet downstream of Sewer Plant Road | *625 |
| At Sewer Plant Road | *631 |
| Approximately 3,000 feet downstream of East Street | *640 |
| Approximately 200 feet upstream of East Street | *649 |
| Approximately 700 feet downstream of Travis Street | *657 |
| Approximately 4,900 feet downstream of U.S. Highway 82 | *721 |
| Approximately 250 feet downstream of U.S. Highway 82 | *741 |
| Approximately 1,800 feet upstream of U.S. Highway 82 | *752 |
| Approximately 2,150 feet upstream of U.S. Highway 82 | *752 |
| *Sand Creek:* | |
| Approximately 2,500 feet downstream of Washington Avenue | *709 |
| Approximately 1,950 feet upstream of Washington Avenue | *718 |
| Approximately 6,750 feet upstream of Washington Avenue | *728 |
| Approximately 11,550 feet upstream of Washington Avenue | *752 |
| *East Fork Post Oak Creek:* | |
| Approximately 580 feet downstream of Pecan Street | *686 |
| Approximately 130 feet upstream of Union Pacific Railroad | *697 |
| Approximately 2,600 feet upstream of Union Pacific Railroad | *712 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 800 feet upstream of Taylor Street | *725 |
| Approximately 700 feet upstream of McLain Drive | *745 |
| Approximately 560 feet downstream of U.S. Highway 82 East Main Lane | *760 |
| Approximately 1,250 feet upstream of Pecan Grove Road | *780 |
| Approximately 900 feet upstream of Forest Creek Drive | *791 |
| *Choctow Creek Tributary A:* | |
| Approximately 2,800 feet downstream of unnamed road | *636 |
| Approximately 100 feet downstream of Southern Pacific Railroad | *653 |

**Maps are available for inspection** at Grayson County's Office, 100 West Houston, Sherman, Texas.

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**Guadalupe County (unincorporated areas) (FEMA Docket No. 7122)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Santa Clara Creek:* | |
| At confluence with Cibolo Creek | *556 |
| Approximately 6,500 feet upstream of confluence with Cibolo Creek | *559 |
| *Town Creek:* | |
| Just downstream of Schaefer Road | *680 |
| Approximately 4,600 feet upstream of FM 1103 | *732 |
| Approximately 2,050 feet upstream of County Road 376 | *764 |
| Just downstream of County Road 377 | *790 |
| *Interstate Highway 10 Diversion:* | |
| At convergence with Cibolo Creek | *594 |
| Just downstream of Bolton Road | *615 |
| *Cibolo Creek:* | |
| Approximately 3,600 feet upstream of confluence of Dry Hollow Creek | *483 |
| Just downstream of confluence of Martinez Creek | *524 |
| Approximately 6,900 feet downstream of Weir Road | *636 |
| Approximately 9,100 feet upstream of Lower Seguin Road (County Road 318) | *666 |
| Just upstream of Selma Road | *736 |
| *Elm Creek South:* | |
| Just upstream of County Boundary | *465 |
| Approximately 2,000 feet upstream of County Road 412D | *465 |

**Maps are available for inspection** at Guadalupe County Sanitation Office, 415 East Center Street, Seguin, Texas.

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**Kendall County (unincorporated areas) (FEMA Docket No. 7118)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Cibolo Creek (Lower Reach):* | |
| Approximately 300 feet upstream of confluence of Balcones Creek | *1,274 |
| Approximately 9,300 feet upstream of confluence of Balcones Creek | *1,300 |
| *Balcones Creek:* | |
| Approximately 1,050 feet upstream of confluence with Cibolo Creek (Lower Reach) | *1,275 |
| Approximately 3,200 feet upstream of confluence with Cibolo Creek (Lower Reach) | *1,278 |

**Maps are available for inspection** at Kendall County Tax Office, 211 East San Antonio Street, Boerne, Texas.

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**La Vernia (city), Wilson County (FEMA Docket No. 7122)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Dry Hollow Creek:* | |
| Just upstream of confluence with Cibolo Creek | *479 |
| Approximately 950 feet upstream of confluence with Cibolo Creek | *479 |
| *Cibolo Creek:* | |
| Approximately 4,900 feet downstream of FM 775 | *473 |
| Just upstream of FM 775 | *478 |
| At confluence of Dry Hollow Creek | *479 |

**Maps are available for inspection** at City of La Vernia City Hall, 102 East Chihuahua, La Vernia, Texas.

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**Schertz (city), Bexar, Comal, and Guadalupe Counties (FEMA Docket No. 7118)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Cibolo Creek:* | |
| At Lower Seguin Road | *650 |
| Approximately 200 feet upstream of confluence with Dietz Creek | *687 |
| Approximately 200 feet downstream of FM 78 | *712 |
| Approximately 7,400 feet upstream of Main Street | *723 |
| *Salitrillo Creek:* | |
| At Martinez Creek Dam No. 6–A | *629 |

**Maps are available for inspection** at the City of Schertz, City Hall, 1400 Schertz Parkway, Schertz, Texas.

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**Sherman (city), Grayson County (FEMA Docket No. 7118)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Ellsworth Branch Tributary A:* | |
| Just upstream of State Highway 691 | *671 |
| Approximately 1,750 feet upstream of State Highway 691 | *671 |
| Approximately 2,500 feet upstream of State Highway 691 | *674 |
| Approximately 1,200 feet upstream of Business Highway 75 | *685 |
| Approximately 60 feet upstream of Fallon Drive | *746 |
| *Post Oak Creek:* | |
| Approximately 700 feet downstream of Travis Street | *657 |
| Approximately 6,700 feet upstream of Highway 75 West Access Road | *674 |
| At Hillcrest Street | *688 |
| At McGee Street | *694 |
| At Lambreth Street | *712 |
| Approximately 4,900 feet downstream of U.S. Highway 82 | *721 |
| Approximately 1,800 feet upstream of U.S. Highway 82 | *752 |
| *Sand Creek:* | |
| Approximately 2,800 feet downstream of Center Street | *674 |
| Approximately 2,000 feet upstream of Center Street | *682 |
| Approximately 100 feet upstream of Highway 56 | *691 |
| Approximately 2,400 feet downstream of Union Pacific Railroad | *701 |
| Approximately 800 feet upstream of Union Pacific Railroad | *709 |
| *Choctaw Creek Tributary A:* | |
| Approximately 100 feet downstream of Southern Pacific Railroad | *653 |
| Approximately 2,100 feet upstream of Southern Pacific Railroad | *671 |
| Approximately 200 feet upstream of Farm Road 1417 | *714 |

**Maps are available for inspection** at the City of Sherman, City Engineer's Office, 400 North Rusk, Sherman, Texas.

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**Wilson County (unincorporated areas) (FEMA Docket No. 7122)**

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Dry Hollow Creek:* | |
| Just upstream of confluence with Cibolo Creek | *479 |
| Approximately 950 feet upstream of confluence with Cibolo Creek | *479 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Cibolo Creek:* | |
| Approximately 14,500 feet downstream of FM 775 ..... | *459 |
| Elm Creek at confluence with Cibolo Creek ..... | *464 |
| Elm Creek at 10,700 feet upstream of confluence with Cibolo Creek ..... | *465 |
| Approximately 3,600 feet upstream of confluence of Dry Hollow Creek ..... | *483 |
| Just downstream of confluence of Martinez Creek ..... | *524 |
| **Maps are available for inspection** at Wilson County Courthouse, 1420 Third Street, Floresville, Texas. | |
| **WASHINGTON** | |
| **Okanogan (city), Okanogan County (FEMA Docket No. 7118)** | |
| *Okanogan River:* | |
| Approximately 1.3 miles upstream of Oak Street ..... | *834 |
| Approximately 2.5 miles upstream of Oak Street ..... | *835 |
| **Maps are available for inspection** at the City of Okanogan, Office of Planning, 237 4th Avenue North, Okanogan, Washington. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8183 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

## Federal Emergency Management Agency

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Energy.

**ACTION:** Final rule.

**SUMMARY:** Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **CONNECTICUT** | |
| **Orange (town), New Haven County (FEMA Docket No. 7116)** | |
| *Race Brook:* | |
| Approximately 0.14 mile upstream of Orange Center Road ..... | *108 |
| At upstream corporate limits (approximately 0.6 mile upstream of State Route 114) . | *172 |
| **Maps available for inspection** at the Department of Public Works, Town Hall, 617 Orange Center Road, Orange, Connecticut. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **OHIO** | |
| **Bexley (city), Franklin County, (FEMA Docket No. 7097)** | |
| *Alum Creek:* | |
| Approximately 1,000 feet upstream of downstream corporate limits | *749 |
| Approximately 1,250 feet downstream of CONRAIL | *756 |
| **Maps available for inspection** at the City Hall, 2242 East Main Street, Bexley, Ohio. | |
| **Brice (village), Franklin County (FEMA Docket No. 7097)** | |
| *Powell Ditch:* | |
| Approximately 600 feet downstream of Refugee Road | *776 |
| Approximately 800 feet upstream of Refugee Road | *781 |
| **Maps available for inspection** at the Village Municipal Building, 5990 Columbus Street, Brice, Ohio. | |
| **Canal Winchester (village), Franklin County (FEMA Docket No. 7097)** | |
| *Georges Creek:* | |
| Approximately 650 feet downstream of U.S. Route 33 | *753 |
| At downstream side of County Route 376 (Winchester Pike) | *758 |
| **Maps available for inspection** at the Village Hall, 10 North High Street, Canal Winchester, Ohio. | |
| **Columbus (city), Franklin County (FEMA Docket No. 7124)** | |
| *Barbee Ditch:* | |
| At Chippewa Street | *801 |
| Approximately 100 feet downstream of Trabue Road | *826 |
| *Barnes Ditch:* | |
| At confluence with Scioto River | *737 |
| At Wilson Road | *836 |
| *Blau Ditch:* | |
| Approximately 0.42 mile upstream of confluence with Dry Run | *818 |
| Approximately 1,160 feet upstream of Maclam Drive | *838 |
| *Snyder Run:* | |
| At confluence with Barnes Ditch | *808 |
| At Wilson Road | *843 |
| *Dry Run:* | |
| At confluence with Scioto River | *731 |
| Approximately 160 feet upstream of Ruth Court | *790 |
| *South Fork Dry Run:* | |
| At downstream corporate limits | *786 |
| Approximately 1,520 feet upstream of CONRAIL | *803 |
| *Turkey Run:* | |
| Upstream side of State Route 315 culvert | *739 |
| Approximately 1,850 feet upstream of Tillbury Avenue at the City of Columbus corporate limits | *781 |
| *Little Walnut Creek:* | |
| Downstream corporate limits | *730 |
| Upstream corporate limits | *731 |
| *Big Run:* | |
| At upstream corporate limits (west of County Route 119) | *735 |
| *Utzinger Ditch:* | |
| Approximately 200 feet downstream of Rose Hill Road | *882 |
| At upstream corporate limits | *892 |
| *Tudor Ditch:* | |
| Approximately 500 feet upstream of confluence with Scioto River | *768 |
| Approximately 857 feet upstream of confluence with Scioto River | *780 |
| **Maps available for inspection at** the Fairwood Complex, 1250 Fairwood Avenue, Columbus, Ohio. | |
| **Dublin (city), Franklin County (FEMA Docket No. 7097)** | |
| *South Fork Indian Run:* | |
| Approximately 1,400 feet upstream of Avery Road | *914 |
| At upstream Dublin corporate limits | *940 |
| *Cosgray Ditch:* | |
| Approximately 425 feet upstream of confluence with Scioto River | *775 |
| Approximately 2,200 feet upstream of Wilcox Road | *921 |
| *Cramer Ditch:* | |
| At upstream side of Dublin Road | *824 |
| Approximately 2,500 feet upstream of Wilcox Road | *920 |
| *Tri-County Ditch:* | |
| At confluence with South Fork Indian Run | *914 |
| At county boundary | *917 |
| **Maps available for inspection** at the Planning and Zoning Building, 5800 Shier-Rings Road, Dublin, Ohio. | |
| **Franklin County (unincorporated areas) (FEMA Docket No. 7105)** | |
| *Blacklick Creek:* | |
| At upstream side of Central College Road (County Route 18) | *1,084 |
| Approximately 0.69 mile upstream of Walnut Street (County Route 19) | *1,119 |
| *Bishop Run:* | |
| Approximately 1,000 feet upstream of confluence with Little Walnut Creek | *751 |
| At Canal Winchester South Road | *780 |
| *Little Walnut Creek:* | |
| At downstream county boundary | *722 |
| Approximately 0.70 mile upstream of Hayes Road | *731 |
| *Lisle Ditch (formerly Big Run Tributary):* | |
| At confluence with Big Run | *741 |
| Approximately 100 feet downstream of Oregon Road | *756 |
| *Big Run:* | |
| Approximately 0.90 mile upstream of confluence with Little Walnut Creek | *735 |
| At downstream county boundary | *809 |
| *Georges Creek:* | |
| At upstream side of C&O Railroad bridge | *747 |
| Approximately 1,500 feet upstream of U.S. Route 33 | *755 |
| *Spring Run:* | |
| Approximately 350 feet upstream of County Route 82 | *850 |
| Approximately 0.4 mile upstream of County Route 82 | *854 |
| *Unnamed Pounding Area:* | |
| In the vicinity of the intersection of Corbett Road and Front Street | *733 |
| *Clover Groff Ditch:* | |
| Approximately 1,060 feet downstream of Interstate Route 70 | *929 |
| Approximately 0.66 mile downstream of Elliot Road | *941 |
| *Dry Run:* | |
| Approximately 160 feet downstream of the downstream CONRAIL | *764 |
| Approximately 550 feet upstream of Hague Avenue | *796 |
| *Blau Ditch:* | |
| At confluence with Dry Run | *796 |
| Approximately 550 feet upstream of Maclam Drive | *834 |
| *Barbee Ditch:* | |
| At confluence with Barnes Ditch | *786 |
| At Trabue Road | *826 |
| *Barnes Ditch:* | |
| At downstream corporate limits | *779 |
| Approximately 1,500 feet upstream of confluence of Snyder Run | *824 |
| *Faust County Ditch:* | |
| At Hayden Run Road | *935 |
| Approximately 1.4 miles upstream of Hayden Run Road | *941 |
| *Hayden Run:* | |
| At upstream side of CONRAIL | *907 |
| At Hayden Run Road | *935 |
| *Snyder Run:* | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 800 feet upstream of Cross Creek Drive | *823 |
| Approximately 1,700 feet upstream of Cross Creek Drive | *830 |
| *Molcomb Ditch:* | |
| At confluence with Tudor Ditch | *820 |
| Approximately 1,700 feet downstream of Interstate Route 270 | *857 |
| *Tudor Ditch:* | |
| Approximately 875 feet upstream of confluence with Scioto River | *780 |
| Approximately 500 feet downstream of Fishinger Boulevard | *851 |
| *Cramer Ditch:* | |
| Approximately 150 feet upstream of confluence with Scioto River | *773 |
| At downstream side of Dublin Road | *773 |
| *Shallow Flooding Area:* | |
| South of County Route 118 and north of C&O Railroad | #1 |
| Between Big Run and Lisle Ditch (north of Berger Road and south of Hayes Road) | #1 |
| **Maps available for inspection** at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio. | |
| **Gahanna (city), Franklin County (FEMA Docket No. 7097)** | |
| *Utzinger Ditch:* | |
| At downstream corporate limits (downstream of CONRAIL) | *893 |
| **Maps available for inspection** at the City Hall, 200 S. Hamilton Road, Gahanna, Ohio. | |
| **Glenford (village), Perry County (FEMA Docket No. 7112)** | |
| *Jonathan Creek:* | |
| At downstream corporate limits, approximately 550 feet downstream of Main Street | *844 |
| At upstream corporate limits, approximately 1,200 feet upstream of Main Street | *848 |
| **Maps available for inspection** at the Village Clerk's Residence, 123 Mill Street, Glenford, Ohio. | |
| **Groveport (village), Franklin County (FEMA Docket No. 7097)** | |
| *Little Walnut Creek:* | |
| Approximately 0.47 mile upstream of Hayes Road | *730 |
| Approximately 250 feet east of Crescent Drive and Delane Road intersection | *734 |
| **Maps available for inspection** at the Municipal Building, 605 Cherry Street, Groveport, Ohio. | |
| **Harrisburg (village), Franklin County (FEMA Docket No. 7097)** | |
| *Big Darby Creek:* | |
| At downstream corporate limits | *788 |
| At upstream corporate limits | *789 |
| **Maps available for inspection** at the Village Hall, 1092 High Street, Harrisburg, Ohio. | |
| **Hilliard (city), Franklin County (FEMA Docket No. 7097)** | |
| *Hayden Run:* | |
| At upstream side of Avery Road | *909 |
| Approximately 900 feet upstream of Avery Road | *910 |
| *Molcomb Ditch:* | |
| Approximately 225 feet upstream of confluence with Tudor Ditch | *821 |
| Approximately 200 feet downstream of Lyman Drive | *874 |
| *Tudor Ditch:* | |
| Approximately 675 feet downstream of Fishinger Boulevard | *849 |
| Approximately 140 feet downstream of Parkway Lane | *873 |
| *Clover Groff Ditch:* | |
| At downstream corporate limits | *936 |
| Approximately 0.66 mile downstream of Elliot Road | *941 |
| **Maps available for inspection** at the City Hall, 3800 Municipal Way, Hilliard, Ohio. | |
| **Malvern (village), Carroll County (FEMA Docket No. 7112)** | |
| *Big Sandy Creek:* | |
| Approximately 600 feet downstream of downstream corporate limits | *994 |
| Approximately 600 feet upstream of upstream corporate limits | *998 |
| **Maps available for inspection** at the Village Hall, 116 West Main Street, Malvern, Ohio. | |
| **Marble Cliff (village), Franklin County (FEMA Docket No. 7097)** | |
| *Scioto River:* | |
| Approximately 1,950 feet downstream of Fifth Avenue | *737 |
| At CONRAIL | *740 |
| **Maps available for inspection** at the Village Hall, 1600 Fernwood Avenue, Columbus, Ohio (please contact Joan Klitch, Village Clerk at (614) 486–6993 to arrange for viewing). | |
| **Riverlea (village), Franklin County (FEMA Docket No. 7097)** | |
| *Olentangy River:* | |
| At downstream corporate limits | *746 |
| At upstream corporate limits | *749 |
| **Maps available for inspection** at the Clerk/Treasurer, 124 West Riverglen, Worthington, Ohio. | |
| **Urbancrest (village), Franklin County (FEMA Docket No. 7097)** | |
| *Baumgardner Ditch:* | |
| Approximately 100 feet downstream of CSX Transportation | *824 |
| At upstream corporate limits | *848 |
| **Maps available for inspection** at the City Hall, 3492 First Avenue, Urbancrest, Ohio. | |
| **Upper Arlington (city), Franklin County (FEMA Docket No. 7097)** | |
| *Turkey Run:* | |
| At downstream corporate limits of Upper Arlington | *781 |
| Approximately 1,600 feet upstream of downstream corporate limits for Upper Arlington | *794 |
| **Maps available for inspection** at the City Hall, 3600 Tremont Road, Upper Arlington, Ohio. | |
| **Valleyview (village), Franklin County (FEMA Docket No. 7097)** | |
| *Dry Run:* | |
| At downstream Village of Valleyview corporate limits | *767 |
| At upstream Village of Valleyview corporate limits | *779 |
| *South Fork Dry Run:* | |
| Approximately 600 feet upstream of confluence with Dry Run | *772 |
| At upstream Village of Valleyview corporate limits | *786 |
| **Maps available for inspection** at the Village Hall, 432 N. Richardson Avenue, Columbus, Ohio. | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8186 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94–144; RM–8554]**

### Radio Broadcasting Services; Dickeyville, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 266A to Dickeyville, Wisconsin, as that community's first local transmission service in response to a petition filed by James F. Munson. *See* 59 FR 65749, December 21, 1994. The coordinates for Channel 266A at Dickeyville are 42–37–38 and 90–35–31. With this action, this proceeding is terminated.

**DATES:** Effective May 12, 1995. The window period for filing applications for Channel 266A at Dickeyville, will open on May 12, 1995, and close on June 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order,* MM Docket No. 94–144, adopted March 21, 1995, and released March 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

#### 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:** Sec. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Dickeyville, Channel 266A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–7949 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

### 47 CFR Part 73

**[MM Docket No. 89–459; RM–7009, RM–7260, RM–7261, RM–7263, RM–7264]**

### Radio Broadcasting Services; LaGrange and Rollingwood, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies an Application for Review filed by Fayette Broadcasting Corporation, licensee of Station KBUK, Channel 285A, LaGrange, Texas, directed to a staff action denying its request to substitute Channel 285C2 for Channel 285A and reallot Channel 285C2 to Rollingwood, Texas. *See* 58 FR 12903, published March 8, 1993. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 776–1654.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 89–459, adopted March 8, 1995, and released March 28, 1995. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription service, (202) 857–3800, 2100 M Street, NW, Washington, D.C. 20037.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–8162 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

## GENERAL SERVICES ADMINISTRATION

### Board of Contract Appeals

### 48 CFR Part 6101

**RIN Number 3090–AF62**

### Rules of Procedure of the General Services Administration Board of Contract Appeals

**AGENCY:** Board of Contract Appeals, General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** This document contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board), which will govern all proceedings before the Board. The revisions implement certain provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA or Act) which have amended the Brooks Automatic Data Processing Act, under which the Board hears and decides protests of procurements involving automatic data processing (ADP) equipment, and the Contract Disputes Act of 1978, under which the Board hears and decides contract disputes. The revisions conform the Board's rules of procedure to the amendments made to its jurisdictional statutes.

**EFFECTIVE DATE:** May 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Wilbur T. Miller, Chief Counsel, GSA Board of Contract Appeals, (202) 501–0891.

**SUPPLEMENTARY INFORMATION:**

#### A. Regulatory Flexibility Act

The General Services Administration certifies that these revisions will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

#### C. Effective Dates

Pursuant to Sections 10001 and 10002 of the FASA, these rules (as well as Sections 1432–1434, 1436–1438, and 2351 (c)–(d) of the Act) are applicable to all proceedings filed on or after May 5, 1995. Section 1435 of the Act shall be applicable to cost applications where

the underlying protest is filed on or after May 5, 1995.

**D. Background**

On December 2, 1994, the Board published a proposed rule with request for comments [59 FR 61861] containing revisions to the Board's rules of procedure. The background information accompanying the proposed rule explained that the revisions were necessitated by the amendment of the Board's jurisdictional statutes, the Contract Disputes Act of 1978 (41 U.S.C. 601–613) and the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), by the FASA. Interested persons were invited to submit comments by January 31, 1995, and the Board received comments from components of two federal agencies, two bar association groups, and one industry association. After consideration of these comments, the Board's members adopted the proposed rules, as revised, by majority vote.

The most significant changes made by the revisions to the Board's rules are highlighted in the next section of the preamble. Following that section, the preamble summarizes the more significant comments received by the Board during the comment period and indicates how these comments were addressed in preparing this final rule.

**E. Highlights of Changes**

Subtitle D of Title I of the FASA names and amends the Brooks Automatic Data Processing Act (40 U.S.C. 759(f)), under which the Board hears and decides protests. Subtitle D of Title II of the FASA amends the Contract Disputes Act of 1978 (41 U.S.C. 601–613), which gives the Board jurisdiction to hear and decide contract disputes.The revisions to the Board's rules contain changes necessitated by the amendment of both the Brooks Act and the Contract Disputes Act. In addition, Section 155 of the Energy Policy Act of 1992 (42 U.S.C. 8287) authorized the Board to review decisions regarding the qualification of firms to enter into energy savings contracts. The Foreword to the rules now includes a statement that, in conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable.

*Definitions*

A definition of ''prevailing party'' (§ 6101.1(b)(12)) has been added to the rules to conform to section 1435(b) of the FASA. In a protest, a ''prevailing party'' is one who has demonstrated that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority. Similarly, the definition of ''protest'' (§ 6101.1(b)(13)) has been changed to that specified in section 1438 of the Act. Finally, in order to conform to the language prescribed in section 1437 of the Act, the term ''working day'' (§ 6101.1(b)(16)) is now defined as any day other than a Saturday, Sunday, or ''legal'' (rather than ''Federal'') holiday.

*Computing Time*

Section 6101.2(c) has been revised to parallel the changes required by section 1433 of the FASA. This section provides that when a period of time prescribed or allowed in the rules is less than 11 days, intervening Saturdays, Sundays, and legal holidays are not counted; in other words, only working days are counted. When the time period is 11 days or more, intervening Saturdays, Sundays, and legal holidays are counted, i.e., all calendar days are counted. The revision states that the only exceptions are the 5-calendar-day period after a debriefing date and the 10-calendar-day period after contract award for filing a protest that requests a suspension hearing.

Three other sections relating to timing have also been revised: (1) Section 6101.19(a)(2) provides that a protest which requests a suspension hearing must be filed no later than 10 calendar days after contract award or 5 calendar days after the debriefing date; (2) § 6101.19(a)(3) provides that the hearing on the merits of a protest shall commence no later than 35 calendar days after the protest is filed (rather than 25 working days); (3) § 6101.29(b) provides that a decision on the merits of a protest shall be issued no later than 65 calendar days after the protest is filed (rather than 45 working days).

*Small Claims and Accelerated Procedures*

The small claims dollar threshold has been changed from $10,000 to $50,000 (§ 6101.13(a)), and the accelerated procedure dollar threshold has been changed from $50,000 to $100,000 (§ 6101.14(a)). These changes implement the amendments to sections 9(a) and 8(f) of the Contract Disputes Act of 1978 (41 U.S.C. §§ 608(a), 607(f)) by subsections 2351 (c) and (d) of the FASA.

*Dismissals; Sanctions*

Section 6101.28(a)(2) has been added to conform to the language specified in Section 1434 of the FASA. The proposed rule provides that the Board may dismiss a protest that it determines is frivolous; has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. Section 6101.18(b) has been amended to provide that the Board may impose appropriate sanctions if it expressly finds that (1) a protest or portion of a protest is frivolous or has been brought or pursued in bad faith; or (2) any person has willfully abused the Board's process during the course of a protest.

*Suspension Hearing and Decision*

Section 6101.19(a)(2) has been amended to change the timing of a protest suspension hearing in order to conform to Section 1433(a)(2) of the FASA. A protest suspension hearing is one in which the Board determines whether to suspend the Administrator's procurement authority or delegation of procurement authority until the protest can be decided. An interested party may request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. The Board must hold the suspension hearing within 5 working days after the date the protest was filed, or in the case of a request for debriefing, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

Section 6101.19(d) (Suspension decision) has been amended to include language specified by Section 1433(a)(1)(C) of the FASA. If a contract award has not been made, a suspension shall not preclude the Federal agency whose procurement authority has been suspended from continuing the procurement process up to but not including contract award, unless the Board determines such action is not in the best interests of the United States.

*Settlement Agreements*

A new paragraph has been added to Section 6101.28 (Dismissals) which incorporates the language specified by Section 1436 of the FASA. Section 6101.28(d) provides that any settlement agreement that dismisses a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and made part of the public record, subject to any protective order considered appropriate by the Board. If a Federal agency is a party to the agreement, the submission of the agreement to the Board must include a memorandum signed by the contracting officer that describes in detail the procurement, the grounds for protest, the Government's position regarding those grounds, the terms of the settlement, and the agency's position regarding the propriety of the

award or proposed award of the contract at issue in the protest.

*Award of Costs*

Section 6101.35(a) has been amended to conform to Section 1435 of the FASA by stating that an appropriate party applying for an award of costs must also be a prevailing party. Also, two additions are made to the application requirements in § 6101.35(c): (1) An applicant asserting that it is a qualifying small business must provide evidence of that fact in its cost application; and (2) an applicant requesting reimbursement of attorney fees that exceed the statutory rate must explain why such fees are justified. Finally, § 6101.35(d) now provides that if the Government contends that fees for consultants or expert witnesses for which reimbursement is sought exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or by the Federal Government (in protests), then it must include evidence of the relevant highest rate in the answer filed in response to the cost application.

**F. Summary of Comments**

The Board received written comments from five commentators: components of two federal agencies, two bar association groups, and one industry association. The majority of the comments focused on five of the rules. The Board carefully considered each comment and adopted some of the suggestions made. The more significant comments are discussed below in a section-by-section format.

*Section 6101.2 (Time: Enlargement; Computation)*

One commentator noted that the Board's proposed rules retained working days as the basis for calculating time periods that are less than 11 days, and suggested that using calendar days to calculate all time periods would be less confusing and more consistent with the FASA, which defines all time limits in calendar days. The Board last changed the method of calculating short time deadlines on January 3, 1994, when the Board rules were amended. At the same time, to reduce confusion, the rules were amended to specify working days or calendar days for each time frame given. Since then, litigants have become familiar with the current system of computing short time frames, and the Board determined that the advantages of leaving that system in place outweighed any advantage to be gained by making the suggested change.

*Section 6101.18 (Sanctions and Other Proceedings)*

As required by the FASA, Section 6106.18 has been amended to provide that the Board may impose appropriate sanctions if it finds that a protest is frivolous or has been brought or pursued in bad faith, or that a person has willfully abused the Board's process during a protest. One commentator suggested that it would be useful for the Board to provide advice in this summary as to the type of conduct that it is likely to view as frivolous or in bad faith. After careful consideration, the Board determined that such matters are more appropriately decided in the context of specific cases. The Board will look to the decisions of the United States Court of Appeals for the Federal Circuit and other case law in determining appropriate sanctions.

*Section 6101.19 (Hearings; Scheduling; Notice; Unexcused Absences; Suspension Decision)*

In order to conform to Section 1433(a)(2) of the FASA, the Board amended § 6101.19(a)(2) to permit an interested party to request a suspension hearing if the underlying protest is filed by the later of (1) the tenth calendar day after the date of contract award; or (2) the fifth calendar day after the debriefing date for any debriefing that is requested and required. According to two commentators, Congress intended to provide meaningful relief to a protester filing a protest within 5 calendar days of a required debriefing, and to obviate the protester's need to file a so-called ''defensive'' protest before receiving all information which the FASA requires the agency to provide. Current Board rules nevertheless require that protests be filed within 10 working days of the date on which the protester knew or should have known of the grounds for its protest (§ 6101.5(b)(3)(ii)). Thus, according to the commentators, for protests based on information known or constructively known at the time an award is announced, the 10-working-day period for filing a protest may expire before a required debriefing is held. Consequently, a protest filed after a required debriefing will be timely for purposes of a suspension hearing but untimely as a protest. The commentators suggest that the rules should provide that a protest (other than one based on information that was known or should have been known prior to contract award), will be considered timely if: (1) It is filed within 10 days after the protester knew (or should have known) of the basis of protest; or (2) it would trigger a suspension under Section 1433(a) of the FASA.

The Board disagrees with this interpretation of the FASA's intent. By providing for agency debriefings, the FASA seeks to remedy the situation in which a protester must file a protest before the basis is known, in order to timely request a suspension hearing. The Act does not change the requirement that a protest be filed within 10 working days of the date on which the basis for the protest is known. When information that serves as the basis for the protest was learned at the debriefing, if a protester files within 5 calendar days after a debriefing, that is also within 10 working days of knowing the basis for the protest. When information that serves as the basis for the protest was learned prior to the debriefing, however, making the change suggested by the commentators would allow the protester to delay its filing and thereby prolong the period of time before contract performance can proceed. The Board decided that to amend its rules for this purpose would be inconsistent with Congress' intent that protests not delay procurements unnecessarily.

Section 6106.19(d) (Proceedings) has been amended to conform to the FASA. It now provides that if contract award has not been made, a suspension shall not preclude an agency from continuing the procurement process up to but not including contract award unless the Board determines such action is not in the best interests of the United States. One commentator suggested that the Board include a ''best interests'' test in the rule to minimize the potential for factual disputes and evidentiary hearings. The Board believes, however, that ''best interests'' are more appropriately determined on a case-by-case basis.

*Section 6101.29 (Decisions)*

One commentator suggested that this rule include the requirement contained in Section 1433 of the FASA which provides that a protest amendment which adds a new ground of protest should be resolved, to the maximum extent possible, within the time limits established for resolving the initial protest. The Board agrees with this comment, and has added language to § 6101.29(b)(2) that reflects the statute.

*Section 6106.35 (Award of Costs)*

Section 1435 of the FASA permits a successful protester to recover reasonable consultant and expert witness fees, but limits such fees (except for small businesses) to the ''highest rate

of compensation for expert witnesses paid by the Federal Government.'' One commentator encouraged the Board to provide guidance in the rules on the manner in which this language will be implemented, for example, by publishing any uniform cap that it intends to impose on consultant fees. In addition, the commentator suggested that if consultant fee caps are to be determined on a case-by-case basis, the Board should indicate which party will have the burden of establishing the fee cap and the factors the Board will consider in determining the applicable cap. The commentator suggested that since the Government is in the best position to obtain the information, it should have the burden of providing evidence of ''the highest rate of compensation for expert witnesses'' paid by the Government. Finally, the commentator suggested that the Board's rules include procedures under which it will allow recovery of attorney fees at higher than the $150 per hour rate established by the FASA.

The Board carefully considered the suggestions made by this commentator and has incorporated several of them in the final rules. First, although the Board determined that it would consider requests for reimbursement of attorney fees that exceed the statutory rate on a case-by-case basis, it amended Rule 6101.35(c)(6) to specify that the applicant must show why such an increase is justified, e.g., an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved. Similarly, the Board added § 6101.35(c)(5), which provides that an applicant asserting that it is a qualifying small business (and thus exempt from the fee limitations) must include evidence thereof in its application.

The Board also determined that it would determine consultant fee caps on a case-by-case basis. However, § 6101.35(d)(1) now provides that if the Government contends that any consultant or expert witness fees claimed by the applicant exceed the highest rate of compensation for expert witnesses paid by the agency (in appeals), or the Federal Government (in protests), it must include in the answer evidence of the relevant highest rate.

**List of Subjects in 48 CFR Part 6101**

Administrative practice and procedure, Government procurement.

For the reasons set out in the preamble, 41 CFR Part 6101 is amended as set forth below:

## PART 6101—RULES OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

1. The authority citation for Part 6101 continues to read as follows:

**Authority:** 40 U.S.C. 759(f)(7); 41 U.S.C. 607(f).

2. Section 6101.0 is revised to read as follows:

### § 6101.0 Foreword.

The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States. The Board also hears and decides protests filed under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), which involve procurements subject to that Act, and conducts proceedings as required under other laws. (The Board also is empowered to review decisions regarding the qualification of firms to enter into energy savings contracts pursuant to 42 U.S.C. 8287. In conducting such reviews, the Board will apply the rules pertinent to protests to the extent practicable. The Board will act in accordance with these rules and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

3. In § 6101.1, paragraph (b)(2) is revised; paragraphs (b)(12) through (15) are redesignated as paragraphs (b)(13) through (16), respectively, and revised; and a new paragraph (b)(12) is added to read as follows:

### § 6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs [Rule 1].

* * * * *

(b) *Definitions.*

(1) * * *

(2) *Application; applicant.* The term ''application'' means a submission to the Board of a request for reimbursement of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, or the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f)(5)(C), pursuant to 6101.35. The term ''applicant'' means a party filing an application.

* * * * *

(12) *Prevailing party.* In a protest, a prevailing party is a party who has demonstrated that a challenged action of a Federal agency violates a statute or regulation or the conditions of a delegation of procurement authority.

(13) *Protest; protester.* (i) The term ''protest'' means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for bids or proposals for a contract for the procurement of property or services;

(B) The cancellation of such a solicitation or other request;

(C) An award or proposed award of such a contract;

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(ii) The term ''protester'' means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(14) *Respondent.* The term ''respondent'' means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, petition, or application.

(15) *Working day.* The term ''working day'' means any day other than a Saturday, Sunday, or legal holiday.

(16) *Working hours.* The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

* * * * *

4. Section 6101.2 is amended by revising paragraph (c) to read as follows:

### § 6101.2 Time; enlargement; computation [Rule 2].

* * * * *

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this part or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted, unless that day is (1) a Saturday, a Sunday, or a legal holiday, or (2) a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or legal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, and in the cases of the 5-day period after a debriefing date and the

10-day period after contract award for filing a protest that requests a suspension hearing (both described in 6101.19(a)(2)), intervening Saturdays, Sundays, and legal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

5. Section 6101.13 is amended by revising the title and the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

**§ 6101.13 Small claims procedure in appeals [Rule 13].**

(a) *Election.* (1) The small claims procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $50,000 or less. * * *

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $50,000, such that the election is inappropriate. * * *

* * * * *

6. Section 6101.14 is amended by revising the first sentence of paragraph (a)(1) and of (a)(2) to read as follows:

**§ 6101.14 Acceleratd procedure in appeals [Rule 14].**

(a) *Election.* (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less. * * *

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. * * *

* * * * *

7. Section 6101.18 is amended by revising paragraph (b) introductory text to read as follows:

**§ 6101.18 Sanctions and other proceedings [Rule 18].**

* * * * *

(b) *Sanctions.* If the Board expressly finds that a protest or a portion of a protest is frivolous or has been brought or pursued in bad faith; or any person has willfully abused the Board's process during the course of a protest, the Board may impose appropriate sanctions. In any type of case, when a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions include:

* * * * *

8. Section 6101.19 is amended by revising paragraphs (a)(2), (a)(3), and (d) to read as follows:

**§ 6101.19 Hearings; scheduling; notice; unexcused absences; suspension decisions [Rule 19].**

(a) *Scheduling of hearings.*

(1) * * *

(2) *Protest suspension hearing.* The Board will, upon timely request by an interested party, hold a hearing to determine whether the Board should suspend the procurement authority of the Administrator or the Administrator's delegation of procurement authority for the protested procurement on an interim basis until the Board can decide the protest. Such a request is timely if the underlying protest is filed by the later of (i) the tenth calendar day after the date of contract award; or (ii) the fifth calendar day after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required. The Board will hold the requested hearing within 5 working days after the date of the filing of the protest or, in the case of a request for debriefing under the provisions of 10 U.S.C. 2305(b)(5), or 41 U.S.C. 253b, within 5 working days after the later of the date of the filing of the protest or the date of the debriefing.

(3) *Protest hearing on merits.* Any hearing on the merits of a protest will commence no later than 35 calendar days after the filing of the protest.

* * * * *

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that: (1) Absent suspension, contract award, if not already made, is likely to occur within 30 calendar days; and (2) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board. If a contract award has not been made, a suspension shall not preclude the Federal agency concerned from continuing the procurement process up to but not including award of the contract unless the Board determines that such action is not in the best interests of the United States. The decision regarding suspension will be by order of the panel chairman and may be oral, to be reduced to writing as soon as practicable.

9. Section 6101.28 is amended by redesignating the three sentences of paragraph (a) as (a)(1) and adding new paragraphs (a)(2) and (d) to read as follows:

**§ 6101.28 Dismissals [Rule 28].**

(a) *Generally.*

(1) * * *

(2) *Protests.* The Board may also dismiss a protest that the Board determines (i) is frivolous; (ii) has been brought or pursued in bad faith; or (iii) does not state on its face a valid basis for protest.

* * * * *

(d) *Settlement agreements.* Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be submitted to the Board and shall be made a part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If a Federal agency is a party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Federal Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

10. Section 6101.29 is amended by revising paragraph (b) to read as follows:

**§ 6101.29 Decisions [Rule 29].**

* * * * *

(b) *Timing of protest decisions.* (1) A decision on the merits of a protest will be issued within 65 calendar days after the filing of the protest, unless the chairman of the Board determines that the specific and unique circumstances of the protest require a longer period. In that event, the Board shall issue a decision within the longer period determined by the chairman of the Board.

(2) In a protest, the Board will, to the maximum extent practicable within the 65-calendar-day period applicable to the original protest, decide all issues, including those raised by amendment or intervention, that are necessary to the resolution of the case. The Board will whenever possible notify the parties prior to the originally scheduled hearing date, or date for record submission, if it believes that because of a new ground of protest raised by an amendment or by an intervention, the protest might not be decided within the original 65-calendar-day period.

11. Section 6101.35 is amended by revising the first sentence of paragraph (a), adding paragraphs (c)(5) and (c)(6), and adding a sentence of the end of paragraph (d)(1) to read as follows:

**§ 6101.35 Award of costs [Rule 35].**

(a) *Requests for costs.* An appropriate prevailing party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Brooks Automatic Data Processing Act, 40 U.S.C. 759(f), the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. * * *

* * * * *

(c) *Application requirements.* * * *

(5) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof.

(6) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings.*

(1) * * * If respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency (appeals), or by the Federal Government (protests), respondent shall include in the answer evidence of such highest rate.

* * * * *

12. Section 6101.36 is amended by revising the third sentence of paragraph (c) to read as follows:

**§ 6101.36 Payment of Board awards [Rule 36].**

* * * * *

(c) *Procedure for filing of certificates of finality.* * * * When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. * * *

* * * * *

13. In the appendix to part 6101, Form No. 4 (Government Certificate of Finality) and Form No. 5 (Appellant/Protester/Intervenor/Applicant Certificate of Finality) are revised to read as follows:

APPENDIX—FORM NOS. 1–5

* * * * *

**Form 4—Board of Contract Appeals**

General Services Administration, Washington, DC 20405

GSBCA _____

_____

_____

_____

Contract/Solicitation No.

_____

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $_____

C. Agency address (regional office if other than central office):

D. Agency Certification.

_____

hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Date _____

Government Agency

By _____

Signature and Title

**Note:** This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

**Form 5—Board of Contract Appeals**

General Services Administration, Washington, DC 20405

GSBCA _____

_____

_____

_____

Contract/Solicitation No.

_____

APPELLANT/PROTESTER/INTERVENOR/APPLICANT CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Protester/Intervenor/Applicant Certification

_____

hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Date _____

Appellant/Protester/Intervenor/Applicant

By _____

Signature and Title

**Note:** This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

Dated: March 23, 1995.

**Stephen M. Daniels,**

*Chairman, GSA Board of Contract Appeals.*

[FR Doc. 95–8135 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–RW–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 675

**[Docket No. 950206040–5040–01; I.D. 032995A]**

## Groundfish of the Bering Sea and Aleutian Islands Area; Inshore Component Pollock in the Aleutian Islands Subarea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the pollock roe season allowance of pollock for the inshore component in the Aleutian Islands subarea.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), March 30, 1995, until 12 midnight, A.l.t., December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the AI was established by the final 1995 initial groundfish specifications (60 FR 8479, February 14, 1995) as 16,838 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), determined, in accordance with § 675.20(a)(8), that the

allowance of pollock TAC for the inshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 15,838 mt after determining that 1,000 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the AI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

## Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 29, 1995.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95–8185 Filed 3–30–95; 3:55 pm]

BILLING CODE 3510–22–F

# Proposed Rules

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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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–NM–255–AD]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections for cracking in the inboard strut-to-diagonal brace attach fittings and repair or replacement, if necessary. This action would require an additional inspection of those attach fittings, and additional inspections in an area beyond that specified in the existing AD. This action also would provide an optional terminating action for the required inspections, and would expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by reports of cracking and severing of the attach fittings. The actions specified by the proposed AD are intended to prevent failure of the strut and separation of an engine from the airplane due to cracking of the inboard strut-to-diagonal brace attach fittings.

**DATES:** Comments must be received by May 30, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–255–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–AD–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On August 13, 1979, the FAA issued AD 79–17–07, amendment 39–3533 (44 FR 50033, August 27, 1979), applicable to certain Boeing Model 747 series airplanes, to require repetitive visual inspections for cracking in the inboard strut-to-diagonal brace attach fittings, and repair or replacement, if necessary. That action was prompted by reports of cracking in the inboard strut-to-diagonal brace attach fittings. The requirements of that AD are intended to prevent structural failure of these attach fittings, and the consequent separation of an engine from the airplane.

Since the issuance of that AD, the FAA has received additional reports of cracking of inboard strut-to-diagonal brace attach fittings. On one airplane that had accumulated 14,151 landings, a 12-inch long crack was detected and, in another case, a severed fitting was reported on an airplane that had accumulated 15,323 landings. Investigation has revealed that the cracking was caused by fatigue. These airplanes had been inspected in accordance with AD 79–17–07. Cracking of the attach fittings, if not detected and corrected in a timely manner, could result in failure of the strut and separation of an engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, which describes the following:

1. Procedures for repetitive visual and high frequency eddy current (HFEC) inspections for cracking of the inboard strut-to-diagonal brace attach fittings;
2. Procedures for reinspections of certain attach fittings at decreased intervals; and
3. Procedures for replacement of certain attach fittings with serviceable fittings.

This service bulletin also describes procedures for accomplishment of a modification that entails removing the aluminum attach fittings and replacing them with steel fittings. Accomplishment of this modification eliminates the need for inspections of the subject area. (This modification is part of the ''Boeing Model 747 Strut and Wing Structural Modification Program,'' described in Boeing Service Bulletin 747–54A2159, dated November 3, 1994.)

Revision 7 of this service bulletin also describes additional action to be

accomplished on airplanes on which the ''terminating modification,'' as provided by AD 79–17–07, was previously installed. This additional action involves sealing a gap between the fitting and the existing closure web, which can be accomplished by either installing a new closure web, or fabricating and installing a new seal plate.

The manufacturer also has identified additional Model 747 series airplanes that are subject to the same cracking conditions addressed by AD 79–17–07; therefore, those additional airplanes are included in the effectivity listing of Revision 7 of the service bulletin.

Based on these data, the FAA has determined that, in addition to adding airplanes to the applicability of this AD, additional actions also are necessary on airplanes that have been inspected in accordance with AD 79–17–07. The FAA finds that repetitive visual inspections and repetitive surface HFEC inspections must be accomplished on the attach fittings. Additionally, the FAA finds that certain attach fittings with known cracking must be inspected at a decreased interval and the attach fitting must be replaced, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 79–17–07 to continue to require repetitive visual inspections to detect cracking of the inboard strut-to-diagonal brace attach fittings, and replacement or repair of the cracking, if necessary. This proposal would add repetitive HFEC inspections to detect cracks of the attach fittings. This proposal also would require that certain attach fittings with cracks be reinspected at decreased intervals, and would require subsequent replacement of the attach fittings of airplanes with certain known cracking. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Additionally, this proposal also would expand the applicability of the rule to include additional affected airplanes.

This proposal also provides for an optional terminating modification for the requirements of the proposed AD. This optional modification entails removing the aluminum attach fittings and replacing them with steel fittings. By a separate rulemaking action [refer to Notice of Proposed Rulemaking, Docket 94–NM–187–AD, (59 FR 65733, December 21, 1994)], the FAA is proposing to require the mandatory accomplishment of this modification (described in Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994) as part of a ''Strut and Wing Structural Modification Program'' developed by Boeing. The intent of that program is to address the cracking condition and other items associated with the engine struts on Boeing Model 747 series airplanes.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.

There are approximately 367 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 152 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $100,320, or $660 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the terminating modification that would be provided by this AD action, it would take approximately 176 work hours to accomplish it, at an average rate of $60 per work hour. The cost of required parts would be $4,752. Based on these figures, the total cost impact of the terminating modification would be $15,312 per airplane.

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3533 (44 FR 50033, August 27, 1979), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 94–NM–255–AD. Supersedes AD 79–17–07, Amendment 39–3533.

*Applicability:* Model 747 series airplanes; as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe

condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of an engine, accomplish the following:

**Note 2:** Paragraph (a) of this AD restates the requirements for initial and repetitive visual inspections contained in paragraphs A., and C., respectively, of AD 79–17–07, amendment 39–3583. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 79–17–07, paragraph (a) of this AD requires that the next scheduled inspection be performed within the intervals specified in (a)(1) or (a)(2), as applicable, after the last inspection performed in accordance with paragraph A. or C. of AD 79–17–07.

(a) For airplanes listed in Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Prior to the accumulation of 5,000 total landings on the airplane, or within 500 hours time-in-service after September 4, 1979 (the effective date of AD 79–17–07, Amendment 39–3533), whichever occurs later, perform a visual inspection of the forward lower diagonal brace fittings of the inboard pylon to detect cracking, in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979, or Revision 7, dated December 21, 1994; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. After the effective date of this AD, only Revision 7 of the service bulletin shall be used.

**Note 3:** Inspections performed prior to the effective date of this AD are considered in compliance with this paragraph if performed in accordance with Boeing Service Bulletin 747–54–2062, Revision 1, dated November 13, 1980; Revision 2, dated March 19, 1981; Revision 3, dated August 28, 1981; Revision 4, dated June 30, 1982; Revision 5, dated June 1, 1984; or Revision 6, dated October 2, 1986.

(1) If no cracking is detected, repeat the inspections at intervals not to exceed 1,000 landings until all affected fittings are replaced with steel fittings in accordance with Revision 7 of the service bulletin.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD until the inspections required by paragraph (b) of this AD are accomplished.

(i) Repair or replace the cracked fitting in accordance with the service bulletin; or

(ii) Rework the cracked fitting in accordance with the service bulletin as required by paragraph (b) of this AD. Thereafter, repeat the inspections at intervals not to exceed 250 landings until the reworked fitting is replaced with a serviceable fitting, or until the inspections required by paragraph (b) of this AD are accomplished.

(b) For airplanes as listed in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Perform a detailed visual inspection and a surface high frequency eddy current (HFEC) inspection to detect cracking of the inboard strut-to-diagonal brace attach fittings, in accordance with the service bulletin at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which a cracked fitting has been reworked in accordance with Boeing Service Bulletin 747–54–2062, dated August 17, 1979: Perform the inspections within 250 landings since the last inspection performed in accordance with paragraph (a)(2)(ii) of this AD.

(2) For airplanes other than those identified in paragraph (b)(1) of this AD: Perform the inspections at the earlier of the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the airplane, or within 1,000 landings after the effective date of this AD, whichever occurs later; or

(ii) Within 1,000 landings since the last inspection performed in accordance with paragraph (a) of this AD.

(c) If no cracking is detected during the inspections required by paragraph (b) of this AD, repeat the inspections thereafter at intervals not to exceed 1,000 landings.

(d) If more than one crack is found during any inspection required by this AD, or if any crack is detected that is beyond the limits specified in Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(e) If any transverse or longitudinal crack is found during the inspection required by paragraph (b) of this AD, and that crack is within the limits specified by Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994: Prior to further flight, stop drill the crack in accordance with the service bulletin, and accomplish the requirements of either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For any transverse crack that is found, accomplish the following:

(i) Prior to further flight, remove the affected fastener and perform an open-hole HFEC inspection to detect cracking of the fastener hole, in accordance with the service bulletin. Thereafter, repeat this inspection within 125 landings.

(ii) Repeat the inspections required by paragraph (b) of this AD within 125 landings after performing them initially.

(iii) If any crack is found during the inspections required by this paragraph and the crack is beyond the limits specified in the service bulletin, prior to further flight, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(iv) Prior to the accumulation of 250 landings following the detection of the transverse cracking, unless previously accomplished, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(2) For any longitudinal crack that is found, accomplish the following:

(i) Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 250 landings.

(ii) Prior to the accumulation of 1,000 landings following detection of the longitudinal cracking, replace the attach fitting with a steel fitting in accordance with the service bulletin.

(f) Replacement of the attach fittings of the strut-to-diagonal brace with steel fittings, in accordance with Boeing Service Bulletin 747–54–2062, Revision 7, dated December 21, 1994, constitutes terminating action for the requirements of this AD.

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

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 29, 1995.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 95–8174 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–13–U

## FEDERAL TRADE COMMISSION

## 16 CFR PART 248

## Request for Comments Concerning Guides for the Beauty and Barber Equipment and Supplies Industry

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission (the ''Commission'') requests public comments on its Guides for the Beauty and Barber Equipment and Supplies Industry. The Commission is also requesting comments about the overall costs and benefits of the Guides for the Beauty and Barber Equipment and Supplies Industry and their overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides.

**DATES:** Written comments will be accepted until June 5, 1995.

**ADDRESSES:** Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Guides for the Beauty and

Barber Equipment and Supplies Industry should be identified as ''16 CFR Part 248—Comment.''

**FOR FURTHER INFORMATION CONTACT:** Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1229.

**SUPPLEMENTARY INFORMATION:** The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or recission.

At this time, the Commission solicits written public comments concerning the Commission's Guides for the Beauty and Barber Equipment and Supplies Industry (the ''Beauty/Barber Supplies Guides,'' or the ''Guides'').

The Beauty/Barber Supplies Guides, like the other industry guides issued by the Commission, ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry.'' 16 CFR 1.5. Conduct inconsistent with the Beauty/Barber Supplies Guides may result in corrective action by the Commission under applicable statutory provisions. The Commission may decide to promulgate an industry guide ''when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission.'' 16 CFR 1.6.

The Beauty/Barber Supplies Guides designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, ''Industry Members'' (as defined in § 248.0 of the Beauty/Barber Supplies Guides) such as barber shops, barber schools, beauty parlors, beauty salons, and beauty clinics. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments. The Beauty/Barber Supplies Guides include, among other things, guidance about the use of trade names, symbols, and depictions; the defamation of competitors or the false disparagement of their products; false invoicing; push money; advertising or promotional allowances, or services or facilities; commercial bribery; enticing away employees of competitors; inducing breach of contract; exclusive dealing arrangements; and price discrimination.

The Commission believes that certain sections of the Beauty/Barber Supplies Guides may not be so specific to the beauty and barber industry that they are warranted in light of general guidance available elsewhere. For example, the statement on discriminatory pricing may be in large part needlessly duplicative of sections (a) and (f) of the Robinson-Patman Act, and the statement on discriminatory promotional allowances and services may be duplicative of the so-called Fred Meyer Guides, which interpret sections (d) and (e) of the Robinson-Patman Act and section 5 of the Federal Trade Commission Act. *See* Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240. Similarly, other sections of the Beauty/Barber Supplies Guides describe general principles derived from the antitrust laws and consumer protection laws enforced by the Commission, but in ways that may not be especially specific to the beauty and barber equipment industry.

If the Commission elects to retain the Beauty/Barber Supplies Guides after conducting this review, it intends to update certain terms to reflect policy changes that have occurred since the Beauty/Barber Supplies Guides were last revised in 1968. The phrase ''capacity and tendency or effect of misleading or deceiving,'' in §§ 248.1, 248.5, and 248.6, may be changed to conform with the language regarding deception that is set forth in *Cliffdale Associates, Inc.*, 103 F.T.C. 110 (1984), and subsequent cases.

The Commission also may provide updated notations to other Commission guides which supplement the Beauty/Barber Supplies Guides. Specifically, a notation may be appended after § 248.0 to advise that certain ''Industry Members,'' such as beauty schools, beauty clinics, and barber schools, may refer to the Commission's Guides for Private Vocational and Home Study Schools, 16 CFR part 254, for additional guidance. A notation may be inserted following § 248.14 of the Beauty/Barber Supplies Guides to indicate that the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR part 240, furnish detailed guidance regarding advertising or promotional allowances, or services or facilities, and should be considered as supplementing § 248.14.

In addition, the Beauty/Barber Supplies Guides currently include, in footnote 1 to § 248.1, a notation to the Commission's Guides Against Deceptive Advertising of Guarantees, 16 CFR part 239. A second notation following § 248.4 of the Guides refers to the Commission's Guides Against Deceptive Pricing, 16 CFR part 233. These notations may be modified so that the language contained therein will be consistent.

Accordingly, the Commission solicits public comments on the following questions:

1. Is there a continuing need for the Beauty/Barber Supplies Guides/

a. Do members of the beauty and barber equipment and supplies industry require these industry-specific guides for information about applicable legal standards, or can equally helpful guidance be obtained from more general sources such as the Fred Meyer guides, 16 CFR part 240?

b. What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

c. Have the Guides imposed costs on purchasers?

d. Do the Guides continue to address practices which are of concern to members of the beauty and barber equipment and supplies industry?

2. What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

a. How would these changes affect the costs the Guides impose on firms subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?

a. Have the Guides provided benefits to such firms?

4. What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their requirements?

a. How would these changes affect the benefits provided by the Guides?

5. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?

**Authority:** 15 U.S.C. 41–58.

**List of Subjects in 16 CFR Part 248**

Advertising, Trade practices, Deceptive pricing, Price discrimination, Promotional allowances.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–8189 Filed 4–3–95; 8:45 am]

BILLING CODE 6750–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[OH69–1–6680b; FRL–5175–3]**

### Approval and Promulgation of Implementation Plans Ohio; Enhanced Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is taking action to approve, through a direct final procedure, the State implementation plan (SIP) revision submitted by the State of Ohio for the purpose of controlling the motor vehicle emissions of hydrocarbons. Emissions will be controlled by implementing an enhanced inspection and maintenance (I/M) program in areas classified as moderate nonattainment. The State currently operates I/M programs in the Cleveland and Cincinnati areas to achieve reductions in emissions of carbon monoxide and volatile organic compounds. The program proposed here calls for enhanced I/M in the metropolitan areas of Cleveland-Akron-Lorain, Cincinnati, and Dayton-Springfield which are moderate nonattainment areas for ozone. Moderate nonattainment areas are required to implement a basic I/M program. These areas have opted up to enhanced I/M because of the greater cost-effective emission reduction available compared to basic programs. The USEPA is approving the State's I/M SIP revision as a direct final rule without prior proposal because the USEPA views this as a noncontroversial action and anticipates no critical or adverse comments.

In the final rules section of this **Federal Register**, USEPA is approving the State's SIP revision request as a direct final rule without prior proposal because USEPA views the approval of the inspection and maintenance program as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to the direct final rule, no further activity is contemplated in regards to this proposed rule. If 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 institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this notice should do so at this time.

**DATES:** Comments must be received on or before May 4, 1995.

**ADDRESSES:** Written comments should be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Paskevicz, at the above address or call (312) 886–6084.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401–7671(q).

Dated: March 10, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 95–8222 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

### 40 CFR Parts 52 and 81

**[IL116–1–6792b; FRL–5182–4]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Environmental Protection Agency (USEPA) is approving a State Implementation Plan (SIP) revision request to redesignate two sulfur dioxide ($SO_2$) nonattainment areas in the State of Illinois to attainment. The USEPA is also approving their accompanying maintenance plans as SIP revisions. The redesignation requests and maintenance plans were submitted by the Illinois Environmental Protection Agency (IEPA) for the following $SO_2$ nonattainment areas: Peoria County (Hollis and Peoria Townships) and Tazewell County (Groveland Township). The State has met the requirements for redesignation contained in the Clean Air Act (the Act), as amended in 1990. The redesignation requests are based on ambient monitoring data that show no violations of the $SO_2$ National Ambient Air Quality Standard (NAAQS). In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation requests and the supporting maintenance plans as a direct final rule without prior proposal because USEPA 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 that direct final rule, no further activity is contemplated in relation to this proposed rule. If 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. USEPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time. Adverse comments received concerning a specific geographic area, Peoria or Tazewell Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

**DATES:** Comments on this proposed rule must be received on or before May 4, 1995.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Fayette Bright, Environmental Protection Specialist, Regulatory Development Section, Regulatory Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: March 22, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95–8214 Filed 4–3–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7130]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base (100-year) flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **OHIO** | |
| **Payne (village), Paulding County** | |
| *Flatrock Creek:* | |
| At Sitzler Road | *741 |
| Approximately 0.9 mile upstream of Sitzler Road | *743 |
| **Maps available for inspection** at the Village of Payne Water Plant, 211 North Laura Street, Payne, Ohio. | |
| Send comments to The Honorable Michael Brigner, Mayor of the Village of Payne, 131 North Main Street, Payne, Ohio 45880. | |

**§ 67.4 [Amended]**

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Illinois | Bannockburn (Village) Lake County. | West Fork North Branch Chicago River. | Approximately 1,150 feet upstream of Duffy Lane. | *667 | *666 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,400 feet upstream of Duffy Lane. | *665 | *664 |
| | | Middle Fork North Branch Chicago River. | Approximately 650 feet upstream of Half Day Road. | *658 | *659 |
| | | | Approximately 0.81 mile downstream of Half Day Road (State Route 22). | *658 | *659 |

Maps available for inspection at the Municipal Building, 2275 Telegraph Road, Bannockburn, Illinois.

Send comments to The Honorable William S. Truckenbord, President of the Village of Bannockburn, 2275 Telegraph Road, Bannockburn, Illinois 60015.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Beach Park (Village) Lake County. | Lake Michigan | For the entire length within the community. | *584 | *585 |

Maps available for inspection at the Municipal Building, 11270 Wadsworth Road, Beach Park, Illinois.

Send comments to The Honorable H. James Solomon, Major of the Village of Beach Park, 11270 Wadsworth Road, Beach Park, Illinois 60099.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Buffalo Grove (Village) Lake County. | McDonald Creek | Approvimately 160 feet upstream of Mill Creek Drive. | *694 | *693 |
| | | | At Mill Creek Drive | *694 | *693 |

Maps available for inspection at the Municipal Building, 50 Raupp Boulevard, Buffalo Grove, Illinois.

Send comments to The Honorable Sidney Mathias, President of the Village of Buffalo Grove, 50 Raupp Boulevard, Buffalo Grove, Illinois 60089.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Central City (Village) Marion County. | Crooked Creek | Approximately 1,400 feet downstream of Illinois Central Railroad. | *466 | *465 |
| | | | Approximately 2,700 feet upstream of new U.S. Route 51. | *471 | *469 |

Maps available for inspection at the Village Hall, 141 North Harrison, Centralia, Illinois.

Send comments to The Honorable Kenneth Buchanan, Mayor of the Village of Central City, 141 North Harrison, Centralia, Illinois 62801.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Deerfield (Village) Lake County. | Middle Fork North Chicago River. | At Lake-Cook Road (County boundary) | *650 | *651 |
| | | | Approximately 0.8 mile downstream of State Route 22 (Half Day Road). | *657 | *658 |
| | | West Fork North Branch Chicago River. | At Interstate 94 | *653 | *651 |
| | | | Approximately 100 feet upstream of Montgomery Road. | *665 | *660 |

Maps available for inspection at the Municipal Building, 850 Waukegan Road, Deerfield, Illinois.

Send comments to The Honorable Bernard Forrest, Mayor of the Village of Deerfield, 850 Waukegan Road, Deefield, Illinois 60015.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Elmhurst (City) DuPage County. | Unnamed Ponding Area | Located north of Van Buren Street, south of Madison Street, east of Hillside Avenue, and west of Bryan Avenue. | *664 | *662 |
| | | | Located north of Butterfield Road, south of Harrison Street, east of Spring Avenue, and west of Saylor Avenue. | *664 | *661 |

Maps available for inspection at the Public Works Department, Elmhurst City Hall, 209 North York Street, Elmhurst, Illinois.

Send comments to The Honorable Thomas D. Marcucci, Mayor of the City of Elmhurst, 209 North York Street, Elmhurst, Illinois 60126–2759.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Grayslake (Village) Lake County. | Mil Creek | At intersection of Bonnie Brae Avenue and Pierce Court. | *772 | *773 |

Maps available for inspection at the Municipal Building, 33 South Whitney Street, Grayslake, Illinois.

Send comments to The Honorable Pat Carey, Mayor of the Village of Grayslake, 33 South Whitney Street, Grayslake, Illinois 60030.

| | | | | | |
|---|---|---|---|---|---|
| Illinois | Green Oaks (Village) Lake County. | Tributary to Middle Fork North Branch Chicago River. | Entire shoreline within the community | None | *682 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Municipal Building, 2020 O'Plaine Road, Green Oaks, Illinois. | | | | | |
| Send comments to The Honorable Thomas Adams, Mayor of the Village of Green Oaks, 2020 O'Plaine Road, Green Oaks, Illinois 60048. | | | | | |
| Illinois | Gurnee (Village) Lake County. | South Fork Gurnee Tributary. | At Washington Street crossing | None | *687 |
| Maps available for inspection at the Municipal Building, 325 North O'Plaine Road, Green Oaks, Illinois. | | | | | |
| Send comments to The Honorable Richard Welton, Mayor of the Village of Green Oaks, 325 North O'Plaine Road, Green Oaks, Illinois 60031. | | | | | |
| Illinois | Hawthorn Woods (Village) Lake County. | West Branch Indian Creek | Approximately 1,500 feet east of intersection of Midlothian Road and Marilyn Lane. | *789 | *792 |
| Maps available for inspection at the Municipal Building, 2 Lagoon Drive, Hawthorn Woods, Illinois. | | | | | |
| Send comments to Mr. Doug Challos, President of the Village of Hawthorn Woods, 2 Lagoon Drive, Hawthorn Woods, Illinois 60047. | | | | | |
| Illinois | Highland Park (City) Lake County. | Lake Michigan | Entire shoreline within the community | *584 | *585 |
| | | Skokie River | At the county boundary (Lake Cook Road). | *632 | *633 |
| | | | At Old Elm Road | *651 | *650 |
| | | Middle Fork North Branch Chicago River. | Approximately 1,100 feet upstream of Half Day Road. | *558 | *559 |
| | | | At Lake Cook Road (county boundary) | *650 | *651 |
| Maps available for inspection at the Municipal Building, 1707 St. John Avenue, Highland Park, Illinois. | | | | | |
| Send comments to The Honorable Daniel Pierce, Mayor of the City of Highland Park, 1707 St. John Avenue, Highland Park, Illinois 60035. | | | | | |
| Illinois | Highwood (City) Lake County. | Lake Michigan | Entire shoreline within community | None | *585 |
| Maps available for inspection at the Municipal Building, 17 Highwood Avenue, Highwood, Illinois. | | | | | |
| Send comments to The Honorable John Sirotti, Mayor of the City of Highwood, 17 Highwood Avenue, Highwood, Illinois 60040. | | | | | |
| Illinois | Lake Bluff (Village) Lake County. | Lake Michigan | Entire shoreline within community | *584 | *585 |
| | | Skokie River | Approximately 1,650 feet upstream of Metra Railroad bridge. | *669 | *666 |
| | | | Approximately 100 feet downstream of Elgin Joliet and Eastern Railroad. | *671 | *670 |
| Maps available for inspection at the Municipal Building, Village of Lake Bluff, 40 East Center Avenue, Lake Bluff, Illinois. | | | | | |
| Send comments to The Honorable Fred G. Wacker III, President of the Village of Lake Bludd, 40 East Center Avenue, Lake Bluff, Illinois 60048. | | | | | |
| Illinois | Lake County (Unincorporated Areas). | Timber Lake Drain | Approximately 125 feet downstream of State Route 59. | None | *750 |
| | | | At downstream side of State Route 59 | None | *750 |
| | | Lake Michigan | Entire shoreline within community | *584 | *585 |
| | | Honey Lake Drain | Approximately 375 feet upstream of Pinewood Drive. | None | *830 |
| | | | Approximately 650 feet upstream of Pinewood Drive. | None | *831 |
| | | North Flint Creek | Backwater area approximately 1,500 feet east of intersection of Miller Road and State Route 59. | None | *768 |
| | | | Approximately 1,650 feet upstream of Echo Lake Road. | None | *852 |
| | | Diamond Lake | Entire shoreline within county | *742 | *744 |
| | | Echo Lake | Entire shoreline within community | None | *844 |
| | | Flint Creek Tributary | Approximately 100 feet downstream of Elgin, Joliet, and Eastern Railroad. | None | *815 |
| | | | Approximately 200 feet downstream of North Lake Shore Drive. | None | *816 |
| | | West Fork North Branch Chicago River. | Approximately 100 feet upstream of Montgomery Road. | *664 | *660 |
| | | | At Everett Road | None | *672 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Tributary A to Buffalo Creek. | Approximately 800 feet upstream of confluence with Buffalo Creek. | *696 | *697 |
| | | | Approximately 1,600 feet upstream of confluence with Buffalo Creek. | None | *699 |
| | | Middle Fork North Branch Chicago River. | Approximately 1,350 feet downstream of Half Day Road (State Route 22). | *658 | *659 |
| | | | Approximately 100 feet downstream of Interstate 94. | None | *711 |
| | | Bruce Tributary ..... | Approximately 500 feet north of North Bruce Circle. | None | *837 |
| | | | Approximately 400 feet upstream of the upstream corporate limits. | None | *837 |
| | | Diamond Lake Drain ..... | Approximately 100 feet downstream of Elgin, Joilet, and Eastern Railroad. | *725 | *728 |
| | | | Approximately 1,100 feet upstream of Elgin, Joliet, and Eastern Railroad. | *728 | *731 |
| | | Skokie River ..... | Approximately 300 feet upstream of Elgin, Joliet, and Eastern Railroad. | *673 | *672 |
| | | | Approximately 1,450 feet upstream of 29th Street. | None | *700 |
| | | Unnamed Ponding Area ... | Approximately 500 feet Northeast of the intersection of Belvidere Road and Darrell Road. | None | *752 |
| | | Tributary to Middle Fork North Branch Chicago River. | Entire length within the county ..... | *682 | *682 |

Maps available for inspection at the Lake County Planning and Zoning Department, 18 North County Street, Waukegan, Illinois.

Send comments to The Honorable Robert Depke, Chairman of the Lake County Board of Commissioners, 18 North County Street, Waukegan, Illinois 60085.

| | | | | | |
|---|---|---|---|---|---|
| Illinois ..... | Lake Forest (City) Lake County. | Lake Michigan ..... | Entire shoreline within community ..... | *584 | *585 |
| | | Middle Fork North Branch Chicago River. | Approximately 1,450 feet upstream of State Route 22 (Half Day Road). | *660 | *659 |
| | | | Approximately 4,200 feet downstream of Wisconsin Central Limited Railroad crossing. | *670 | *669 |
| | | Skokie River ..... | Approximately 100 feet upstream of Old Elm Road. | *651 | *652 |
| | | | Approximately 1,650 feet upstream of Metro Railroad bridge. | *669 | *666 |
| | | West Fork North Branch Chicago River. | Approximately 0.3 mile upstream of Half Day Road (State Route 22). | None | *668 |
| | | | Approximately 0.3 mile downstream of Everett Road. | None | *671 |

Maps available for inspection at the Municipal Building, 220 East Deerpath Road, Lake Forest, Illinois.

Send comments to The Honorable Charles Clarke, Mayor of the City of Lake Forest, 220 Deerpath Road, Lake Forest, Illinois 60045.

| | | | | | |
|---|---|---|---|---|---|
| Illinois ..... | Libertyville (Village) Lake County. | Seavey Drain Ditch ..... | Approximately 500 feet west of the intersection of Sylvan Drive and Dawes Street. | None | *701 |
| | | Bull Creek ..... | Approximately 1,100 feet downstream of State Route 21. | None | *671 |
| | | | Approximately 0.42 mile upstream of Butterfield Road. | None | *715 |
| | | Bull Creek Tributary ..... | At confluence of Bull Creek ..... | None | *676 |
| | | | Approximately 1,850 feet upstream of confluence with Bull Creek. | None | *687 |

Maps available for inspection at the Municipal Building, 200 East Cook Avenue, Libertyville, Illinois.

Send comments to The Honorable Joan Eckman, Mayor of the Village of Libertyville, 200 East Cook Avenue, Libertyville, Illinois 60048.

| | | | | | |
|---|---|---|---|---|---|
| Illinois ..... | Lincolnshire (Village) Lake County. | West Fork North Branch Chicago River. | Approximately 1,500 feet upstream of Duffy Lane. | *667 | *666 |
| | | | Approximately 1.1 miles upstream of Half Day Road (State Route 22). | None | *671 |
| | | Aptahisic Creek ..... | Approximately 2,750 feet upstream of Busch Road. | None | *657 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 2,400 feet upstream of Busch Road. | None | *658 |

Maps available for inspection at the Municipal Building, One Old Half Day Road, Lincolnshire, Illinois.

Send comments to the Honorable Barbara LaPiana, Mayor of the Village of Lincolnshire, One Old Half Day Road, Lincolnshire, Illinois 60069.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | North Barrington (Village) Lake County. | North Flint Creek | Approximately 400 feet upstream of Rugby Road. | None | *805 |
| | | | Approximately 1,250 feet upstream of Rugby Road. | None | *808 |

Maps available for inspection at the Municipal Building, 111 North Old Barrington Road, North Barrington, Illinois.

Send comments to The Honorable Walter Clarke, President of the Village of North Barrington, 111 North Old Barrington Road, North Barrington, Illinois 60010.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | North Chicago (City) Lake County. | Lake Michigan | Entire shoreline within the community | *584 | *585 |
| | | Skokie River | Approximately 100 feet downstream of Elgin, Joliet and Eastern Railroad. | None | *670 |
| | | | Approximately 1,450 feet upstream of 29th Street. | None | *700 |
| | | Middle Fork North Branch Chicago River. | Approximately 250 feet downstream of Atkinson Road. | None | *679 |
| | | | Approximately 350 feet upstream of Atkinson Road. | None | *682 |

Maps available for inspection at the Municipal Building, 1850 Lewis Avenue, North Chicago, Illinois.

Send comments to The Honorable Bobby Thompson, Mayor of the City of North Chicago, 1850 Lewis Avenue, North Chicago, Illinois 60064

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | Oakwood (Village) Paulding County. | Auglaize River | Approximately 0.5 mile downstream of Norfolk and Southern Railroad. | None | *711 |
| | | | Approximately 0.6 mile upstream of State Route 613. | None | *712 |

Maps available for inspection at the Village Hall, 228 North First Street, Oakwood, Ohio.

Send comments to The Honorable Martin W. Harmon, Mayor of the Village of Oakwood, P.O. Box 128, Oakwood, Ohio 45873.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | Park City (City) Lake County. | Skokie River | On downstream side of Washington Street bridge. | None | *700 |
| | | | Approximately 0.4 mile upstream of 29th Street. | None | *700 |

Maps available for inspection at the Municipal Building, 3420 Kehm Boulevard, Park City, Illinois.

Send comments to The Honorable Robert Allen, Mayor of the City of Park City, 3420 Khm Boulevard, Park City, Illinois 60085.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | Riverwoods (Village) Lake County. | West Fork North Branch Chicago River. | At Interstate 94 | *665 | *664 |
| | | | Approximately 0.4 mile upstream of Duffy Lane. | *667 | *666 |

Maps available for inspection at the Municipal Building, 300 Portwine Road, Riverwoods, Illinois.

Send comments to The Honorable Charles Smith, President of the Village of Riverwoods, 300 Portwine Road, Riverwoods, Illinois 60015–3898.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | Vernon Hills (Village) Lake County. | Indian Creek | Ponding areas south of Westmoreland Drive east of intersection with State Highway 83. | None | *703 |
| | | Diamond Lake Drain | At State Route 83 | *712 | *721 |
| | | | Approximately 1,000 feet upstream of State Route 83. | *715 | *722 |

Maps available for inspection at the Municipal Building, 290 Evergreen Drive, Vernon Hills, Illinois.

Send comments to The Honorable Roger Byrne, Mayor of the Village of Vernon Hills, 290 Evergreen Drive, Vernon Hills, Illinois 60061.

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| Illinois | Waukegan (City) Lake County. | Lake Michigan | Entire shoreline within the community | *584 | *585 |
| | | Irondale Creek | Approximately 0.49 mile upstream of Guerin Road. | None | *676 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 0.59 mile upstream of Guerin Road. | None | *679 |
| | | Skokie River | Just downstream of Washington Street | None | *700 |
| | | | Approximately 500 feet upstream of 29th Street. | None | *700 |
| | | Middle Fork North Branch Chicago River. | Approximately 1,250 feet downstream of Wisconsin Central Limited Railroad. | None | *692 |
| | | | Approximately 1,600 feet downstream of Interstate 94. | None | *704 |
| Maps available for inspection at the Municipal Building, 410 Robert V. Sabonjian Place, Waukegan, Illinois. | | | | | |
| Send comments to The Honorable William F. Durkin, Mayor of the City of Waukegan, 410 Robert V. Sabonjian Place, Waukegan, Illinois 60085. | | | | | |
| Illinois | Winthrop Harbor (Village) Lake County. | Lake Michigan | Entire shoreline within the community | *584 | *585 |
| | | Kellogg Ravine | Approximately 1,150 feet downstream of Metra Crossing. | None | *653 |
| | | | Approximately 1,900 feet downstream of State Highway 173. | None | *664 |
| Maps available for inspection at the Municipal Building, 830 Sheridan Road, Winthrop Harbor, Illinois. | | | | | |
| Send comments to The Honorable Michael D. Lambert, Mayor of the Village of Winthrop Harbor, 830 Sheridan Road, Winthrop Harbor, Illinois 60096. | | | | | |
| Illinois | Zion (City) Lake County. | Lake Michigan | Entire shoreline within the community | *584 | *585 |
| | | Kellogg Ravine | Approximately 0.76 mile upstream of confluence with North Branch Kellogg Ravine. | None | *631 |
| | | | Approximately 1.70 miles upstream of confluence with North Branch Kellogg Ravine. | None | *643 |
| Maps available for inspection at the Municipal Building, 2828 Sheridan Road, Zion, Illinois. | | | | | |
| Send comments to The Honorable Billy J. McCullough, Mayor of the City of Zion, 2828 Sheridan Road, Zion, Illinois 60099. | | | | | |
| Michigan | Plymouth (Charter Township) Wayne County. | Middle River Rouge | Approximately 2,100 feet downstream of I–275 (At downstream corporate limits). | None | *667 |
| | | | Approximately 1,000 feet upstream of Phoenix Dam (At upstream corporate limits). | None | *731 |
| Maps available for inspection at the Township Hall, 42350 Ann Arbor Road, Plymouth, Michigan. | | | | | |
| Send comments to Ms. Kathleen Keen-McCarthy, Charter Township of Plymouth Supervisor, 42350 Ann Arbor Road, Plymouth, Michigan 48170. | | | | | |
| Michigan | Plymouth (City) Wayne County. | Middle River Rouge | Approximately 400 feet downstream of Edward Hines Drive (Downstream of corporate limits). | None | *671 |
| | | | Approximately 600 feet upstream of Mill Street. | None | *709 |
| Maps available for inspection at the City Hall, 201 South Main Street, Plymouth, Michigan. | | | | | |
| Send comments to The Honorable Douglas Miller, Mayor of the City of Plymouth, 201 South Main Street, Plymouth, Michigan 48170–1688. | | | | | |
| New Jersey | Cape May Point (Borough). | Atlantic Ocean | Approximately 100 feet southwest of the intersection of Harvard and Coral Avenues. | *10 | *12 |
| | | | Approximately 300 feet southwest of the intersection of Harvard and Coral Avenues. | *14 | *15 |
| | | | At the intersection of Pearl Avenue and Cape Avenue. | *None | *10 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Cape May Point Municipal Building, Cape May Point, New Jersey. | | | | | |
| Send comments to The Honorable Malcolm Fraser, Mayor of the Borough of Cape May Point, P.O. Box 323, Cape May Point, New Jersey 08212. | | | | | |
| New Jersey | Newark (City) Essex County. | Peddie Ditch | West of main Newark International Airport terminal. | *10 | *9.5 |
| | | Port Newark Channel | Intersection of Import Street and Marsh Street. | *10 | *9.5 |
| | | Newark Bay | At confluence of Port Newark Channel | *10 | *9.5 |
| | | Elizabeth Channel | Entire length within the City of Newark | *10 | *9.5 |
| Maps available for inspection at the Newark City Hall, Department of Engineering, 920 Broad Street, Newark, New Jersey. | | | | | |
| Send comments to The Honorable Sharpe James, Major of the City of Newark, 920 Broad Street, Newark, New Jersey 07102. | | | | | |
| Ohio | Florida (Village) Henry County. | Maumee River | Approximately 0.57 mile downstream of the Henry Street bridge. | *None | *663 |
| | | | Approximately 1,700 feet upstream of the Henry Street bridge. | *None | *665 |
| Maps available for inspection at the Village of Florida Clerk's Office, East High Street, Route 2, Napoleon, Ohio. | | | | | |
| Send comments to The Honorable Katherine Gessner, Mayor of the Village of Florida, 103 South Canal Street, Route 2, Napoleon, Ohio 43545. | | | | | |
| Ohio | Henry County (Unincorporated Areas). | Maumee River | Approximately 1.9 miles downstream of the confluence of Big Creek. | None | *650 |
| | | | Approximately 2 miles upstream of County Road 2 (Henry Street). | None | *667 |
| Maps available for inspection at the Henry County Planning Office, 104 East Washington Street, Hahn Center, Suite 301, Napoleon, Ohio. | | | | | |
| Send comments to Mr. Richard C. Bertz, President of the Henry County Board of Commissioners, P.O. Box 546, Napoleon, Ohio 43454. | | | | | |
| Ohio | Louisville (City) Stark County. | Broad-Monter Creek | At State Route 44 | *1104 | *1102 |
| | | | Approximately 500 feet upstream of Brookfield Avenue. | None | *1160 |
| | | North Chapel Creek | Approximately 660 feet upstream of the confluence with East Branch Nimishillen Creek. | *1103 | *1104 |
| | | | At upstream corporate limits | None | *1130 |
| Maps available for inspection at the City of Louisville, Planning and Development, 215 South Mill Street, Louisville, Ohio. | | | | | |
| Send comments to Mr. Robert Miller, Louisville City Manager, 215 South Mill Street, Louisville, Ohio 44641. | | | | | |
| Ohio | Paulding County (Unincorporated Areas). | Maumee River | Approximately 0.6 mile downstream of downstream county boundary. | None | *695 |
| | | | Approximately 0.2 mile upstream of upstream county boundary. | None | *724 |
| | | Auglaize River | Approximately 880 feet upstream of confluence at Flatrock Creek. | None | *704 |
| | | | At upstream county boundary | None | *715 |
| | | Flatrock Creek/Auglaize River Overflow Channel. | At upstream of County Route 171 | None | *704 |
| | | | At diversion from Auglaize River | None | *706 |
| Maps available for inspection at the Paulding County Commissioners Office, 115 North William Street, Paulding, Ohio. | | | | | |
| Send comments to Mr. Carl Langham, 115 North William Street, Paulding, Ohio 45879. | | | | | |
| Pennsylvania | Hampden (Township) Cumberland County. | Navy Ship Parts Control Center. | At the confluence with Trindle Spring Run | None | *378 |
| | | Drainage Channel | Approximately 0.4 mile upstream of the second Gabion Dam. | None | *417 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. * Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Hampden Township Building, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania. | | | | | |
| Send comments to Mr. John E. Bradley, Jr., Hampden Township Manager, 230 South Sporting Hill Road, Mechanicsburg, Pennsylvania 17055–3097. | | | | | |
| Pennsylvania | Mount Holly Spring (Borough) Cumberland County. | Mountain Creek | Approximately 900 feet downstream of Conrail. | *536 | *538 |
| | | | Approximately 300 feet downstream of upstream corporate limits. | *600 | *600 |
| Maps available for inspection at the Mount Holly Springs Municipal Building, 200 Harmon Street, Mount Holly Springs, Pennsylvania. | | | | | |
| Send comments to Mr. James Collins II, Borough of Mount Holly Springs Council President, 200 Harmon Street, Mount Holly Springs, Pennsylvania 17065. | | | | | |
| Pennsylvania | Oneida (Township) Huntingdon County. | Juniata River | At the Borough of Huntingdon northern corporate limits. | None | *638 |
| | | | Approximately 1,100 feet upstream of the northern corporate limits of the Borough of Huntingdon. | None | *639 |
| | | Standing Stone Creek | At the southern corporate limits of the Borough of Huntingdon. | None | *615 |
| | | | Approximately 500 feet upstream of the southeastern corporate limits of the Borough of Huntingdon. | None | *615 |
| Maps available for inspection at the Township of Oneida, Stone Creek Road, Oneida, Pennsylvania. | | | | | |
| Send comments to Mr. John A. Wagner, Chairman of the Township of Oneida, R.D. 2, Huntingdon, Pennsylvania 16652. | | | | | |
| Pennsylvania | Philadelphia (City) Philadelphia County. | Schuylkill River | Approximately 1,600 feet upstream of Passyunk Avenue. | *11 | *10 |
| | | | Approximately 1.4 miles upstream of Flat Rock Dam (At the upstream county boundary). | *57 | *54 |
| | | Cobbs Creek | Approximately 1,275 feet upstream of Market Street. | *74 | *73 |
| | | | Approximately 0.3 mile downstream of confluence with Indian Creek. | *87 | *86 |
| | | Byberry Creek | At confluence with Poquessing Creek | *28 | *27 |
| | | | At the downstream side of Knights Road | *28 | *27 |
| Maps available for inspection at the Philadelphia Planning Commission, 1515 Market Street, Philadelphia, Pennsylvania or the Department of Licenses and Inspection, 1600 Arch Street, Room 505, Philadelphia, Pennsylvania 19102. | | | | | |
| Send comments to Mr. Edward G. Rendell, Mayor of the City of Philadelphia, Room 215, City Hall, Philadelphia, Pennsylvania 19107. | | | | | |
| Pennsylvania | South Middleton (Township) Cumberland County. | Mountain Creek | Approximately 650 feet upstream of confluence with Yellow Breeches Creek. | *505 | *506 |
| | | | Approximately 1.1 miles upstream of the Borough of Mount Holly Springs southern corporate limits. | None | *613 |
| Maps available for inspection at the Township Building, 520 Park Drive, Boiling Springs, Pennsylvania. | | | | | |
| Send comments to Mr. Duff Manweiler, Chairman of the Township of South Middleton Board of Supervisors, 520 Park Drive, Boiling Springs, Pennsylvania 17007. | | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8177 Filed 4–3–95; 8:45 am]

**BILLING CODE 6718–03–P**

## 44 CFR Part 67

**[Docket No. FEMA–7134]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show

evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Arkansas ..... | Calhoun County (Unincorporated Areas). | Two Bayou Main Canal .... | Approximately 300 feet downstream of State Highway 4. | None | *113 |
| | | | Just downstream of a railroad spur located approximately 2,000 feet upstream of Dogwood Creek. | None | *123 |
| | | | Just downstream of State Highway 274 ... | None | *127 |
| | | | Approximately 200 feet upstream of divergence from Two Bayou Old Channel. | None | *135 |
| | | | Approximately 900 feet downstream of State Highway 203 and East Camden and Highland Railroad. | None | *155 |
| | | | Approximately 17,540 feet upstream of East Camden and Highland Railroad. | None | *185 |
| | | Two Bayou Old Channel .. | Approximately 300 feet downstream of State Highway 274. | None | *120 |
| | | | At County Road ..... | None | *128 |
| | | | Approximately 1,000 feet downstream of divergence from Two Bayou Main Canal. | None | *134 |
| | | Dogwood Creek ..... | Approximately 200 feet upstream of confluence with Two Bayou Main Canal. | None | *120 |
| | | | Approximately 200 feet upstream of State Highway 274. | None | *135 |
| | | | Approximately 200 feet upstream of State Highway 203. | None | *175 |
| | | | Approximately 11,680 feet upstream of State Highway 203. | None | *205 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Dogwood Creek Tributary . | Approximately 700 feet upstream of confluence with Dogwood Creek. | None | *145 |
| | | | Just upstream of an unnamed road located approximately 8,240 feet above mouth. | None | *152 |

Maps are available for inspection at the Calhoun County Judge's Office, County Courthouse (in County Square), 2nd and Main Street, Hampton, Arkansas.

Send comments to The Honorable Arthur Jones, County Judge, Calhoun County, County Courthouse, P.O. Box 626, Hampton, Arkansas 71744.

| | | | | | |
|---|---|---|---|---|---|
| Arkansas ..... | East Camden (City) Ouachita County. | Two Bayou Old Channel .. | Approximately 650 feet upstream of Alley B extended. | None | *119 |
| | | | Just downstream of State Highway 274 ... | None | *120 |

Maps are available for inspection at City Hall, City of East Camden, 100 North Womble, East Camden, Arkansas.

Send comments to The Honorable Jack Phar, Mayor, City of East Camden, P.O. Box 3046, East Camden, Arkansas 71701.

| | | | | | |
|---|---|---|---|---|---|
| Arkansas ..... | Ouachita County (Unincorporated Areas). | Two Bayou Main Canal .... | Approximately 300 feet downstream of State Highway 4. | None | *113 |
| | | Two Bayou Old Channel .. | Approximately 300 feet downstream of State Highway 274. | None | *120 |
| | | | Approximately 1,700 feet downstream of State Highway 205. | None | *134 |
| | | Two Bayou Main Canal .... | Just upstream of State Highway 203 ..... | None | *160 |
| | | | Approximately 350 feet downstream of an unnamed road located 5,300 feet upstream of State Highway 203. | None | *164 |
| | | | Approximately 17,650 feet upstream of State Highway 203. | None | *185 |

Maps are available for inspection at the County Judge's Office, Court House, 145 Jefferson Street, Camden, Arkansas.

Send comments to The Honorable Paul Lucus, County Judge, Ouachita County, P.O. Box 644, Camden, Arkansas 71701.

| | | | | | |
|---|---|---|---|---|---|
| Hawaii ..... | Hawaii County (Unincorporated Areas). | Keopu Drainageway ..... | Just upstream of Kuakini Highway ..... | *36 | *36 |
| | | | Approximately 1,300 feet upstream of Kuakini Highway. | *114 | *110 |
| | | | Approximately 50 feet downstream of Hawaii Belt Road. | *220 | *220 |
| | | Waiaha Drainageway Splitflow No. 2. | Just upstream of Hawaii Belt Road ..... | *315 | *315 |
| | | | Approximately 1,200 feet upstream of Hawaii Belt Road. | *327 | *372 |
| | | | Approximately 500 feet downstream of Hualali Road. | *440 | *440 |
| | ..... | ..... | ..... | * | * |

Maps are available for inspection at the Hawaii Office Building, 25 Aupuni Street, Hilo, Hawaii.

Send comments to The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Room 215, Hilo, Hawaii 96720.

| | | | | | |
|---|---|---|---|---|---|
| Kansas ..... | Independence (City) Montgomery County. | Elk River ..... | Approximately 3,340 feet upstream of U.S. Highway 75/Kansas State Highway 96. | None | *765 |
| | | | Approximately 5,080 feet upstream of U.S. Highway 75/Kansas State Highway 96. | None | *764 |

Maps are available for inspection at City Hall, 120 North Sixth Street, Independence, Kansas.

Send comments to The Honorable Mike Seller, Mayor, City of Independence, City Hall, 120 North Sixth Street, Independence, Kansas 67301.

| | | | | | |
|---|---|---|---|---|---|
| Missouri ..... | Sedalia (City) Pettis County. | Brushy Creek ..... | At the corporate limits, approximately 640 feet downstream of West Main Street. | None | *793 |
| | | | Approximately 200 feet upstream of West Main Street. | None | *798 |
| | | | Just upstream of State Fair Boulevard, eastbound lane. | None | *820 |
| | | | Just upstream of Barrett Avenue ..... | None | *841 |
| | | | Just downstream of 9th Street ..... | None | *855 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Brushy Creek Tributary #1 | At confluence with Brushy Creek | None | *794 |
| | | | Just upstream of culvert at West Treatment Plant. | None | *800 |
| | | | Approximately 200 feet upstream of State Fair Road. | None | *814 |
| | | | Approximately 40 feet upstream of U.S. Highway 50. | None | *822 |
| | | Sewer Branch | At the north corporate limits, approximately 1,960 feet downstream of U.S. Highway 65. | None | *811 |
| | | | Just upstream of William Parkhurst Drive | None | *824 |
| | | | Approximately 100 feet upstream of Missouri Avenue. | None | *844 |
| | | | Just downstream of Washington Avenue | None | *861 |

Maps are available for inspection at the Engineering Department, City of Sedalia, City Hall, Second Floor, 200 South Osage Avenue, Sedalia, Missouri.

Send comments to The Honorable Jane Gray, Mayor, City of Sedalia, City Hall, Second Floor, 200 South Osage Avenue, Sedalia, Missouri 65301.

| | | | | | |
|---|---|---|---|---|---|
| Oklahoma | Cleveland (County) | Canadian River | At lower limit of detailed study located approximately 7,000 feet downstream of confluence of Walnut Creek. | N/A | *1,020 |
| | Lexington (City) | | Just upstream of U.S. Highway 77 | *1,034 | *1,035 |
| | | | Approximately 300 feet downstream of confluence of Chouteau Creek. | *1,042 | *1,044 |
| | | | Approximately 500 feet upstream of Atchison, Topeka, and Santa Fe Railroad. | *1,059 | *1,062 |
| | Noble (Town) | | At Cemetery Road extended | *1,072 | *1,072 |
| | Norman (City) | | Just downstream of U.S. Highway 35 | *1,105 | *1,107 |
| | | | At intersection of Robinson Street and 60th Avenue. | *1,126 | *1,126 |
| | | | At intersection of Franklin Road and 60th Avenue. | *1,142 | *1,140 |
| | Oklahoma City (City). | | Approximately 800 feet downstream of confluence of Canadian River Tributary 1. | *1,148 | *1,147 |
| | | | Just upstream of Interstate Highway 44 | *1,163 | *1,165 |
| | | | At Canadian County-Cleveland County line. | N/A | *1,180 |
| | Slaughterville (Town). | Chouteau Creek | Approximately 2,000 feet downstream of State Highway 77. | N/A | *1,045 |
| | | | Just upstream of State Highway 77 | N/A | *1,055 |
| | | | Approximately 200 feet downstream of Duffy Road. | N/A | *1,061 |
| | | | Just downstream of Bryand Road | N/A | *1,071 |
| | Moore (City) | Little River | Approximately 300 feet upstream of Olympic Street extended. | N/A | *1,246 |
| | | | Just downstream of Garland Avenue | N/A | *1,259 |
| | | | Approximately 60 feet upstream of Nail Parkway. | N/A | *1,267 |
| | | Kelly Creek | Approximately 600 feet downstream of NW 5th Street. | N/A | *1,124 |
| | | | Approximately 50 feet upstream of Maxwell Avenue. | N/A | *1,240 |
| | | | AT NW 20th Street | N/A | *1,268 |
| | | | Just upstream of NW 22nd Street | N/A | *1,273 |
| | | Northmoore Creek | Just upstream of Bellaire Drive | N/A | *1,246 |
| | | | At NE 18th Street | N/A | *1,254 |
| | | | Approximately 100 feet downstream of NE 27th Street. | N/A | *1,280 |
| | | | Approximately 1,600 feet upstream of NE 27th Street. | N/A | *1,292 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at the Office of County Commissioners, Cleveland County Courthouse, 201 South Jones, Norman, Oklahoma. | | | | | |
| Send comments to The Honorable Leroy Krohmer, Chairman, Cleveland County Board of Commissioners, County Courthouse, 201 South Jones, Norman, Oklahoma 73069–6099. | | | | | |
| Maps are available for inpsection at City Hall, 130 West Almond, Lexington, Oklahoma. | | | | | |
| Send comments to The Honorable Luther Dean, Mayor, City of Lexington, City Hall, 130 West Almond, Lexington, Oklahoma 73051–0997. | | | | | |
| Maps are available for inspection at City Hall, 304 South Main, Noble, Oklahoma. | | | | | |
| Send comments to The Honorable Dee Downer, Mayor, Town of Noble, City Hall, 304 South Main, Oklahoma 73068. | | | | | |
| Maps are available for inspection at City Hall, 201 West Gray, Norman, Oklahoma. | | | | | |
| Send comments to The Honorable Bill Nations, Mayor, City of Norman, City Hall, 201 West Gray, Norman, Oklahoma 73070. | | | | | |
| Maps are available for inspection at the Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, Oklahoma. | | | | | |
| Send comments to The Honorable Ronald Norick, Mayor, City of Oklahoma City, City Hall, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102 | | | | | |
| Maps are available for inspection at City Hall, 12021 Slaughterville Road, Lexington, Oklahoma. | | | | | |
| Send comments to The Honorable Terry Childress, Mayor, Town of Slaughterville, City Hall, 12021 Slaughterveille Road, Lexington, Oklahoma 73051–0997 | | | | | |
| Maps are available for inspection at City Hall, 301 North Broadway, Moore, Oklahoma | | | | | |
| Send comments to The Honorable Glenn Lewis, Mayor, City of Moore, City Hall, 301 North Broadway, Moore Oklahoma 73153. | | | | | |
| Oregon ..... | Keizer (City) Marion County. | Willamette River ..... | Approximately 900 feet downstream of Riverwood Drive extended, at the City of Keizer corporate limits. | *133 | *135 |
| | | | Approxiamtely 650 feet upstream of Cummings Lane extended. | *136 | *136 |
| | | | Approximately 1,000 feet upstream of Way Drive extended, at the City of Keizer corporate limits. | *137 | *138 |
| Maps are available for inspection at City Hall, 930 Chemawa Road, N.E., Keizer, Oregon. | | | | | |
| Send comments to The Honorable Dennis Kohol, Mayor, City of Keizer, City Hall, P.O. Box 21000, Keizer, Oregon 97307–1000. | | | | | |
| Oregon ..... | Marion County (Unincorporated Areas). | Willamette River ..... | Approximately 6.9 miles below State Highway 22 westbound (Marion Street Northeast). | *123 | *124 |
| | | | Approximately 4.2 miles below State Highway 22 westbound (Marion Street Northeast). | *133 | *134 |
| | | | Approximately 2 miles below State Highway 22 westbound (Marion Street Northeast). | *137 | *137 |
| | | | Approximately 0.6 mile above State Highway 22 westbound (Marion Street Northeast). | *142 | *143 |
| | | | Approximately 1 mile above State Highway 22 westbound (Marion Street Northeast). | *144 | *144 |
| Maps are available for inspection at the Marion County Courthouse, 100 High Street, N.E., Salem, Oregon. | | | | | |
| Send comments to The Honorable Ken Roudybush, Administration Officer, Marion County Board of Commissioners, Marion County Courthouse, 100 High Street, N.E., Salem, Oregon 97301. | | | | | |
| Oregon ..... | Polk County (Unincorporated Areas). | Willamette River ..... | Approximately 13,500 feet downstream of confluence of Glenn Creek. | *123 | *124 |
| | | | Approximately 500 feet downstream of confluence of Glenn Creek. | *132 | *133 |
| | | | Approximately 1,300 feet downstream of confluence of Glenn Creek. | *134 | *135 |
| | | | Approximately 3,100 feet downstream of Southern Pacific Railroad. | *140 | *141 |
| | | | At State Highway 22 ..... | *142 | *142 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps are available for inspection at Community Development Department, Polk County Courthouse, 850 Main Street, Dallas, Oregon. | | | | | |
| Send comments to The Honorable Ron Dodge, Chairman, Polk County Board of Commissioners, Polk County Courthouse, 850 Main Street, Dallas, Oregon 97338. | | | | | |
| Oregon | Salam (City) Marion and Polk Counties. | Willamette River | Approximately 3.7 miles downstream of confluence with Mill Creek. | *133 | *133 |
| | | | Approximately 3.3 miles downstream of confluence with Mill Creek. | *134 | *135 |
| | | | Approximately 2.1 miles downstream of confluence with Mill Creek. | *136 | *137 |
| | | | Approximately 0.8 mile downstream of confluence with Mill Creek. | *139 | *139 |
| | | | Approximately 300 feet downstream of State Highway 22 eastbound Center Street Northeast). | *142 | *142 |
| Maps are available for inspection at 555 Liberty Street S.E., Salem, Oregon. | | | | | |
| Send comments to The Honorable R.G. Anderson-Wyckoff, Mayor, City of Salem, 555 Liberty Street S.E., Room 220, Salem, Oregon 97301. | | | | | |
| South Dakota | Pennington County (Unincorporated Areas). | Rapid Creek | Approximately 4,500 feet upstream of Jolly Lane (County Road 274). | *3,101 | *3,101 |
| | | | Approximately 1,250 feet downstream of Valley Drive. | *3,115 | *3,114 |
| | | | Approximately 2,350 feet upstream of Valley Drive. | *3,125 | *3,125 |
| | | | Approximately 4,300 feet upstream of Valley Drive. | *3,129 | *3,129 |
| | | | Approximately 5,500 feet downstream of East St. Patrick Street. | *3,133 | *3,132 |
| Maps are available for inspection at Pennington County Planning Division, 300 Sixth Street, Rapid City, South Dakota. | | | | | |
| Send comments to The Honorable Kathy Work, Chairperson, Pennington County Board of Commissioners, 315 St. Joseph Street, Rapid City, South Dakota 57701. | | | | | |
| South Dakota | Rapid City (City) Pennington County. | Rapid Creek | Approximately 4,500 feet upstream of Jolly Lane (County Road 274). | *3,101 | *3,101 |
| | | | Approximately 5,500 feet downstream of East St. Patrick Street. | *3,133 | *3,132 |
| | | | Approximately 4,500 feet upstream of Jolly Lane (County Road 274). | *3,101 | *3,101 |
| | | | Approximately 1,200 feet downstream of East St. Patrick Street. | *3,143 | *3,141 |
| | | | Approximately 1,500 feet upstream of East St. Patrick Street. | *3,149 | *3,149 |
| | | | Approximately 300 feet upstream of Creek Drive. | *3,158 | *3,156 |
| | | | Approximately 200 feet upstream of Campbell Avenue. | *3,166 | *3,167 |
| | | | Approximately 300 feet upstream of Cherry Avenue. | *3,172 | *3,173 |
| | | | Approximately 500 feet downstream of East Main Street. | *3,185 | *3,186 |
| | | | Approximately 500 feet upstream of Maple Avenue. | *3,204 | *3,203 |
| | | | Approximately 450 feet upstream of East Boulevard. | *3,207 | *3,206 |
| | | | Just upstream of Eighth Street | *3,226 | *3,227 |
| | | | Approximately 250 feet upstream of West Omaha Street. | *3,265 | *3,262 |
| | | | Approximately 150 feet downstream of Sheridan Lake Drive. | *3,282 | *3,281 |
| | | | Approximately 250 feet upstream of Jackson Boulevard. | *3,315 | *3,314 |
| | | | Approximately 550 feet downstream of Park Drive. | *3,344 | *3,340 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet. (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,700 feet upstream of confluence of Rapid Creek with Red Rock Canyon. | *3,386 | *3,386 |
| Maps are available for inspection at Rapid City Engineering Division, 300 Sixth Street, Rapid City, South Dakota. | | | | | |
| Send comments to The Honorable Edward McLaughlin, Mayor, City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701–2724. | | | | | |
| Texas ..... | Collin County (Unincorporated Areas). | Lake Ray Hubbard ..... | From Collin County-Rockwall County boundary to State Highway 78. | None | *437 |
| Maps are available for inspection at Collin County Courthouse, Department of Public Works, 210 South McDonald Street, McKinney, Texas. | | | | | |
| Send comments to The Honorable Ron Harris, Collin County Judge, Country Courthouse, Suite 626, 210 South McDonald Street, McKinney, Texas 75069. | | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 28, 1995.

**Richard T. Moore,**

*Associate Director for Mitigation.*

[FR Doc. 95–8178 Filed 4–3–95; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 95–33, RM–8597]**

### Radio Broadcasting Services; Fairbanks, AK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Northern Television, Inc. seeking the allotment of FM Channel 245C3 to Fairbanks, Alaska, as that community's sixth local FM broadcast service. Coordinates used for Channel 245C3 at Fairbanks are North Latitude 64–50–16 and West Longitude 147–42–59. Fairbanks is located with 320 kilometers (199 miles) of the United States-Canadian border, and therefore, the Commission must obtain concurrence of the Canadian government to this proposal.

**DATES:** Comments must be filed on or before May 22, 1995, and reply comments on or before June 6, 1995.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Northern Television, Inc., Attn: Henry H. Hove, President, Fairbanks Division, 3528 International Way, Fairbanks, AK 99701.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–33, adopted March 22, 1995, and released March 29, 1995. 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–8133 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

### 47 CFR Part 73

**[MM Docket No. 95–34; RM–8600]**

### Radio Broadcasting Services; Rapid City, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Conway Broadcasting proposing the allotment of Channel 222C at Rapid City, South Dakota, as the community's seventh local FM transmission service. Channel 222C can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 222C at Rapids City are North Latitude 44–04–50 and West Longitude 103–13–50.

**DATES:** Comments must be filed on or before May 22, 1995, and reply comments on or before June 6, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lars Conway, Conway Broadcasting, 4415 Fremont Ave., South, Minneapolis, Minnesota 55409 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–34, adopted March 22, 1995, and released March 29, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M

Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95–8134 Filed 4–3–95; 8:45 am]

BILLING CODE 6712–01–F

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Chapter I

**[Docket No. HM–222; Notice No. 95–5]**

## Improving the Hazardous Materials Safety Program; Public Meetings and Request for Comments Related to Regulatory Review and Customer Service

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Public meetings and request for comments.

**SUMMARY:** This notice announces a nationwide series of seven public meetings during April and May to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program.

**DATES:** *Meetings:* Public meetings will be held as follows:

(1) April 19, 1995, in San Francisco, California.
(2) April 20, 1995 in Chicago, Illinois.
(3) April 26, 1995 in Clearwater Beach, Florida.
(4) April 27, 1995 in Tampa, Florida.
(5) April 28, 1995 in Tampa, Florida.
(6) May 16, 1995 in Houston, Texas.
(7) May 18, 1995 in Minneapolis, Minnesota.

*Comments:* This notice invites comments on both regulatory reform and improved customer service. Participation in the meeting is not a prerequisite for the submission of written comments. Please submit comments before May 31, 1995.

**ADDRESSES:** *Meetings:* See Supplementary Information for specific times, locations and agendas.

*Comments:* Please address written comments to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments may also be faxed to (202)366–3753. Comments should identify the docket (Docket No. HM–222). The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office is closed.

**FOR FURTHER INFORMATION CONTACT:** Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. RSPA is reviewing the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), and associated procedural rules (49 CFR Parts 106 and 107), in response to the President's directive.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order requires continual reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from customers of its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

### Conduct of Meetings

Meetings will be informal, intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer reserves the right to limit time allocated to speakers, if necessary, to ensure that all have an opportunity to speak. Conversely, meetings may conclude before the scheduled time if all persons wishing to participate have been heard.

### Meeting Schedule and Agendas

The public meetings will be held as follows:

(1) April 19, 1995, from 9:00 a.m. to 4:00 p.m., in San Francisco, California, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, 1st floor conference rooms. This meeting will have an open agenda.

(2) April 20, 1995, from 9:00 a.m. to 4:00 p.m., in Chicago, Illinois, Banker's Building (Health and Human Services Facility), 105 West Adams Street, Chicago, Illinois 60603, Floor/Room: 10th/1015. This meeting will have an open agenda.

(3) April 26, 1995, from 1:00 p.m. to 4:00 p.m., in Clearwater Beach, Florida, Sheraton Sand Key Resort Hotel, 1160 Gulf Boulevard, Clearwater Beach, Florida 34630. This meeting, held immediately after a previously scheduled Compressed Gas Association meeting, will focus primarily on the manufacture, maintenance and testing of compressed gas cylinders.

(4) April 27, 1995, from 1:00 p.m. to 4:00 p.m., in Tampa, Florida, Crowne Plaza, Sabal Park, 10221 Princess Palm Avenue, Tampa, Florida 33610. This meeting will have an open agenda.

(5) April 28, 1995, from 9:00 a.m. to 12:00 p.m., in Tampa, Florida, Crowne Plaza, Sabal Park, 10221 Princess Palm Avenue, Tampa, Florida 33610. This meeting will focus primarily on pyrotechnics (fireworks) transportation issues.

(6) May 16, 1995, from 9:00 a.m. to 4:00 p.m., in Houston, Texas, Sheraton Crown Hotel & Conference Center, 15700 John F. Kennedy Boulevard, Houston, Texas 77032. This meeting will have an open agenda.

(7) May 18, 1995, from 1:00 p.m. to 4:00 p.m., in Minneapolis, Minnesota, Radisson Hotel South & Plaza Tower, 7800 Normandie Boulevard, Minneapolis, Minnesota 55539. This meeting will have an open agenda.

Five of the seven meetings (April 19 in San Francisco, April 20 in Chicago,

April 27 in Tampa, May 16 in Houston, and May 18 in Minneapolis) will have an open agenda, based on interests of the participants. Two meetings to be held in Florida will have focus areas as follows:

(1) April 26 in Clearwater Beach: This meeting, held in association with a Compressed Gas Association meeting, will focus primarily on the manufacture, maintenance and testing of compressed gas cylinders.

(2) April 28 in Tampa: This meeting, held with the cooperation of the American Pyrotechnics Association, will focus primarily on pyrotechnics (fireworks).

Even though these latter two meetings will have focus areas, they will be open to all interested persons and speakers may address any area pertinent to RSPA's hazardous materials safety program.

**Areas of Regulatory Concern**

In calling on agencies to cut obsolete regulations, the President directs each agency to consider the following issues in its review of the regulations:

- Is this regulation obsolete?
- Could its intended goal be achieved in more efficient, less intrusive ways?
- Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the States or local governments do the job, making Federal regulation unnecessary?

RSPA suggests that persons commenting on the hazardous materials safety program consider these issues.

The President's call for regulatory reform provides opportunities for eliminating or improving hazardous materials safety regulations. RSPA has undertaken a page-by-page review of the HMR and has identified certain sections of the HMR that are candidates for elimination, revision, clarification or relaxation. Although RSPA does not wish to imply that discussion is limited to these items, the items listed below are suggested as candidates for discussion at the public meetings:

(1) There appear to be jurisdictional issues that need resolution. For example, there is a question as to whether certain rail storage practices are ''storage in transportation'' and, thus, subject to the HMR, and whether the HMR should apply to rail tank car unloading operations, not involving rail carriers, which occur on private facilities. Other issues concern whether RSPA should continue to exercise jurisdiction in areas where other Federal agencies also exercise jurisdiction. For example, should RSPA remove regulatory provisions concerning hazardous waste manifests in deference to EPA requirements for manifesting? Should RSPA continue to regulate hazardous materials, such as fireworks, that are subject to regulations of the Consumer Product Safety Commission or the Bureau of Alcohol, Tobacco and Firearms? Should RSPA defer to the requirements of other agencies having occupational safety responsibilities which affect transportation, such as the Occupational Safety and Health Administration (OSHA), and OSHA agreement States? RSPA anticipates coordinating with other Federal agencies that regulate hazardous materials to resolve any multi-jurisdictional problems identified through the review.

(2) The modal-specific portions of the HMR—Part 174 for rail, Part 175 for air, Part 176 for water and Part 177 for highway—appear to contain a number of provisions that should be eliminated or revised. For example, many of the special handling requirements and accident response requirements appear obsolete.

(3) There may be opportunities for relaxing certain regulatory provisions without unduly impacting safety, such as by increasing the time interval for recurrent training or providing additional small quantity exceptions from incident reporting.

**Improvements to Customer Service**

RSPA is soliciting comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments to establish service standards and measure results against them; provide customers with choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide the means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications, and enforcement actions. Other customer services include conduct of multi-modal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and informational materials.

Issued in Washington, DC, on March 30, 1995.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 95–8165 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–60–P

# Notices

Federal Register
Vol. 60, No. 64
Tuesday, April 4, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Wild and Scenic River Suitability Study for Big Sheep Creek, East Eagle Creek, Five Points Creek, North Fork Catherine Creek, Swamp Creek, and Upper Grande Ronde River, Wallowa-Whitman National Forest, Baker, Union, and Wallowa Counties, OR; and Granite Creek and Sheep Creek, Payette and Nez Perce National Forests, Adams and Idaho Counties, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a legislative environmental impact statement.

**SUMMARY:** The USDA, Forest Service will prepare a legislative environmental impact statement (LEIS) and wild and scenic river study report to determine the eligibility and address the suitability of sections of Big Sheep Creek, East Eagle Creek, Five Points Creek, North Fork Catherine Creek, Swamp Creek, and the Upper Grande Ronde River within the Wallowa-Whitman National Forest boundary in Baker, Union, and Wallowa Counties, Oregon; and Granite and Sheep Creek within the Payette and Nez Perce National Forest boundaries (administrated by the Wallowa-Whitman National Forest) in Adams and Idaho Counties, Idaho for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on the suitability of these river sections. The agency gives notice of the environmental analysis and decision making process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

**DATES:** Comments concerning the study of these rivers should be received by May 15, 1995.

**ADDRESSES:** Send written comments and suggestions concerning the management of the river to Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and draft LEIS should be directed to Steve Davis, Wild & Scenic River Planning Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814; telephone (503) 523–1316.

**SUPPLEMENTARY INFORMATION:** The USDA, Forest Service agreed to study the eligibility and suitability (if eligibility is confirmed) of Big Sheep Creek, East Eagle Creek, Five Points Creek, Granite Creek, North Fork of Catherine Creek, Sheep Creek, Swamp Creek, and Upper Grande Ronde River for possible inclusion in the National Wild and Scenic Rivers System. Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968 (Public Law 90–542, 82 Stat. 906, as amended; 16 U.S.C. 1271–1287) allows for the study of new potential wild and scenic rivers not designated under Section 3(a) or designated for study under Section 5(a) of the Act. Section 5(d)(1) states ''In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national, wild, scenic, and recreational river areas.'' The study will consider within the Wallowa-Whitman National Forest boundary a 48-mile segment of Big Sheep Creek from its headwaters (including the North, Middle, and South Forks) to the Imnaha Wild and Scenic River boundary; a 15-mile segment of East Eagle Creek from its headwaters to the Eagle Wild and Scenic River boundary; a 12-mile segment of the mainstem of Five Points Creek from its headwaters, just north of the confluence with the Middle Fork of Five Points Creek, to the National Forest boundary; a 13.5-mile segment of the North Fork of Catherine Creek, from its headwaters to the National Forest boundary; a 16.5-mile segment of Swamp Creek from the National Forest boundary to the Joseph Creek Wild and Scenic River boundary; and a 27.5-mile segment of the Upper Grande Ronde River from its headwaters to the National Forest boundary. The study will also consider within the Payette and Nez Perce National Forest boundaries (administered by the Wallow-Whitman National Forest) a 12.5-mile segment of Granite Creek and a 15.5-mile segment of the East and West Forks of Sheep Creek from their headwaters to the Snake Wild and Scenic River boundary. The studies will include lands generally within ¼ mile from each stream bank. Preliminary alternatives include recommending wild and scenic designation for each segment and an alternative that recommends none of the segments for designation.

Robert M. Richmond, Forest Supervisor, Wallow-Whitman National Forest is the responsible official for preparing the suitability study. The Secretary of Agriculture, U.S. Department of Agriculture, room 200–A, Administration Building, Washington, DC 20250 is the responsible official for recommendations for wild and scenic river designation.

Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal State, and local agencies, affected Indian tribes, individuals and organizations who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft LEIS.

Initial scoping has occurred. Public meetings have been held and comments have been solicited by letters and newspaper articles, starting in May of 1994. Additional scoping meetings are planned. Federal, State, and local agencies as well as the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, user groups, and other organizations participated in scoping the issues that should be considered. Additional comments concerning the study of these rivers are encouraged.

The draft LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by June 1995. At that time, the EPA will publish a notice of availability of the draft LEIS in the **Federal Register**.

The comment period on the draft LEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of this river participate at that time. To be the most helpful, comments on the

draft LEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft LEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft LEIS stage but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. City of *Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 f. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final study and environmental impact statement.

After the comment period ends on the draft LEIS, comments will be analyzed and considered by the Forest Service in preparing the final LEIS. In the final LEIS, the Forest Service will respond to comments received. The final LEIS is scheduled to be completed by October 1995. The Secretary will consider the comments, responses, and consequences discussed in the LEIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: March 24, 1995.

**Sterling J. Wilcox,**

*Acting Associate Deputy Chief.*

[FR Doc. 95–8136 Filed 4–3–95; 8:45 am]

BILLING CODE 3411–10–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 9–95]**

## Foreign-Trade Zone 93, Triangle J Council of Governments; Application for Subzone: AT&T/Custom Manufacturing Services (Telecommunication and Computer Products) Whitsett, NC (Greensboro area)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the telecommunication and computer products manufacturing plant of Custom Manufacturing Services (CMS), (subsidiary of AT&T Corporation) in Whitsett (Guilford County), North Carolina, adjacent to the Greensboro Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 27, 1995).

The CMS facility (3 buildings/210,000 sq. ft. on 19 acres) is located at 6537 Judge Adams Road, Whitsett, North Carolina, 10 miles east of Greensboro. The facility (400 employees) is used to produce a variety of telecommunications and computer products, components and subassemblies. Telecommunication products include encryption devices, speech compression devices, cellular handsets and network equipment, ATM and digital conferencing switches, optical and voice recognition circuit packs, teleconferencing bridges and routers, and power equipment for voice and data transmission. Computer products include signal processing computers, local-area network (LAN)/wide-area network (WAN) equipment, workstations, high resolution terminals, printers, portable copiers, optical disk drives, disk array controllers, and memory modules. Most of the products are manufactured under contract for other AT&T plants and for other telecommunication and computer product manufacturers.

Foreign components currently account for 15 percent of material used in production. Items sourced from abroad include cable assemblies, computer parts and subassemblies, dial pad assemblies, computer monitors and displays, sheet glass, semiconductors, integrated circuits, keypads, LCDs (liquid crystal displays), LEDs (light emitting diodes), microphones, power supplies, printed circuit assemblies, printed wiring boards, ringers, speakers, switches, rectifiers, resistors, transformers, transistors, capacitors, connectors, diodes, and hardware, including screws and bolts.

Zone procedures would exempt CMS from Customs duty payments on foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate that applies to the finished product (duty rates, duty-free to 8.5%). The duty rates on foreign components range from duty-free to 10 percent. The application indicates that zone procedures will improve the plant's international competitiveness and will help increase exports.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 5, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 18, 1995).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 400 West Market Street, Suite 400, Greensboro, North Carolina 27401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 28, 1995.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 95–8192 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1933)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than April 30, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

| | Period |
|---|---|
| *Antidumping duty proceedings:* | |
| Canada: Sugar and Syrups, (A–122–085) | 04/01/94–03/31/95 |
| France: Sorbitol, (A–427–001) | 04/01/94–03/31/95 |
| Greece: Electrolytic Manganese Dioxide, (A–484–801) | 04/01/94–03/31/95 |
| Japan: Calcium-Hypochlorite, (A–588–401) | 04/01/94–03/31/95 |
| Japan: Cyanuric Acid, (A–588–019) | 04/01/94–03/31/95 |
| Japan: Electrolytic Manganese Dioxide, (A–588–806) | 04/01/94–03/31/95 |
| Japan: Lenses, (A–588–819) | 04/01/94–03/31/95 |
| Japan: 3.5″ Microdisks and Media Thereof, (A–588–802) | 04/01/94–03/31/95 |
| Japan: Roller Chain, other than Bicycle, (A–588–028) | 04/01/94–03/31/95 |
| Kazakhstan: Ferrosilicon, (A–823–804) | 04/01/94–03/31/95 |
| Kenya: Standard Carnations, (A–779–602) | 04/01/94–03/31/95 |
| Korea: Color Television Receivers, (A–580–008) | 04/01/94–03/31/95 |
| Mexico: Certain Fresh Cut Flowers, (A–201–601) | 04/01/94–03/31/95 |
| Norway: Fresh and Chilled Atlantic Salmon, (A–403–801) | 04/01/94–03/31/95 |
| Taiwan: Color Television Receivers, (A–583–009) | 04/01/94–03/31/95 |
| Ukraine: Ferrosilicon, (A–834–804) | 04/01/94–03/31/95 |
| *Countervailing duty proceedings:* | |
| Argentina: Wool, (C–357–002) | 01/01/94–12/31/94 |
| Argentina: Cold-Rolled Carbon Steel Flat-Rolled Products, (C–357–005) | 01/01/94–12/31/94 |
| Brazil: Pig Iron, (C–351–062) | 01/01/94–12/31/94 |
| Malaysia: Carbon Steel Wire Rod, (C–557–701) | 01/01/94–12/31/94 |
| Mexico: Leather Wearing Apparel, (C–201–001) | 01/01/94–12/31/94 |
| Norway: Fresh and Chilled Atlantic Salmon, (C–403–802) | 01/01/94–12/31/94 |
| Peru: Pompon Chrysanthemums, (C–333–601) | 01/01/94–12/31/94 |
| Thailand: Rice, (C–549–503) | 01/01/94–12/31/94 |

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each county of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests of the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by April 30, 1995. If the Department does not receive, by April 30, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 29, 1995.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–8197 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–588–836, A–580–826, A–570–842, A–583–824]**

## Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol From Japan, the Republic of Korea, the People's Republic of China, and Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Louis Apple or John Brinkmann at (202) 482–1769 or (202) 482–5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**Initiation of Investigations**

*The Applicable Statute*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

*The Petition*

On March 9, 1995, the Department of Commerce (the Department) received a petition filed in proper form by Air Products and Chemicals, Inc. (the petitioner), one of three U.S. producers of polyvinyl alcohol. Supplements to the petition were filed on March 21 and 24, 1995.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of polyvinyl alcohol from Japan, the Republic of Korea (Korea), the People's Republic of China (PRC), and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The petitioner states that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act.

*Determination of Industry Support for the Petition*

Section 732(c) of the Act, as amended by the URAA, requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets those minimum requirements if (1) domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product; and (2) those domestic producers or workers expressing support account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

The petitioner, one of three known domestic producers of the domestic like product, accounts for more than 25 percent of the total production of the domestic like product as defined in the petition. One producer has informed the Department that it takes no position regarding this antidumping petition. Although the petition identified only two U.S. producers of polyvinyl alcohol, on March 29, 1995, the Department received a statement from another company indicating that it is a producer of polyvinyl alcohol and that it opposes the petition. A review of production data reveals that the petitioner accounts for more than 25 percent of the total production of the domestic like product and for more than 50 percent of that produced by companies expressing support for, or opposition to, the petition. Accordingly, the Department determines that this petition is supported by the domestic industry.

*Scope of the Investigations*

The merchandise under investigation is polyvinyl alcohol. Polyvinyl alcohol is a dry, white to cream-colored, water-soluble synthetic polymer, usually prepared by hydrolysis of polyvinyl acetate. This product includes polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid.

The merchandise under investigation is currently classifiable under item 3905.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

*Export Price and Normal Value*

Japan

Export price was based on a price offered by a Japanese trading company in late September 1994. The petitioner adjusted the price for foreign inland and ocean freight, storage and handling, U.S. duties, and U.S. inland freight.

The petitioner based normal value on the low end of a range of prevailing domestic invoice pricing obtained from a Japanese trading company. The petitioner made adjustments to normal value for home market inland freight, trading company mark-ups and differences between home market and U.S. credit.

Based on a comparison of the export price to normal value, the calculated dumping margin is 77.49 percent.

Korea

Export price was based on the average c.i.f. unit value of U.S. imports from the Korea during November 1994. The petitioner adjusted this price for foreign inland and ocean freight expenses.

The home market price was based on a letter from a Korean producer to a home market customer, announcing an increase from the price in effect during the fourth quarter of 1994. The petitioner adjusted the price in effect prior to the increase for home market inland freight.

The petitioner based the normal value on constructed value (CV) because it asserts that the Korean home market price provided in the petition represented sales that were made below the cost of production (COP) and, therefore, was not an appropriate basis for calculating normal value.

The two components of COP are the cost of manufacture (COM) and selling, general and administrative expenses (SG&A). The petitioner calculated COM on the basis of its own cost and production experience and published prices in trade publications for certain chemical inputs, adjusted for known differences in Korean costs. For SG&A, including financial expenses, the petitioner relied upon the financial statements of the Korean producer of polyvinyl alcohol.

The allegation that the Korean producer is selling the foreign like product in its home market at prices below its COP is based upon a comparison of the adjusted home market price with the calculated COP. Based on this information, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with 773(b)(2)(A)(i) of the Act. Accordingly, the Department will initiate a cost investigation with respect to Korea.

Therefore, for purposes of this initiation, in accordance with section 773(b)(1) of the Act, we are accepting the petitioner's estimate of CV as the appropriate basis for Korean normal value. The petitioner based CV on its COP methodology, adding an amount for profit and export packing to arrive at a total CV. Prior to the amendment of the Act by the URAA, the Department used the greater of actual profit or an eight percent minimum profit to calculate CV. The URAA eliminated the statutory minimum for profit. In the petition, therefore, profit was calculated on the basis of the Korean producer's financial statements, a method that is consistent with the URAA amendments. Packing was based upon the petitioner's own cost experience.

For Korea, based on comparisons of export price to CV, the calculated dumping margin is 187.43 percent.

People's Republic of China

Export price was based on the average c.i.f. unit value of U.S. imports from the PRC during November 1994 and on a sales call report from the same month. In both cases, the petitioner adjusted the starting prices for ocean freight and U.S. credit. Because this is an export price calculation, and because the Department does not deduct direct selling expenses

from the export price, we have recalculated the petitioner's export price to remove the U.S. credit adjustment.

The petitioner asserts that the PRC is an NME within the meaning of sections 771(18)(A) and (C) of the Act and in accordance with section 773(c) of the Act. Accordingly, the normal value of the product should be based on the producer's factors of production, valued in a surrogate market economy country. In previous investigations, the Department has determined that the PRC is an NME, and the presumption of NME status continues for the initiation of this investigation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Glycine from the People's Republic of China,* 60 FR 5620 (Jan. 30, 1995).

It is our practice in NME cases to construct normal value from the factors of production of those factories that produced polyvinyl alcohol sold to the United States during the period of investigation.

In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994).

With the exception of two raw materials, the petitioner based the factors of production (*i.e.*, raw materials, labor, and energy) on its own production process and usage experience. For the two exceptions, the petitioner made adjustments based on its knowledge of differences in the manufacturing processes in the PRC and estimated the raw material consumption and the amount of by-product based upon its knowledge of the production process of the other U.S. producer. Profit, SG&A, and factory overhead were based on rates calculated from a financial statement that included the chemical sector in India, published in the *Reserve Bank of India Bulletin* (September 1994).

The petitioner valued these factors, where possible, on publicly available published information from the surrogate country it selected. India was selected for the surrogate country because it is the only non-industrialized country listed in the *Directory of World Chemical Producers* (1995/1996 Standard Edition) that the petitioner knows is producing the merchandise subject to investigation. Further, India's gross domestic product is comparable to the PRC's.

Indian packing costs are not included in the valuation of the factors of production because the petitioner was unable to obtain the necessary information. Factory overhead, SG&A, and profit are based on the financial statement for Indian chemical producers, as published in the September 1994 *Reserve Bank of India Bulletin*.

Based on a comparison of the export price to the factors of production, the calculated dumping margins range from 139.82 to 183.72 percent.

Taiwan

Export price was based on the average c.i.f. unit value of U.S. imports from Taiwan during October 1994. The petitioner made adjustments for foreign inland and ocean freight expenses.

The home market price was based on a domestic invoice from a Taiwanese producer to a home market customer in October 1994. The petitioner adjusted this price for home market inland freight.

The petitioner based the normal value on CV because it asserts that the Taiwanese home market price provided in the petition represented sales that were made below the COP and, therefore, was not an appropriate basis for calculating normal value.

The components of COP are COM and SG&A. The petitioner calculated the COM on the basis of its own cost and production experience and published prices in trade publications for certain chemical inputs, adjusted for known cost differences in Taiwan. For SG&A, including financial expenses, the petitioner relied upon the financial statements of the Taiwanese producer of polyvinyl alcohol. This producer manufactures and sells products in multiple industries. Since the petitioner had submitted financial data for a Taiwanese chemical producer whose manufacturing activities are limited to the chemical sector, we recomputed SG&A using this data.

The allegation that the Taiwanese producer is selling the foreign like product in its home market at prices below its COP is based upon a comparison of the adjusted home market price with the calculated COP. Based on this information, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, the Department will initiate a cost investigation with respect to Taiwan.

Therefore, for the purposes of this initiation, we are accepting the petitioner's estimate of CV, as adjusted by the Department, as the appropriate basis for Taiwanese normal value. The petitioner based CV on its COP methodology, described above, adding an amount for profit and packing to arrive at a total CV. The Department made the same adjustment to the petitioner's Taiwanese SG&A estimate as in the COP calculation. The petitioner calculated profit on the basis of financial data for three Taiwanese chemical producers, however only one of these chemical producers manufactured and sold solely chemical products. Therefore, the Department recomputed profit on the basis of the financial data for the one company whose operations were limited to chemicals. This treatment of profit is consistent with the URAA amendments. Packing costs were based on the petitioner's experience.

For Taiwan, based on comparisons of export prices to CV, the recalculated dumping margins are in a range from 82.23 to 91.83 percent.

*Fair Value Comparisons*

Based on the data provided by the petitioner, there is reason to believe that imports of polyvinyl alcohol from Japan, Korea, the PRC, and Taiwan are being, or likely to be, sold at less than fair value. If it becomes necessary at a later date to consider the petition as a source of facts available, we may review the calculations.

*Initiation of Investigations*

We have examined the petition on polyvinyl alcohol and have found that it meets the requirements of section 732 of the Act, including the requirements concerning the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of polyvinyl alcohol from the PRC, Japan, Korea, and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations by August 16, 1995.

*Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the petition have been provided to the representatives of the PRC, Japan, Korea, and Taiwan. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition.

*ITC Notification*

We have notified the International Trade Commission (ITC) of our

initiations, as required by section 732(d) of the Act.

*Preliminary Determination by the ITC*

The ITC will determine by April 24, 1995, whether there is a reasonable indication that imports of polyvinyl alcohol from Japan, Korea, the PRC, and Taiwan are causing material injury, or threaten to cause material injury to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: March 29, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–8193 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

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**A–588–823**

## Professional Electric Cutting Tools From Japan; Termination of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of Termination of Antidumping Duty Administrative Review.

**SUMMARY:** On August 24, 1994, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39033) the notice of initiation of the administrative review of the antidumping duty order on professional electric cutting tools from Japan. This review has now been terminated as a result of the withdrawal by the petitioner of its request for review.

**EFFECTIVE DATE:** April 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jack Dulberger or Maureen Flannery, 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) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 29, 1994, Black and Decker, Inc., a U.S. manufacturer of professional electric cutting tools, as an interested party, requested an administrative review of the antidumping duty order on professional electric cutting tools from Japan, for the period January 4, 1993 through June 30, 1994, pursuant to 19 CFR 353.22(a)(2) (1994). On August 24, 1994, the Department published in the **Federal Register** (59 FR 43537) the notice of initiation of that administrative review.

Black and Decker timely withdrew its request for review on October 24, 1994, pursuant to 19 CFR 353.22(a)(5). As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–8194 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–P

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## University of Washington, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 94–153. *Applicant:* University of Washington, Seattle, WA 98195. *Instrument:* Electron Microscope, Model CM100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 60 FR 7168, February 7, 1995. *Order Date:* April 30, 1994.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 95–8195 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DS–F

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## National Oceanic and Atmospheric Administration

## Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Alaska and Northern Marianas Islands Coastal Zone Management Programs and the Old Woman Creek (Ohio) and South Slough (Oregon) National Estuarine Research Reserve Programs.

These evaluations will be conducted pursuant to Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal and estuarine management. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national coastal management objectives, adhered to its Coastal Program or Reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Old Woman Creek National Estuarine Research Reserve in Ohio evaluation site visit will be from May 15–19, 1995. A public meeting will be held on Wednesday, May 17, 1995, at 7 p.m., at the Old Woman Creek Visitor's Center, 2514 Cleveland Road-East, Huron, OH.

The Commonwealth of the Northern Marianas Islands Coastal Zone Management Program evaluation site visit will be from June 5–9, 1995. A public meeting will be held on Wednesday, June 7, 1995 at 7:30 p.m., in Saipan.

The Alaska Coastal Zone Management Program evaluation site visit will be from June 19–23, 1995. A public

meeting will be held on Monday, June 19, 1995, at 7 p.m., at the Anchorage Legislative Information Office, 716 W. 4th Avenue, Suite 200, Anchorage, AK. Teleconference connections to Legislative Information Offices will be provided between Anchorage and the coastal communities of Ketchikan, Sitka, Juneau, Cordova, Valdez, Kenai, Kodiak, Dillingham, Bethel, Nome, Kotzebue, and Barrow.

The South Slough National Estuarine Research Reserve in Oregon evaluation site visit will be from July 10–14, 1995. A public meeting will be held on Thursday, July 13, 1995, at 7 p.m., at Southwestern Oregon Community College, 1988 Newmark, Coos Bay, OR.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

**FOR FURTHER INFORMATION CONTACT:** Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419

Coastal Zone Management Program Administration

**W. Stanley Wilson,**

*Assistant Administrator for Ocean Services and Coastal Zone.*

[FR Doc. 95–8150 Filed 4–3–95; 8:45 am]

**BILLING CODE 3510–08–M**

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**[I.D. 032495B]**

## Western Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council (Council), and its entities, will hold meetings from April 19–21, 1995, at the Rainmaker Hotel in Pago Pago, American Samoa.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813; telephone 808–522–8220.

**SUPPLEMENTARY INFORMATION:** On April 19, the Council's Standing Committees will meet from 8:00 a.m. until 6:00 p.m. The full Council will convene for its 86th meeting on April 20–21, from 8:00 a.m. until 5:00 p.m. On April 20, from 8:00 a.m. until 9:00 a.m., the Council will hold a closed session to discuss personnel matters. The tentative Council meeting agenda will be:

**1. Closed session to discuss personnel matters**

**2. Introduction**

**3. Approval of Agenda**

**4. Approval of 85th Council Minutes**

**5. Reports from the Council's State Territories and Commonwealth**

**6. Reports from the fishery agencies and organizations**

**7. Enforcement**

a. US Coast Guard activities;
b. NMFS activities and status of proposed Pacific enforcement conference;
c. Status of violations;
d. Enforcement Committee recommendations;
e. Public comment; and
f. Council discussion and action

**8. Ecosystems and Protected Resources**

a. Longline observer quarterly report;
b. Longline/turtle workshop;
c. Justification for Main Hawaiian Islands (MHI) monk seal relocations;
d. Status of Hawaiian Islands humpback whale sanctuary;
e. Coral reef management needs, possibly including development of a coral reefs fishery management plan;
f. Scientific Standing Committee (SSC) recommendations;
g. Ecosystems and Habitat Committee recommendations;
h. Public comment; and
i. Council discussion and action.

**9. Pelagics**

a. Longline permit actions;
b. Status of fisheries;
c. Preliminary report on Pacific pelagic fisheries database review;
d. Status of request for single-council designation;
e. United Nations Conference on Straddling and Highly Migratory Fish Stocks;
f. Pelagic Fisheries Research Program;
g. Draft pelagic fisheries research plan;
h. Status of Small Boat Pelagic Fisheries Working Group;
i. SSC recommendations;
j. Pelagics Committee recommendations;
k. Public comment; and
l. Council discussion and action.

**10. Bottomfish**

a. Status of fisheries;
b. Status of MHI bottomfish management initiative;
c. NMFS report on Northwestern Hawaiian Islands (NWHI) catch reporting system;
d. SSC recommendations;
e. Bottomfish Committee recommendations;
f. Public comment; and
g. Council discussion and action.

**11. Crustaceans**

a. 1995 NWHI lobster quota;
b. Experimental fishing;
c. Status of stocks;
d. Status of NWHI lobster management review;
e. Consideration of alternative management program for NWHI;
f. SSC recommendations;
g. Crustaceans Committee recommendations;
h. Public comment; and
i. Council discussion and action.

**12. Native Rights and Indigenous Fishing Issues**

a. Status of Magnuson Act amendments/other Federal legislation;
b. Status of State of Hawaii's Molokai subsistence fishing demonstration project;
c. Status of Moomomi community-based subsistence fishing proposal;
d. Kahoolawe ocean management plan, Request for Proposals;
e. Native Rights Committee recommendations;
f. Public comment; and
g. Council discussion and action.

**13. Program Planning**

a. Status of proposed Hawaii ownership of unincorporated U.S. Pacific Islands;
b. Status of joint Interior-Commerce working group to review Federal policy in the Pacific;
c. Status of Midway Reuse Committee;
d. Saltonstall-Kennedy proposals for the region;

e. Status of the Magnuson Act re-authorization;
f. Status of Western Pacific Fisheries Information Network;
g. Status of cooperative project to correlate El Niño-Southern Oscillation and island fishery data;
h. Council's public education outreach program;
i. Defining marine recreational and commercial fishing/fishermen;
j. SSC recommendations;
k. Budget and Program Committee recommendations;
l. Public comment; and
m. Council discussion and action.

**14. Administrative Matters**

a. Reports on meeting and workshops;
b. 1995–96 Advisory Panel selection;
c. Statement of organization, practices, and procedures revisions;
d. Recommendations of Executive and Budget and Program Committees;
e. Scheduling of 87th Council meeting;
f. Public comment; and
g. Council discussion and action.

**15. Fishermen's Forum**

**16. Other Business**

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 27, 1995.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 95–8132 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–22–F

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**[I.D. 031495C]**

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification no. 2 to scientific research permit no. 873 (P772#63).

**SUMMARY:** Notice is hereby given that a request for modification of scientific research permit no. 873 submitted by the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has been granted.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016).

**SUPPLEMENTARY INFORMATION:** On February 15, 1995, notice was published in the **Federal Register** (60 FR 8632) that a modification of permit no. 873, issued July 28, 1993 (58 FR 34038), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit no. 873 authorized the permit holder to biopsy several species of cetaceans off the Pacific and Southern Oceans, and to import biopsy tissues collected outside of U.S. waters. The permit has been modified to add several additional species to the permit authority, to import biopsy tissues from these additional species, to expand the study area to include the Indian Ocean, to biopsy gray whales (including animals accompanying calves), fin, sei, minke, and right whales, and to employ photo-identification and photogrammetry techniques to study both gray whales and the additional species mentioned above.

Issuance of this modification, as required by the ESA, was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 21, 1995.

**Ann D. Terbush,**

*Chief, Permits & Documentation Division, National Marine Fisheries Service.*

[FR Doc. 95–8169 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcing the Establishment and Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Egypt

March 27, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing and adjusting limits for the new agreement year.

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**EFFECTIVE DATE:** April 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Memoranda of Understanding (MOUs) dated September 12, 1993 and April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt establish limits for the period beginning on January 1, 1995 and extending through December 31, 1995. The limit for Categories 340/640 has been reduced for carryforward used during the previous agreement period.

These limits will be subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) on the date that Egypt becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs, but are designed to assist only in the

implementation of certain of their provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 27, 1995.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Memoranda of Understanding (MOUs) dated September 12, 1993 and April 29, 1994 between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 5, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit [1] |
|---|---|
| Fabric Group 218–220, 224–227, 313–317 and 326, as a group. | 83,191,888 square meters. |
| Sublevels in Fabric Group | |
| 218 | 2,508,000 square meters. |
| 219 | 19,573,194 square meters. |
| 220 | 19,573,194 square meters. |
| 224 | 19,573,194 square meters. |
| 225 | 19,573,194 square meters. |
| 226 | 19,573,194 square meters. |
| 227 | 19,573,194 square meters. |
| 313 | 35,941,995 square meters. |
| 314 | 19,573,194 square meters. |
| 315 | 22,984,979 square meters. |
| 317 | 19,573,194 square meters. |
| 326 | 2,508,000 square meters. |
| Levels not in a group | |
| 300/301 | 7,681,216 kilograms of which not more than 2,409,100 kilograms shall be in Category 301. |
| 338/339 | 2,226,000 dozen. |
| 340/640 | 870,000 dozen. |
| 369–S [2] | 1,167,791 kilograms. |
| 448 | 18,342 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Should Egypt become a member of the World Trade Organization (WTO), the limits set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 95–8196 Filed 4–3–95; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable Control Number:* Defense FAR Supplement, Part 209, Contractor Qualifications, and related clause at 252.209; OMB Control No. 0704–0360

*Type of Request:* Revision of a currently approved collection

*Average Burden Hours/Minutes Per Response:* 40 hours

*Responses Per Respondent:* 1

*Number of Respondents:* 18

*Annual Burden Hours:* 720

*Annual Responses:* 18

*Needs and Uses:* The Defense FAR Supplement, Part 209, prescribes policies and procedures for, among other things, avoiding organizational conflicts of interest. The information required by this requirement will be used by the Government to determine if an actual or potential conflict of interest exists, and to determine the best course of action to avoid or mitigate such a conflict

*Affected Public:* Businesses or other for-profit; non-profit institutions; small businesses or organizations

*Frequency:* On occasion

*Respondent's Obligation:* Required to obtain or retain a benefit

*OMB Desk Officer:* Mr. Peter N. Weiss. Written comments and recommendations on the proposed revision to the information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503

*DOD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

Dated: March 29, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–8138 Filed 4–3–95; 8:45 am]

BILLING CODE 5000–04–M

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and Applicable OMB Control Number:* DOD FAR Supplement, Part 237.70, Mortuary Services, and the clause at 252.237–7011, Preparation History; OMB Control Number 0704–0231

*Type of Request:* Extension

*Average Burden Hours Per Response:* 1

*Responses Per Respondent:* 1

*Number of Respondents:* 500

*Annual Burden Hours:* 500

*Annual Responses:* 500

*Needs and Uses:* This information is used by (1) contracting officers to ensure that the contractor has properly prepared the body and (2) the common carrier so that the body can be shipped by that carrier

*Affected Public:* Business or other for-profit and Small Businesses or organizations
*Frequency:* On occasion
*Respondents Obligation:* Required to obtain or retain a benefit
*Desk Officer:* Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503
*DOD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302

Dated: March 29, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–8139 Filed 4–3–95; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary

### U.S. Strategic Command Strategic Advisory Group

**AGENCY:** Department of Defense, USSTRATCOM.

**ACTION:** Notice.

**SUMMARY:** The Strategic Advisory Group (SAG) will meet in closed session on April 20 and 21, 1995.

The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, April 2, 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that, accordingly, this meeting will be closed to the public.

Dated: March 29, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–8137 Filed 4–3–95; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP94–21–002]**

### Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

March 29, 1995.

Take notice that on March 23, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the changes were made in compliance with the Commission's Order issued in this proceeding on February 15, 1995, which are intended to reflect the reallocation of SBA costs as provided in the SBA Settlement, filed on September 12, 1994.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 5, 1995. All protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–8141 Filed 4–3–95; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5183–7]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR described the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before May 4, 1995.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1747.01.

**SUPPLEMENTARY INFORMATION:**

### Office of Research and Development

*Title:* Information Collection Request (ICR) for Report and Database on Ecosystem Research in the Pacific Northwest.

*Abstract:* This is a new information collection request to establish a database of ecosystem research activities in the Pacific Northwest. The establishment of the database is one of the tasks assigned under President Clinton's Forest Plan and associated Record of Decision (ROD) from U.S. District Court in Seattle. Specifically, the task requires the EPA to identify possible sources of research activities (State, federal, and university research programs) and compile this information into an EPA electronic database. The information is needed to: (1) Ensure that EPA and non-EPA research conducted in the Pacific Northwest is complementary, (2) help federal research organizations identify research needs or redundant projects, (3) serve as a basis for development of an interagency ecosystem research plan that is responsive to the requirements in the President's Forest Plan.

The information will be gathered through a voluntary mail survey that targets researchers working at various governmental and non-governmental institutions located within the Pacific Northwest. Respondents will be asked to provide information that includes: (1) Identification information (title, contact, and principal investigators), (2) project status (activities, funding), (3) descriptive information about the research (spatial scale, location, ecosystem, etc.), and (4) survey goals and objectives. Respondents shall also be asked to provide their opinion on the top five ecosystem research needs to support the President's Forest Plan. Following the distribution of the survey, the EPA will perform follow-up calls to track survey completion and answer

questions that respondents may have about the survey.

EPA will perform quality assurance checks on completed surveys and enter the information into an electronic database that shall be accessible to researchers. The information will be used by the EPA and research organizations to establish a baseline of information about research activities and encourage coordination among various research institutions.

*Burden Statement*: Public reporting burden for this collection of information is estimated to average 30 minutes for mail surveys, including time for reviewing instructions, gathering and compiling the information, and completing and reviewing the response.

*Respondents*: Researchers at federal, State and university institutions that maintain ecological research programs in the Pacific Northwest.

*Estimated Number of Respondents*: 500.

*Estimated Number of Responses Per Respondent*: 1.

*Frequency of Collection*: One time.

*Estimated Total Annual Burden on Respondents*: 250 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, EPA ICR #, 1747.01, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St., SW, Washington, DC 20460
and
Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503

Dated: March 30, 1995.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95–8211 Filed 4–3–95; 8:45 am]

**BILLING CODE 6560–50–M**

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## Office of Research and Development

**[FRL–5183–4]**

## Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) that utilizes a measurement principle based on UV fluorescence. The new designated method is identified as follows:

EQSA–0495–100, ''Advanced Pollution Instrumentation, Inc. Model 100A Sulfur Dioxide Analyzer,'' operated on any full scale range between 0–50 ppb* and 0–1000 ppb, at any temperature in the range of 5 to 40 degrees C, with a 5-micron TFE filter element installed in the filter assembly, with either the vendor-supplied internal pump or a user- or vender-supplied external vacuum pump capable of maintaining an absolute pressure of 35 cm (14 inches) of mercury (or less) at 1.0 standard liter per minute flow rate, with the following software settings: Dynamic zero: OFF; Dynamic span: OFF; AutoCal: ON or OFF; Dual range: ON or OFF; Autorange: ON or OFF; Temp/pressure compensation: ON; dilution factor: 1.0; and with or without any of the following options:

Rack mount with chassis slides
Rack mount without slides, ears only
Fluorocarbon zero/span valves
Internal zero/span (IZS)
$SO_2$ Permeation tube, uncertified, 0.4 ppm @ 0.7 L/min
$SO_2$ Permeation tube, certified, 0.4 ppm @ 0.7 L/min
$SO_2$ Permeation tube, uncertified, 0.8 ppm @ 0.7 L/min
$SO_2$ Permeation tube, certified, 0.8 ppm @ 0.7 L/min
4–20 mA, isolated outputs
External pump
Rack mount for external pump with tray
Status outputs
RS–232 output

*Users should be aware that designation of this analyzer for operation on ranges less than 500 ppb is based on meeting the same absolute performance specifications required for the 0–500 ppb range. Thus, designation of lower ranges does not imply commensurably better performance than that obtained on the 0–500 ppb range.

**Note:** In addition to the U.S. electrical power voltage and frequency, this analyzer is approved for use, with proper factory configuration, on 50 Hertz line frequency and any of the following voltage ranges: 200–242 Vac (220 volts nominal); 216–264 Vac (240 volts nominal).

This method is available from Advanced Pollution Instrumentation, Inc., 8815 Production Avenue, San Diego, California 92121–2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 60, January 9, 1995, page 2386.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such a analyzer has two or more selectable ranges, the label or sticker

must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzers has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

**Joseph K. Alexander,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 95–8208 Filed 4–3–95; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Request for comment; extension of comment period.

**SUMMARY:** On February 21, 1995, the Board requested comment on proposed revisions to the Country Exposure Report (FFIEC 009). The Federal Financial Institutions Examination Council (FFIEC) proposed to implement the report as of March 31, 1995. The Secretary of the Board, as requested by the FFIEC, has extended the comment period by 30 days to give the public additional time to provide comment. In addition the implementation date of the proposed revisions to the reporting form will be delayed until not earlier than September 30, 1995, to provide institutions with additional time to modify their systems and to resolve conceptual issues related to the report.

**DATES:** Comments must be received by April 21, 1995.

**ADDRESSES:** Comments may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (OMB 83-I), supporting statement, instructions, and other documents that have been submitted to OMB for approval may be requested from the agency clearance officer, Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only,* Telecommunications Device for the Deaf (TTD) Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The FFIEC has received a request to extend the comment period and delay the implementation date of the proposed revisions to the Country Exposure Report (FFIEC 009). In view of the significance of the new items that are proposed in the reports, the Board is extending the comment period to April 21, 1995, and delaying the proposed implementation date to not earlier than September 30, 1995.

Board of Governors of the Federal Reserve System, March 29, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8159 Filed 4–3–95; 8:45am]

**BILLING CODE 6210–01–F**

### Richard Lee Brown, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 1995.

**A. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Richard Lee Brown*, Fort Worth, Texas; Trustee of the M.L. Rhea Estate, Fort Worth, Texas, Trustee of the Fred D. Thompson, Jr. Trust, Fort Worth, Texas, Trustee of the John A. Thompson Trust, Fort Worth, Texas; to acquire an additional 20.94 percent, for a total of 24.86 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Frederick Dickson Thompson, Fort Worth, Texas, Trustee of the Cleaves Rhea Thompson Trust under will Louise R. & Floore, Fort Worth, Texas; Trustee

of the Frederick Dickson Thompson, Jr., Trust under Will Louise R. Floore, Fort Worth, Texas; Trustee of the John Andrew Thompson Trust under Will Louise R. Floore, Fort Worth, Texas; to acquire an additional 23.40 percent, for a total of 25.00 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Cleaves Rhea Thompson, Santa Clara, California; to acquire an additional 1.07 percent, for a total of 1.36 percent; Frederick Dickson Thompson, Jr., Fort Worth, Texas, to acquire an additional .94 percent, for a total of 1.30 percent; John Andrew Thompson, Fort Worth, Texas, to acquire an additional 1.25 percent, for a total of 6.17 percent; Kelly R. Thompson, Fort Worth, Texas, Executor of the 3 estates of Jimmie K. Thompson, Forth Worth, Texas, to acquire an additional .35 percent, for a total of .79 percent, of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, March 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8154 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## First Evanston Bancorp, 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 April 27, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First Evanston Bancorp, Inc.*, Evanston, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Evanston Bank & Trust Company, Evanston, Illinois (in organization).

*2. Northern Trust Corporation*, Chicago, Illinois; to acquire 100 percent of the voting shares of Tanglewood Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Tanglewood Bank, N.A., Houston, Texas.

*3. Scott Bancshares, Inc.*, Bethany, Illinois; to acquire 100 percent of the voting shares of Maroa Bancshares, Inc., Maroa, Illinois, and thereby indirectly acquire Bank of Maroa, Maroa, Maroa, Illinois.

Board of Governors of the Federal Reserve System, March 28, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8153 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## First Commerce Corporation, 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 April 28, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First Commerce Corporation*, New Orleans, Louisiana; to merge with Lakeside Bancshares, Inc., Lake Charles, Louisiana, and thereby indirectly acquire Lakeside National Bank of Lake Charles, Lake Charles, Louisiana.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. CBOT Financial Corporation*, New Waverly, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of CBOT Financial Corporation of Delaware, Wilmington, Delaware, and thereby indirectly acquire Citizens Bank of Texas, N.A., New Waverly, Texas.

In connection with this application, CBOT Financial Corporation of Delaware, Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Texas, N.A., New Waverly, Texas.

*2. First Liberty National Bancshares, Inc.*, Liberty, Texas; to become a bank holding company by acquiring an additional 54 percent of the voting shares of First Liberty National Bank, Liberty, Texas.

In connection with this application, Applicant has applied to acquire FLNB Shares, Inc., Wilmington, Delaware, which will become a bank holding company by acquiring Bank.

Board of Governors of the Federal Reserve System, March 29, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8156 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## John Bigham Barnett, III; 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 April 18, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. John Bigham Barnett, III*, Monroeville, Alabama; to retain 14 percent of the voting shares of First Monco Bancshares, Inc., Monroeville, Alabama, and thereby indirectly acquire The Monroe County Bank, Monroeville, Alabama.

Board of Governors of the Federal Reserve System, March 29, 1995.

**William W. Wiles,**

*Secretary of the Board*.

[FR Doc. 95–8155 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## Mercantile Bancorporation Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 18, 1995.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Mercantile Bancorporation Inc.*, St. Louis, Missouri; to acquire Plains Spirit Financial Corporation, Davenport, Iowa, and thereby indirectly acquire First Federal Savings Bank of Iowa, Davenport, Iowa, and engage in operating a savings association, whose activities include taking deposits and lending funds for residential, commercial, and consumer purposes, pursuant to § 225.23(b)(9) of the Board's Regulation Y; and in the sale of credit related insurance products, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. National City Corporation*, Cleveland, Ohio; to acquire United Bancorp of Kentucky, Inc., Lexington, Kentucky, and thereby indirectly acquire its subsidiary, Computer Bank Services, Inc. Lexington, Kentucky, and engage in permissible data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. Upon consummation, the data processing operations of Computer Bank Services, Inc., will be consolidated with those of National City Corporation.

Board of Governors of the Federal Reserve System, March 29, 1995.

**William W. Wiles,**

*Secretary of the Board*.

[FR Doc. 95–8157 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## Union-Calhoun Investments, Ltd.; 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 April 15, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Union-Calhoun Investments, Ltd.*, Rockwell, City, Iowa; to acquire Keith Insurance, Rockwell City, Iowa, and thereby engage in insurance agency activities in a small town of less than 5,000 in population, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 28, 1995.

**William W. Wiles,**

*Secretary of the Board*.

[FR Doc. 95–8152 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## Western Bancorporation, Inc.; 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 April 18, 1995.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Western Bancorporation, Inc.*, Duluth, Minnesota; to engage *de novo* through its subsidiary Premier Credit Corporation, Duluth, Minnesota, in industrial banking activities, and the purchase of dealer paper on both recourse and non-recourse bases, at a discount from automobile dealers and other merchants who sell at retail to the public, pursuant to § 225.25(b)(2) of the Board's Regulation Y. These activities will be conducted throughout the states of Minnesota and Wisconsin.

Board of Governors of the Federal Reserve System, March 29, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8158 Filed 4–3–95; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031395 AND 032495

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Gibbs Oil Company Limited Partnership, The Circle K Corporation, Circle K Stores, Inc | 95–1120 | 03/13/95 |
| Howell Corporation, Exxon Corporation, Exxon Pipeline Company | 95–1125 | 03/13/95 |
| BanPonce Corporation, CS Holding, CS First Boston (Puerto Rico), Inc | 95–1130 | 03/13/95 |
| The Economist Newspaper Limited, Knight-Ridder, Inc., Journal of Commerce, Inc | 95–1132 | 03/13/95 |
| Lee Enterprises, Incorporated, J.C. Seacrest Trust, Journal-Star Printing Co | 95–1140 | 03/13/95 |
| Montedison S.p.A., American Maize-Products Company, American Maize-Products Company | 95–1142 | 03/13/95 |
| James T. McAfee, Jr., National Medical Enterprises, Inc., National Medical Enterprises, Inc | 95–1143 | 03/13/95 |
| Milk Marketing, Inc., Eastern Milk Producers Cooperative Association, Inc., Eastern Milk Producers Cooperative Association, Inc | 95–1144 | 03/13/95 |
| News Holdings Corp., Black & Decker Corp., PRC Realty Systems, Inc | 95–1145 | 03/13/95 |
| Settlement Dated 31st December 1985, Bausch & Lomb Incorporated, Bausch & Lomb Incorporated | 95–1148 | 03/13/95 |
| NationsBank Corporation, Tenneco Inc., Dixie Container Corporation | 95–1149 | 03/13/95 |
| Unitas Ltd., Kansallis-Osake-Pankki, Kansallis-Osake-Pankki | 95–1150 | 03/13/95 |
| General Electric Company, Atlantic Richfield Company, Lehndorff Windsor Square Associates Joint Venture | 95–1154 | 03/13/95 |
| Bob Marbut, Tak Communications, Inc., as debtor-in-possession, Tak Communications, Inc | 95–1156 | 03/13/95 |
| Hollywood Entertainment Corporation, Title Wave Stores, Inc., Title Wave Stores, Inc | 95–1161 | 03/13/95 |
| Gibraltar Steel Corporation, Albert Fruman, Wm. R. Hubbell Steel Corporation | 95–1165 | 03/13/95 |
| Merrill Lynch Capital Appreciation Ptnship No B—XXIV LP, Donald E. Tykeson, Telecomm Systems, Inc | 95–1166 | 03/13/95 |
| YPF Sociedad Anonima, Maxus Energy Corporation, Maxus Energy Corporation | 95–1172 | 03/13/95 |
| Roberts Pharmaceutical Corporation, SmithKline Beecham Pharmaceuticals, SmithKline Beecham Pharmaceuticals | 95–1177 | 03/13/95 |
| President and Fellows of Harvard College, TRST Tower Inc., Anatole Hotel-Tower | 95–1194 | 03/13/95 |
| President and Fellows of Harvard College, Dallas Market Center Development Co., Ltd., Anatole Hotel-Atria and Trinity Hall | 95–1201 | 03/13/95 |
| Schnitzer Steel Industries, Inc., Manufacturing Management, Inc., Manufacturing Management, Inc | 95–0199 | 03/14/95 |
| American Linen Supply Co., Walter B. Klyce, White Rose, Inc | 95–1104 | 03/14/95 |
| Health Management, Inc., Caremark International Inc., Clozaril Patient Management Business | 95–1117 | 03/14/95 |
| Blackstone Capital Partners II Merchant Banking Fund LP, People's Choice TV Corp., People's Choice TV Corp | 95–1187 | 03/14/95 |
| Glaxo plc, Wellcome plc, Wellcome plc | 95–0931 | 03/15/95 |
| Actel Corporation, Texas Instruments Incorporated, Texas Instruments Incorporated | 95–1071 | 03/15/95 |
| Richard Lee, Phillips-Van Heusen Corporation, Phillips-Van Heusen Corporation | 95–1116 | 03/16/95 |
| E.I. Dupont De Nemours and Company, Enron Corporation, Enron Oil & Gas Company | 95–1153 | 03/16/95 |
| Leonard S. Mandor, Milestone Properties, Inc., Milestone Properties, Inc | 95–1181 | 03/16/95 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 031395 AND 032495—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Time Warner Inc., American Cable TV Investors 4, Ltd., American Cable TV Investors 4, Ltd | 95–1191 | 03/16/95 |
| WHX Corporation, Mitsubishi Estate Company, Limited, Unimast Incorporated | 95–1064 | 03/17/95 |
| Motorola, Inc., Digital Equipment Corporation, Digital Equipment Corporation | 95–1080 | 03/17/95 |
| Helix Health System, Inc., Church Home and Hospital of the City of Baltimore, Church Home and Hospital of the City of Baltimore | 95–1085 | 03/17/95 |
| United States Shoe Corporation (The), Green Capital Investors, L.P., Opti-World, Inc | 95–1160 | 03/17/95 |
| Milestone Properties, Inc., Leonard S. Mandor, Concord Assets Group, Inc | 95–1180 | 03/17/95 |
| Consolidated Electrical Distributors, Inc., Eastern Enterprises, WaterPro Supplies Corporation | 95–1193 | 03/17/95 |
| Dresser Industries, Inc., Henry L. Hillman, Wellstream Company L.P | 95–1196 | 03/17/95 |
| Caremark International Inc., Vaicaitis, Schorr, Richards, et al., M.D., P.A., Vaicaitis, Schorr, Richards, et al., M.D., P.A | 95–1208 | 03/17/95 |
| The Rival Company, Noel T. Patton and Eva M. Patton, Patton Electric Company, Inc | 95–1211 | 03/17/95 |
| Praxair, Inc., Sam Wilson and Sonia Wilson, Wilson Oxygen & Supply Company | 95–1215 | 03/17/95 |
| Associated Wholesale Grocers, Inc., Homeland Holding Corporation, Homeland Stores, Inc | 95–1219 | 03/17/95 |
| Apollo Investment Fund, L.P., Ronald W. Burkle, DFF Holdings, Inc | 95–1221 | 03/17/95 |
| Welsh, Carson, Anderson & Stowe VI, L.P., Bridge Information Systems, Inc., Bridge Information Systems, Inc | 95–1141 | 03/20/95 |
| Pennzoil Company, Oryx Energy Company, Sun Operating Limited Partnership | 95–1162 | 03/20/95 |
| Mariner Health Group, Inc., Convalescent Services, Inc., Convalescent Services, Inc | 95–1169 | 03/20/95 |
| Samuel B. Kellett, Mariner Health Group, Inc., Mariner Health Group, Inc | 95–1170 | 03/20/95 |
| Stiles A. Kellett, Jr., Mariner Health Group, Inc., Mariner Health Group, Inc | 95–1171 | 03/20/95 |
| Cross Timbers Oil Company, Apache Corporation, Apache Corporation | 95–1176 | 03/20/95 |
| PennCorp Financial Group, Inc., Integon Life Partners L.P., Integon Life Corporation, Marketing One Financial Corp | 95–1214 | 03/20/95 |
| Coventry Corporation, HealthCare USA, Inc., HealthCare USA, Inc | 95–1218 | 03/20/95 |
| The Goldfarb Corporation, Allied Domecq PLC, Fleming Packaging Corporation | 95–1222 | 03/20/95 |
| Charter Oak Partners, Ewald Lehmann and Marvin R. Wollin, Wollin Products, Inc | 95–1229 | 03/20/95 |
| Kuhlman Corporation, Schwitzer, Inc., Schwitzer, Inc | 95–1233 | 03/20/95 |
| The Goldfarb Corporation, Bacardi Limited, Fleming Packaging Corporation | 95–1238 | 03/20/95 |
| Radex-Heraklith Industriebeteiligungs AG, VIAG AG, Didier-Werke AG | 95–1107 | 03/21/95 |
| GranCare, Inc., HealthTrust, Inc., Cornerstone Health Management Company | 95–1163 | 03/21/95 |
| Red Man Pipe & Supply Co., Estate of Charles A. Sammons, Vinson Supply Company | 95–1175 | 03/21/95 |
| LG&E Energy Corp., Santa Fe Energy Resources, Inc., Hadson Corporation | 95–1205 | 03/21/95 |
| Kwik-Wash Laundries, Inc., Broad Street Investment Fund I, L.P., Solon Automated Services, Inc | 95–1216 | 03/21/95 |
| Channel One Associates, L.P., Walter Industries, Inc., Walter Industries, Inc | 95–1234 | 03/21/95 |
| Noranda Inc., Pentair, Inc., Cross Pointe Paper Corporation | 95–1178 | 03/22/95 |
| Circus Circus Enterprises, Inc., Paul W. Lowden, Hacienda Hotel Resort and Casino | 95–1212 | 03/22/95 |
| Berwind Group Partners, Dennis Pobiak and Marilyn Pobiak, High-Tech institute, Inc | 95–1228 | 03/22/95 |
| BankAmerica Corporation, Healthtrust, Inc.—The Hospital Company, Chesterfield General Hospital Inc | 95–1155 | 03/23/95 |
| PacifiCare Health Systems, Inc., Pacific Hospital Preservation and Development Authority, Pacific Health Plans | 95–1213 | 03/23/95 |
| De La Rue plc, Richard N. Groves and Margaret B. Groves, North American Video Corporation | 95–1217 | 03/23/95 |
| Sisters of St. Joseph of Nazareth, US Province/Congregation-Sisters of Bon Secours Paris, Bon Secours of Michigan Health Care System Inc | 95–1243 | 03/23/95 |
| Finaxa, The Long-Term Credit Bank of Japan, Ltd., Aventine Partners | 95–1260 | 03/23/95 |
| Western Wireless Corporation, Bachtel Cellular Liquidity, L.P., Bachtel KS–14, L.P | 95–1188 | 03/24/95 |
| Western Wireless Corporation, PriCellular Corporation, Cellular Information Systems, Inc | 95–1189 | 03/24/95 |
| PriCellular Corporation, Western Wireless Corporation, KETS Partnership | 95–1190 | 03/24/95 |
| Den norske stats oljeselskap a.s., Ralph Bradley, The Eastern Group, Inc | 95–1204 | 03/24/95 |
| Marriott International, Inc., William B. Johnson, William B. Johnson Properties, Inc | 95–1233 | 03/24/95 |
| US WEST, Inc., US WEST, Inc., San Juan Cellular Limited Partnership | 95–1226 | 03/24/95 |
| Rockwell International Corporation, Gerald W. Schwartz, Dura Automotive Systems, Inc | 95–1241 | 03/24/95 |
| Federal Express Corporation, Delford M. Smith, Evergreen International Airlines, Inc | 95–1250 | 03/24/95 |
| Healthsource, Inc., Provident Life and Accident Insurance Co. of America, Provident Life and Accident Insurance Company and | 95–1256 | 03/24/95 |
| General Electric Company, New World Development Co., Ltd., Renaissance Hotel Operating Company | 95–1257 | 03/24/95 |
| Kjell I. Rokke, Orkla A/S, Helly-Hansen A/S | 95–1273 | 03/24/95 |

*For Further Information Contact:* Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–8188 Filed 4–3–95; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Responsible Fatherhood Projects

**AGENCY:** Administration for Children and Families, (ACF), Department of Health and Human Services, (HHS).

**ACTION:** Announcement of the availability of funds and request for applications to demonstrate promising program interventions to encourage and increase responsible fatherhood.

**SUMMARY:** The Administration for Children and Families (ACF) announces the availability of Federal funding to demonstrate promising program interventions to encourage and increase responsible fatherhood. Funding under this announcement is authorized by section 1110 of the Social Security Act governing Social Services Research and Demonstration activities (Catalog of Federal Domestic Assistance 93.647).

**DATES:** The closing date for submission of applications is June 5, 1995.

**MAILING ADDRESSES:** William J. McCarron, Administration for Children and Families, Division of Discretionary Grants—Room 6C–462, 370 L'Enfant Promenade SW., Washington, DC 20447. For hand delivered applications, use: William J. McCarron, Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Mark Fucello, Administration for Children and Families, Office of Policy and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone (202) 401–4538.

**SUPPLEMENTARY INFORMATION:** The Administration for Children and Families announces that competing applications are being accepted for Federal financial assistance to demonstrate promising program interventions to encourage and increase responsible fatherhood. Up to five awards will be made under this announcement for project periods of 24 months. Each successful recipient will receive a financial award for an initial budget period of 17 months. The second budget period, consisting of months 18 through 24, will be unfunded with Federal funds; applicants are encouraged to secure other sources of funding to cover these latter months of the project period. Each recipient will be expected to enter into a cooperative agreement with ACF which will outline the terms of ACF's interest and involvement in the project and the responsibilities of the recipient.

This program announcement consists of three parts. Part I describes the activities supported by this announcement and application requirements. Part II describes the application review process. Part III provides information and instructions for the development and submission of applications. The forms to be used for submitting an application follow Part III.

## Part I.—Project Design

### *Purpose*

The purpose of the announcement is to inform the public of the availability of Federal funding to demonstrate promising program interventions to encourage and increase responsible fatherhood. There is a growing body of evidence suggesting that the impact of fathers' participation on children's behavior is significant. Although research does not suggest a straightforward relationship between paternal participation in child rearing and child well-being, it can be reasonably assumed that children benefit emotionally and developmentally when fathers play a larger role in children's lives. According to this program announcement, ACF will provide funding to community programs designed to strengthen the role and parenting abilities of fathers and to enable fathers to relate positively to their children and their children's mothers. The target populations for these programs should encompass a wide range of fathers including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children.

The recipients will operate projects designed to create an environment where fathers are encouraged and supported in conduct that allows them to improve the quality of life for their families. Projects should provide comprehensive services designed to assist men and their families for the purpose of attempting to reverse the negative trends among adults and youth related to at-risk behaviors such as substance abuse, gang involvement, school failure, and unemployment. Beyond encouraging and increasing basic responsible acts such as establishing paternity and encouraging contact between father and children, programs should teach fathers:

- How to understand their children's development,
- How to understand and positively affect their children's behavior,
- How to be positive role models for their children, and
- How to work constructively with the children's mother for the benefit of the children regardless of whether both parents live in the same household as the children.

### *Eligible Applicants*

Organizations eligible to apply for financial assistance under this announcement include States, local governments, and public or private nonprofit organizations. Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ACF is interested in providing financial support to organizations: With experience in working with fathers and which are knowledgeable about the issues concerning fathers; with developed plans and methods to teach fathers how to act responsibly and to understand their children's development and positively affect their children's behavior; and which have significant, long-term financial support ensuring uninterrupted project operation beyond the projected period of federal assistance.

### *Minimum Requirements for Project Design*

In order to compete successfully in response to this announcement, the applicant should develop an application which:

- Describes the applicant's experience in working with fathers. The description should highlight the applicant's experience in coordinating services from different providers or levels of government aimed at encouraging men to be responsible fathers and should describe the men whom the project has served. The types of services provided or to which clients are referred may include health and nutrition instruction, employment and career counseling, parenting education, peer support, and formal and informal mediation and dispute resolution with the children's mother, etc.
- Explains the applicant's methods to teach fathers how to act responsibly and to adopt behaviors which exemplify the following principles: Raising children requires an active commitment from both parents—financially and emotionally; employment is important to being a responsible father not only to provide financial support but also to be a good role model; and successful child-rearing depends on understanding how children develop. The application must explain in detail how the proposed project aims to enable fathers at risk of

destructive behaviors to develop an achievement orientation from which they will be better able to act responsibly and to interact constructively with the children and the children's mother regardless of whether both parents live in the same household as the children.

• Identifies the typical settings or points in fathers' lives that the applicant first engages and enrolls individuals for program services, e.g., in-hospital recruitment of new fathers, community centers where neighborhood men gather, half-way houses, etc. ACF is interested in funding a group of programs which together engage men at various points in their lives and in various settings to help develop for the public a better understanding about how to structure programs and services for fathers.

• Includes assurance that the recipient will produce two major reports (in addition to regular quarterly progress reports) to be issued during the project. The initial major report, due mid-way into the project, should discuss program implementation and participation and activities of fathers, including a discussion of program approaches and activities, paternity establishment, level of employment among participating fathers, and level of contact of fathers with their children as well as with the children's mother. The final report, due at the end of the project (90 days after the end of the 24-month project period), should cover the topics discussed above with longer follow-up and more detailed discussion of the project's staffing structure; procedures for referrals to services and coordination with other public and private agencies; type and duration of services actually provided; procedures and criteria used in recruitment and training of staff; and recommendations for others seeking to establish similar projects. Recommendations should include a discussion of the project's contextual factors, such as the social, economic, and political forces that may have a bearing on the implementation of this type of project. These reports are intended to further the general knowledge of the public, community-based organizations, and social service departments regarding program interventions to increase responsible fatherhood. In addition regular quarterly progress reports must be submitted within 60 days of the end of each quarter of the 24-month project period.

• Includes assurance of the recipient's willingness and intention to participate in and cooperate with evaluability assessment activities to be funded by the Department of Health and Human Services, possibly leading to a full-scale program evaluation if determined to be feasible.

• Includes financial support for project activities in addition to Federal funding to ensure uninterrupted project operation over the project period. ACF will give preference to applicants who provide evidence of significant, long-term financial support ensuring uninterrupted project operation beyond the period of federal assistance. Applicants should provide evidence of funding commitments from organizations such as private foundations.

Also, the recipient must be prepared to enter into a cooperative agreement with ACF which will outline the terms of ACF's interest and involvement in the project and the responsibilities of the recipient. The cooperative agreement:

(a) Will provide that ACF retain authority for review of significant program design changes from the model proposed in the original application; (b) will provide that ACF maintain involvement in any evaluability assessment activities to be funded by the Department of Health and Human Services, and (c) will provide for ACF review of reports (other than quarterly progress reports) before publication.

*Project Duration*

This announcement is soliciting applications for project periods of 24 months. Awards, on a competitive basis, will be for an initial 17-month budget period, although project periods will be for 24 months, subject to availability of funds. Each recipient will receive an initial financial award for 17 months. The second budget period, consisting of months 18 through 24, will be unfunded with Federal funds; applicants are encouraged to secure other sources of funding to cover these latter months of the project period.

*Federal Share of the Project*

The maximum Federal share of each project is not to exceed $85,000 for the initial 17-month budget period, subject to the availability of funds.

*Matching Requirement*

Recipients must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by in-kind contributions from a third party or cash, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $85,000 in Federal funds must include a match of at least $21,250 (20 percent of total project cost).

If approved for funding, recipients will be held accountable for commitments of non-Federal resources; and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

*Anticipated number of Projects to be Funded*

Five projects will be funded under this announcement. A single organization may apply on behalf of separate project sites operated by the same organization. If operated by the same organization, each project site which applies must submit a separate application.

**Part II—The Review Process**

*A. Review Process and Funding Decisions*

Timely applications from eligible applicants will be reviewed and scored competitively. Reviewers will use the evaluation criteria listed below to review and score the application.

In addition ACF may refer applications for review to other Federal or non-Federal entities when it is determined to be in the best interest of the Federal Government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations and national organizations. These comments along with those of the reviewers will be considered by ACF in making the funding decision.

In making a funding decision, ACF may give preference to applications which reflect experience in working with fathers since such experience on the part of an applicant has the potential to substantially improve the theory and practice of increasing responsible behavior among fathers and improving the well-being of their children.

ACF may also give preference to applicants who make a greater financial commitment to the demonstration since a greater total financial investment than the minimum required in this announcement has the potential of producing a high benefit in furthering knowledge about policies and practice of working with fathers for a low Federal investment.

*B. Evaluation Criteria*

Using the evaluation criteria below, reviewers will review and score each application. Applicants should insure that they address each minimum requirement listed above.

Reviewers will determine the strengths and weaknesses of each

application in terms of the appropriate evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each criterion may be given in the review process.

*Review Criteria*

(1) *Organizational experience* (15 points) The application should provide evidence of organizational experience in working with fathers including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children. Evidence of this experience should include a complete description of past or current projects which serve fathers and are aimed at improving their understanding of their responsibilities to their children, their roles as fathers, and their children's development.

(2) *Staff skills and responsibilities* (15 points) The application should list each consultant or other key individuals who will work on the project along with a short description of the nature of their contribution. Summarize the background and experience of the project director and key project staff. Applicants are encouraged to discuss staff experience in working with fathers.

(3) *Knowledge of issues concerning fathers* (15 points) The application should provide evidence of the applicant's understanding of the demographics and experiences of fathers, including disadvantaged, never-married non-custodial fathers; separated or divorced non-custodial fathers, as well as fathers living with their children. Evidence of this understanding should include (a) knowledge of key issues concerning fathers, any obstacles to effecting healthy levels of paternal involvement in their children's lives, and strengths and deficits of fathers in meeting their responsibilities to their children; and (b) if appropriate to the target population of fathers considered, familiarity with how men interact with child support enforcement systems, courts, employment and training programs, and social service agencies.

(4) *Approach and project design* (50 points) The application should describe how the organization will operate projects designed to create an environment where fathers are encouraged and supported in conduct that allows them to improve the quality of life for their families. The application should explain the applicant's methods to teach fathers how to act responsibly and to adopt behaviors which exemplify the following principles: Raising children requires an active commitment from both parents—financially and emotionally; employment is important to being a responsible father not only to provide financial support but also to be a good role model; and successful child-rearing depends on understanding how children develop. The application must explain in detail the typical settings or points in fathers' lives that the applicant first plans to engage and enroll individuals for program services, e.g., in-hospital, community centers, employment agency, etc. The application should explain how the project plans to increase basic responsible acts among fathers, such as establishing paternity and encouraging contact between father and children, but also, and more important, how programs will teach fathers to understand their children's development, to understand and positively affect their children's behavior, to be positive role models for their children, and to work constructively with the children and the children's mother regardless of whether both parents live in the same household as the children. The application should also describe the types of services to be provided or to which clients will be referred, e.g., health and nutrition instruction, employment and career counseling, parenting education, peer support, formal and informal mediation and dispute resolution with the children's mother, etc.

(5) *Budget Appropriateness* (5 points) The application should demonstrate that the project's costs are reasonable in view of the anticipated results and benefits. Applicants may refer to the budget information presented in the Standard Forms 424 and 424A.

## Part III. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided as part of this announcement along with a checklist for assembling an application package.

*A. Required Notification of the State Single Point of Contact*

This program announcement is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, South Dakota, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs), listed at the end of this announcement. Applicants from these nineteen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, Washington, DC. 20447.

*B. Deadline for Submittal of Applications*

Applications shall be considered as meeting an announced deadline if they are either:

1. Received on or before the deadline date at the receipt point specified in this program announcement, or

2. Sent on or before the deadline date and received by ACF in time for the independent review. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private

Metered postmarks shall not be acceptable as proof of timely mailing.

*Late applications:* Applications which do not meet the criteria in 1 and 2 above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it will not extend the deadline for any applicants.

*C. Instructions for Preparing the Application*

In order to assist applicants in completing the application, the Standard Forms 424 and 424A, required certifications, and a list of SPOCs have been included at the end of Part III of this announcement. Please reproduce single-sided copies of these forms from the reprinted forms and type your information onto the copies. Do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

*1. SF 424 Page 1, Application Cover Sheet*

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

*Item 1.* ''Type of Submission''—Non-Construction.

*Item 2.* ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF and applicant's own internal control number, if applicable.

*Item 3.* ''Date Received By State''—State use only (if applicable).

*Item 4.* ''Date Received by Federal Agency''—Leave blank.

*Item 5.* ''Applicant Information'' ''Legal Name''—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

''Organizational Unit''—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

''Name and telephone number of the person to be contacted on matters involving this application (give area code)''—Enter the full name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given.

*Item 6.* ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

*Item 7.* ''Type of Applicant''—Self-explanatory.

*Item 8.* ''Type of Application''—New.

*Item 9.* ''Name of Federal Agency''—DHHS/ACF.

*Item 10.* ''Catalog of Federal Domestic Assistance Number''—93.647.

*Item 11.* ''Descriptive Title of Applicant's Project''—Responsible Fatherhood Project.

*Item 12.* ''Areas Affected by Project''—Self-explanatory.

*Item 13.* ''Proposed Project''—Enter the desired start date for the project and projected completion date.

*Item 14.* ''Congressional District of Applicant/Project''—Enter the number of the Congressional district where the applicant's principal office is located.

*Items 15* ''Estimated Funding Levels''—In completing 15a through 15f, the dollar amounts entered should reflect the total amount requested for the initial 17-month budget period.

*Item 15a.* Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount available under this announcement for the initial 17-month budget period.

*Items 15b–e* Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or ''matching funds.''

*Item 15f.* Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

*Item 15g.* Enter the sum of items 15a-15e.

*Item 16a.* ''Is Application Subject to Review By State Executive Order 12372 Process?—Check ''Yes'' if your State participates in the E.O. 12372 process. Enter the date the application was made available to the State for review. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC.

*Item 16b.* ''Is Application Subject to Review By State Executive Order 12372 Process?—Check ''No'' if the program has not been selected by State for review.

*Item 17.* ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

*Item 18.* ''To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.''—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

*Item 18a-c.* ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

*Item 18d.* ''Signature of Authorized Representative''—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

*Item 18e.* ''Date Signed''—Enter the date the application was signed by the authorized representative.

*2. SF 424A—Budget Information—Non-Construction Programs*

This is a form used by many Federal agencies. For this application, Sections A, B, and C are to be completed. Sections D, E and F do not need to be completed.

*Section A—Budget Summary.* Line 1:

Column (a): Enter ''Responsible Fatherhood'';

Column (b): Enter 93.647.

Columns (c) and (d): Leave blank.

Columns (e), (f) and (g): Enter the appropriate amounts needed to support the project for the budget period.

*Section B—Budget Categories.* This budget should include the Federal as well as non-Federal funding for the proposed project for the budget period.

The budget should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

*Personnel—Line 6a.* Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, ''Other.''

*Justification:* Identify the project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

*Fringe Benefits—Line 6b.* Enter the total costs of fringe benefits.

*Justification:* Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

*Travel—6c.* Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

*Justification:* Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

*Equipment—Line 6d.* Enter the total costs of all equipment to be acquired by the project. For grants governed by the administrative requirements of either 45 CFR Part 92 or 45 CFR Part 74, equipment is defined as tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

*Justification:* Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

*Supplies—Line 6e.* Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

*Justification:* Specify general categories of supplies and their costs.

*Contractual—Line 6f.* Enter the total costs of all contracts, including procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and contracts with secondary recipient organizations. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line.

*Justification:* Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

*Construction—Line 6g.* Not applicable. New construction is not allowable.

*Other—Line 6h.* Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

*Justification:* Specify the costs included.

*Total Direct Charges—Line 6i.* Enter the total of Lines 6a through 6h.

*Indirect Charges—6j.* Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' This line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

*Justification:* Enclose a copy of the indirect cost rate agreement, if applicable.

*Total—Line 6k.* Enter the total amounts of lines 6i and 6j.

*Program Income—Line 7.* Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

*Justification:* Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

*Section C—Non-Federal Resources.* This section summarizes the amounts of non-Federal resources that will be applied to the grant. On lines 8–11, list estimates for each projected budget period within the total project period (if an additional line is needed, use line 23 and label it appropriately). Enter total amounts on line 12.

In-kind contributions are defined in title 45 of the Code of Federal Regulations, § 74.2, as the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

*Justification:* Describe third party in-kind contributions, if included.

*Section D—Forecasted Cash Needs.* Not applicable.

*Section E—Budget Estimate of Federal Funds Needed For Balance of the Project.* Not applicable

*Section F—Other Budget Information.* Not applicable.

*3. Program Narrative Statement*

The Program Narrative Statement should be clear, concise, and address the specific requirements mentioned under Part I. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) *Organizational Experience;*

(b) *Staff Skills and Responsibilities;*

(c) *Knowledge of Issues Concerning Fathers;*

(d) *Approach and Project Design;*

(e) *Budget Appropriateness.*

The specific information to be included under each of these headings is described in section B of Part II—Evaluation Criteria.

The narrative should be typed double-spaced. All pages of the narrative (including charts, references, footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with ''Organizational Experience.'' The length of the application, including the application forms and all attachments, should not exceed 50 pages.

*4. Assurances/Certifications*

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances and certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications. A signature on the SF 424 indicates compliance with Drug-Free Workplace Requirements, Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

*D. Checklist for a Complete Application*

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original application, signed and dated, plus two copies.

—Complete application length should not exceed 60 pages.

—A complete application consists of the following items in this order:

- Application for Federal Assistance (SF 424);
- A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;
- Budget Information—Non-construction programs (SF 424A);
- Budget Justification for SF 424A Section B—Budget Categories;
- Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
- Copy of the applicant's approved indirect cost rate agreement, if appropriate;
- Program Narrative Statement (See Part II, Section C);
- Assurances—Non-construction programs (SF 424B); and
- Certification Regarding Lobbying.

*E. Submitting the Application*

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered. In order to facilitate handling, please do not use covers, binders, or tabs.

Applicant should include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application.

Dated: March 28, 1995.

**Howard Rolston,**

*Director, Office of Policy and Evaluation.*

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ . ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

**13. PROPOSED PROJECT:**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

| a. Applicant | b. Project |
|---|---|
| | |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure is response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount request or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

**BILLING CODE 4184–01–P**

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6 a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section needs not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a

purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of under ground sources of drinking water under the Safe Drinking Water Act of 1974; as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. will comply with the Laboratory Animal Welfare Act of 1996 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

_____

**BILLING CODE 4184–01–P**

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee certifies that it will or will continue to provide a drug-free workplace by:**

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

*Check* ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

BILLING CODE 4184–01–C

*Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction.'' Provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions*

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

**Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

**Authorized for Local Reproduction**
**Standard Form - LLL**

BILLING CODE 4184–01–C

*Certification Regarding Environmental Tobacco Smoke*

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

**Executive Order 12372—State Single Points of Contact**

*Arizona*

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

*Arkansas*

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

*California*

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

*Delaware*

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

*District of Columbia*

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

*Florida*

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive OFfice of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441.

*Georgia*

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

*Illinois*

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

*Indiana*

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

*Iowa*

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

*Kentucky*

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

*Maine*

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

*Maryland*

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

*Massachusetts*

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

*Michigan*

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

*Mississippi*

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

*Missouri*

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

*Nevada*

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

*New Hampshire*

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

*New Jersey*

Gregory W. Adkins, Action Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292-9025

*New Mexico*

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

*New York*

New York State Clearinghouse, Division of the Budget, State Capital, Albany, New York 12224, Telephone (518) 474–1605

*North Carolina*

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin, N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

*North Dakota*

N.D. Single Point of Contact Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

*Ohio*

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411 Telephone (614) 466–0698

*Rhode Island*

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

*South Carolina*

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1204 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

*Tennessee*

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

*Texas*

Mr. Thomas Adams, Governor's Office of Budget and Planning, PO Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

*Utah*

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

*Vermont*

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

*West Virginia*

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305 Telephone (304) 348–4010

*Wisconsin*

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, PO Box 7864, Madison, Wisconsin 53707 Telephone (608) 266–0267

*Wyoming*

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

*Guam*

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, PO Box 2950, Agana, Guam 96910, Telephone (617) 472–2285

*Northern Mariana Islands*

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

*Puerto Rico*

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, PO Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

*Virgin Islands*

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802
Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

[FR Doc. 95–8131 Filed 4–3–95; 8:45 am]

**BILLING CODE 4184–01–P**

## Administration for Native Americans

## Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KE, Administration for Native Americans (ANA) (56 FR 42340), as last amended, August 27, 1991. Specifically, delete Chapter KE in its entirety, and replace it with the following:

*KE.00 Mission.* The Administration for Native Americans (ANA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to American Indians, Alaskan Natives, Native American Pacific Islanders and Native Hawaiians, hereinafter referred to as Native Americans. ANA represents the concerns of Native Americans and serves as the focal point in the Department on the full range of developmental, social and economic strategies that support Native American self-determination and self-sufficiency.

ANA administers grant programs to eligible Indian tribes and Native American organizations in urban and rural areas with funds authorized under the Native American Programs Act of 1974, as amended.

In conjunction with the Office of the Assistant Secretary for Children and Families, ANA serves as Departmental liaison with other federal agencies on Native American affairs, working to promote social and economic self-sufficiency for Native Americans. In concert with other components of ACF, it develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of Native Americans. Through its policy, liaison, and programmatic grant functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans, and ensures that information about Departmental services and benefits and eligibility criteria is available to Native Americans and fosters the opportunity for the exercise of self-determination by Native Americans and their operation of Native American programs and enterprises.

*KE.10 Organization.* The Administration for Native Americans is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KEA)
Intra-Departmental Council on Native American Affairs (KEB)
Planning and Support Staff (KEC)
Program Operations Division (KED)

*KE.20 Functions.* A. The Office of the Commissioner provides executive direction and management strategy for all components of ANA. The Commissioner serves as the effective and visible advocate on behalf of Native Americans within the Department, and with other departments and agencies of the Federal Government regarding all Federal policies affecting Native Americans. The Commissioner serves as advisor to the Assistant Secretary for Children and Families, the Secretary, and the heads of DHHS agencies administering programs which have a significant impact on Native Americans. On behalf of the Department, the Commissioner conducts liaison with and obtains advice from Indian tribes and Native American organizations. The Commissioner provides policy direction and guidance to the ACF regional offices with respect to programs for Urban Indians, off-reservation Indians, and other Native American projects in Hawaii and the Pacific Islands. The Deputy Commissioner acts as Commissioner in the absence of the Commissioner. The Commissioner is Chairperson of the Intra-Departmental Council on Native American Affairs and shall advise the Secretary on all matters affecting Native Americans that involve the Department.

B. Intra-Departmental Council on Native American Affairs serves as the focal point within the Department for intra-agency activities related to Native American affairs and effect coordination, cooperation and complementary utilization of the Department's resources for Native Americans. It promotes consistent policies on Native American affairs for the entire Department and promotes the full and continuous application of these policies throughout the Department. The Commissioner is the Chairperson of the Council and advises the Secretary on Native American issues. Council staff provide support to the Commissioner of ANA/Council Chair.

The Council identifies administrative, legislative and regulatory changes or developments necessary for the applications of effective and consistent Federal Indian policy.

C. Planning and Support Staff plans, coordinates, and controls ANA policy, planning, and management activities, and manages the development of regulations, policies, and guidelines for ANA. It develops and recommends the implementation of policies in coordination and consultation with the Office of Policy and Evaluation.

In coordination with the Office of Policy and Evaluation and the Office of Financial Management in ACF, the staff directs the development of program plans consistent with the Department's

requirements. It formulates budget and legislative plans consistent with Departmental and ANA requirements. It coordinates the reporting by ANA components to the ACF management information system including reports on short range initiatives.

The staff manages the ANA program management system to support ANA programming, planning and administration; provides a wide range of management administrative services in support of all ANA programs and activities; and initiates and monitors the progress of all personnel actions.

The staff serves as ANA Executive Secretariat, controlling the flow of correspondence. It is responsible for the receipt of Freedom of Information Act requests directed to ANA and coordinates responses to such requests; coordinates with appropriate ACF components in implementing administrative requirements and procedures; and oversees and administers the panel review process for grant applications within ANA.

D. Program Operations Division provides direct financial assistance to American Indian tribal governments, Native Hawaiian organizations, Native Pacific Island organizations, urban Indian groups, rural off-reservation Native American groups, other Native American groups and organizations including national, regional, statewide, local, and inter-tribal consortia groups throughout the lower 48 states, Alaska, Hawaii and the South Pacific Islands. The Division serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with projects of national significance, and carries out special projects and initiatives for the benefit of the ANA service population.

The Division provides information and program content for plans, budget information and policy development for activities authorized under the Native American Programs Act of 1974, as amended. In cooperation with the ANA Planning and Support Staff, it coordinates all matters pertaining to planning, overall ANA management, policy development and control, and program development.

Dated: March 28, 1995.

**Mary Jo Bane,**

*Assistant Secretary for Children and Families.*

[FR Doc. 95–8129 Filed 4–3–95; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. N–95–3847; FR–3828–N–02]**

### NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance: Clarification

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Clarification of NOFA.

**SUMMARY:** On March 1, 1995, HUD announced the availability of $25 million for FY 1995 under the Public and Indian Housing Tenant Opportunities Program (TOP). This notice clarifies the eligibility requirements for National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs). The notice also clarifies that Indian housing RO/RMC applicants are not required to complete the certification of democratic election that is required of public housing RC/RMC applicants.

**FOR FURTHER INFORMATION CONTACT:** Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 4112, Washington, D.C. 20410; telephone: (202) 708–3611. All Indian Housing applicants may contact Charles Bell, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room B–133, Washington, D.C. 20410; telephone: (202) 755–0032. 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 for information on the program. (Other than the ''800'' TDD number, telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In a Notice of Funding Availability (NOFA) published in the **Federal Register** on March 1, 1995 (60 FR 11222), the Department announced the availability of $25 million for the Public and Indian Housing Tenant Opportunities Program, of which $1 million is set aside for National Resident Organizations (NROs), Statewide Resident Organizations (SROs), and Regional Resident Organizations (RROs). To more clearly define the eligibility requirements for NROs/RROs/SROs, the Department is issuing the following clarifications. For further information about specific aspects of the NOFA and application requirements, please refer to the March 1, 1995, NOFA.

Accordingly, FR Doc. 95–4968, NOFA for the Public and Indian Housing Tenant Opportunities Program Technical Assistance, published on March 1, 1995 (60 FR 11222), is amended as follows:

1. On page 11223, column 1, two new sentences are added in parentheses at the end of paragraph (4) of Section I.C, ''Key Features of this NOFA,'' to read as follows:

* * * (This certification is required only for public housing RCs/RMCs. Indian housing RO/RMC applicants are not required to provide this certification.)

* * * * *

2. On page 11224, in the third column, in Section I.F, ''Definitions, the introductory text before the definition of ''National Resident Organization (NRO)'' is revised to read as follows:

The following definitions apply to NRO/RRO/SRO applicants. Note, however, that a NRO/RRO/SRO is eligible to apply for funding under this NOFA if the organization has submitted to the proper governmental agency the application and materials required to become an incorporated nonprofit organization or association. Before execution of the grant, an organization selected for funding must be incorporated or organized as an association in accordance with applicable State or Tribal law:

* * * * *

3. On page 11234, column 2, the paragraph following the heading ''*Serves: Colorado, Montana, the Dakotas, Nebraska, Utah and Wyoming*'', which sets out the name, address, and telephone number for Mr. Vernon Haragara, is revised to read as follows:

Mr. Vernon Haragara, Administrator, Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462.

**Authority:** 42 U.S.C. 1427r; 42 U.S.C. 3535(d).

Dated: March 27, 1995.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 95–8147 Filed 4–3–95; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Application(s) for Permit

The following applicant(s) has 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.*)

PRT–799103

*Applicant:* Mr. Don Blanton, Hicks and Company, Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–800611

*Applicant:* Mr. Steven D. Paulson, SWCA Incorporated, Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

PRT–800613

*Applicant:* Mr. Dwight Chapman, Southwest Research, Moab, Utah.

The applicant requests a permit to take the Mexican spotted owl (*Strix occidental lucida*) on U.S. Forest Service lands in Arizona and New Mexico for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

*Addresses:* Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days of the date of this publication.

Documents and other information submitted with this application 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 above office within 30 days of the date of publication of this notice. (See Addresses above.)

**John Cross,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8167 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–55–M

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### Receipt of Application(s) for Permit

The following applicant(s) has 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.)

PRT–798998

*Applicant:* Mr. C. Lee Sherrod, Horizon Environmental Services Inc., Austin, Texas.

The applicant requests a permit to take several threatened and endangered species that occur throughout the State of Texas, primarily in Travis and Bastrop Counties, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

Addresses: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application 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 above office within 30 days of the date of publication of this notice. (See Addresses above.)

**John Cross,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 95–8168 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–55–M

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### National Park Service

### Delaware Water Gap National Recreation Area Citizens Advisory Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

*Meeting Date and Time:* Saturday, May 13, 1995 at 9:00 a.m.

*Address:* Pinchot Institute (Grey Towers), Milford, PA 18337.

*Meeting Date and Time:* Thursday, September 14, 1995 at 7:00 p.m.

*Address:* Wayne Dumont Administration Building, Route 519, Belvidere, NJ 07823.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: By-Laws, Natural Resources, Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, as well as Special Committee Reports. Superintendent Roger K. Rector will give a report on various park issues. Immediately following the May 13, 1995 meeting, Park Archeologist John Wright will present a brief program highlighting archeology within the recreation area.

**SUPPLEMENTARY INFORMATION:** The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:**

Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: March 24, 1995.

**Marie Rust,**

*Regional Director, Mid-Atlantic Region.*

[FR Doc. 95–8151 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–70–M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 25, 1995. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127. Washington, D.C. 20013–7127. Written comments should be submitted by April 19, 1995.

**Patrick Andrus,**

*Acting Chief of Registration, National Register.*

**ARKANSAS**

**Hot Spring County**

Cabin No. 1 [Facilities Constructed by the CCC in Arkansas MPS], Cabin area access rd., Lake Catherine State Park, Shorewood Hills, 95000455

**Prairie County**

Prairie County Courthouse, Jct. of Magnolia and Prairie Sts., DeValls Bluff, 95000457

**Washington County**

Chi Omega Chapter House, 940 Maple St., Fayetteville, 95000456

**COLORADO**

**El Paso County**

Calhan Rock Island Railroad Depot, 252 ft. W of Denver St. on rock Island RR right-of-way, Calhan, 95000476

**FLORIDA**

**Palm Beach County**

Milton—Myers American Legion Post No. 65, 263 NE. 5th Ave., Delray Beach, 95000471

**St. Lucie County**

Frere, Jules, House [Hillsboro MPS], 2404 Sunrise Blvd., Fort Pierce, 95000467

**ILLINOIS**

**Adams County**

South Side German Historic District (Boundary Increase), Roughly bounded by Jefferson, S. 12th, Jackson and S. 5th Sts., Quincy, 95000481

**Champaign County**

Moultrie County Courthouse, 10 S. Main St., Sullivan, 95000489

**Cook County**

Bryn Mawr Avenue Historic District, Bryn Mawr Ave. from Sheridan Rd. to Broadway, Chicago, 95000482

Hamilton Park [Chicago Park District MPS], 513 W. 72nd St., Chicago, 95000487

Indian Boundary Park [Chicago Park District MPS], 2500 W. Lunt, Chicago, 95000485

Portage Park [Chicago Park District MPS], 4100 N. Long Ave., Chicago, 95000484

Riis, Jacob A., Park [Chicago Park District MPS], 6100 W. Fullerton Ave., Chicago, 95000483

Trumbull Park [Chicago Park District MPS], 2400 E. 105th St., Chicago, 95000486

**Marion County**

Jehle, Louis, House, 511 E. Fifth St., Pana. 95000490

**Mercer County**

Willits, Levi, House, 202

Main St., New Boston, 95000488

**Woodford County**

Schertz, Joseph, House, IL 116, 1 mi. W of city limits, Metamora vicinity, 95000491

**KANSAS**

**Pawnee County**

Babbitt—Doerr House, 423 W. 5th St., Larned, 95000477

**LOUISIANA**

**Pointe Coupee Parish**

Cherie Quarters Cabins, Major Ln., approximately ½ mi. from jct. with LA 1, Oscar vicinity 95000470

**MICHIGAN**

**Huron County**

*Huron City Historic District,* Pioneer Dr., Huron and Port Austin Townships, Huron City, 95000446

**NEW MEXICO**

**Sierra County**

*Alert—Hatcher Building (Hillsboro MPS),* Jct. of Second Ave. and Main St., SE corner, Hillsboro, 95000460

*Bucher, William H., House (Hillsboro MPS),* 300 W. Main St., Hillsboro, 95000461

*Meyers House (Hillsboro MPS),* Main St. N side between 4th and 5th Aves., Hillsboro 95000463

*Miller, George Tambling and Ninette Stocker, House (Hillsboro MPS),* Elenora St. S side, W of Union Church, Hillsboro 95000465

*Robins, Will M., House (Hillsboro MPS),* Jct. of Main St. and Fifth Ave., SW corner, Hillsboro 95000462

*Sullivan, Cornelius, House (Hillsboro MPS),* Jct. of Elenora and First Ave., SW corner, Hillsboro 95000459

*Webster, John M., House (Hillsboro MPS),* Jct. of Main St. and Fifth Ave., SE corner, Hillsboro 95000464

**NEW YORK**

**Cayuga County**

*House at 15 East Cayuga Street (Moravia MPS),* 15 E. Cayuga St., Moravia, 95000472

**Essex County**

*Trudeau Sanatorium (Saranac Lake MPS),* Trudeau Rd., Saranac Lake vicinity, 95000479

**Niagara County**

*Bond, Col. William M. and Nancy Ralston, House,* 143 Ontario St., Lockport, 95000475

**Orange County**

*Hatch, Vermont, Hansion,* Old Pleasant Hill Rd., Cornwall, 95000480

**Oswego County**

*Woodruff Block,* 17 W. Cayuga St., Oswego, 95000473

**Rensselaer County**

*Trinity Church Lansingburgh,* 585 Fourth Ave., Troy, 95000478

**Tompkins County**

*St. Thomas' Episcopal Church,* 2740 Slaterville Rd. (NY 79), Slaterville Springs, 95000458

**Ulster County**

*Phoenicia Railroad Station,* High St., Phoenicia, 95000474

**NORTH DAKOTA**

**Grand Forks County**

*Beare, Harriett and Thomas, House,* 420 Reeves Dr., Grand Forks, 95000469

*St. Michael's Hospital and Nurses' Residence,* 813 Lewis Blvd., Grand Forks, 95000468

**OHIO**

**Fayette County**

*Sollars Farmstead,* Address Restricted, Greenfield vicinity, 95000493

**Franklin County**

*Groverport United Methodist Church,* 512 Main St., Groveport, 95000494

**Hamilton County**

*Cincinnati and Suburban Telephone Company Building,* 209 W. Seventh St., Cincinnati, 95000495

**Madison County**

*Price Corners,* 7040 US 42 S, Plain City vicinity, 95000496

**Miami County**

*Bradford Junction Interlocking Tower,* 501 E. Main St., Bradford, 95000497

**Stark County**

*Cook, George E., House,* 1435 Market Ave. N., Canton, 95000498

**Summit County**

*Mason, Frank H., House,* 615 Latham Ln., Franklin Township, Akron vicinity, 95000499

*Raymond, Frank Mason, House,* 655 Lathan Ln., Akron vicinity, 95000500

**WISCONSIN**

**Ashland County**

*Wakefield Hall,* 1409 Ellis Ave., Ashland, 95000466

[FR Doc. 95–8231 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–88 (Sub-No. 7X)]**

### Bessemer and Lake Erie Railroad Company; Abandonment Exemption; in Armstrong and Butler Counties, PA

Bessemer and Lake Erie Railroad Company (B&LE) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 3.13 miles of its line of railroad, known as the Western Allegheny Branch, extending from Station 2294+53 eastward to the end of the track at Station 2460+01, in Armstrong and Butler Counties, PA.[1]

B&LE has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 4, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by April 14, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 24, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert J. Koch, 135 Jamison Lane, P.O. Box 68, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

B&LE has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 7, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 29, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95–8190 Filed 4–3–95; 8:45 am]

BILLING CODE 7035–O1–P

[1] By letter dated March 20, 1995, the Bradys Bend Corporation (BBC) filed a comment opposing the proposed abandonment and requests that we deny B&LE's exemption. BBC alleges that because of the potential for future traffic, it believes that B&LE's rail line should remain operational.

We do not normally consider comments prior to the publication of a notice of exemption under 49 CFR 1152.50(b). Here, BBC can file a petition to stay and/or a petition to reopen or revoke on or before the dates specified in this notice. BBC should clearly set out the relief it seeks and any supporting arguments for such relief. Speculation about future traffic is not sufficient basis upon which to deny an exemption.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

### Extension of a Currently Approved Collection

(1) Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

(2) DEA Form 357. Drug Enforcement Administration, United States Department of Justice.

(3) Primary = Business or other for-profit. Title 21, CFR 1312.12, requires any registrant who desires to import certain controlled substances into the United States to apply on DEA Form 357. Information is needed to determine the suitability for issuance of an Import Permit, ensure that import quotas are not exceeded, and provider the United

Nations with information concerning legitimate traffic in narcotics.

(4) 267 annual respondents at .25 hours per response.

(5) 67 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 29, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8160 Filed 4–3–95; 8:45 am]

BILLING CODE 4410–09–M

## Information Collection Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information;

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *and* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *and* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *and* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

### New Collection

(1) Removal of Restriction on Employing Certain Individuals.

(2) None. Drug Enforcement Administration.

(3) Primary = Business or other for-profit. Others = Individuals and households, Not-for-profit institutions, Federal Government and State, Local, or Tribal Government. This collection is necessary to maintain a closed system of distribution by requiring notification from DEA registrants of their intent to employ persons who have been convicted of a felony offense.

(4) 100 annual respondents at ½ hour per response.

(5) 50 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 29, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 95–8161 Filed 4–3–95; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Bureau of International Labor Affairs; Public Hearings

This document is a notice of public hearings to be held by the Department of Labor for the purpose of gathering factual information regarding child labor practices throughout the world. The hearing will be held on Friday, May 5, 1995, at the Department of Labor, room N–3437, beginning at 9 a.m. The hearing will be open to the public. The Department of Labor is now accepting requests from all sectors to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Individuals or organizations interested in testifying at the international child labor hearing, should call (202) 501–6068 to be put on the roster.

The Department of Labor is currently undertaking a second Congressionally-mandated review of international child labor practices (pursuant to the 1995 HHS/Department of Labor Appropriations Bill—Pub. L. 103–333). Information provided at the hearing will be considered by the Department of Labor in preparing its report to Congress. Testimony should be confined to the specific topic of the study. Specifically, the international child labor study of the Bureau of International Labor Affairs is seeking written and oral testimony on the topics noted below:

1. Use of child labor in commercial (i.e., non-subsistence) export-oriented agricultural enterprises. While we are not examining family or subsistence farming, we are seeking information on children in agricultural enterprises of all sizes, from plantations and estates to small-sized farms; in forest industries, ranching, and fishing (including shellfish) enterprises.

2. Forced or bonded child labor. We are seeking information on the incidence of forced and bonded labor in industries directly or indirectly contributing to exports.

3. Government efforts to deal with child labor. Any significant actions, progressive or regressive, taken by governments with respect to child labor laws, the enforcement of child labor laws, new programs or approaches for curtailing child labor, oversight efforts, or other relevant initiatives.

4. Non-Governmental efforts intended to reduce child labor. Private-sector programs or policies to reduce child labor, including codes of conduct, corporate efforts to develop guidelines for subcontractors, or the creation of schools, centers, organizations, studies, and other approaches to limit child labor.

5. Updates and new developments. Significant actions taken by the 19 countries reviewed in the first report, such as new laws, regulations, or enforcement efforts; educational, rehabilitational, or other programs initiated; and any significant public discussion or debate of the issue.

**DATES:** The hearing is scheduled for Friday, May 5, 1995. The deadline for being placed on the roster for oral testimony is 5 p.m., April 21, 1995. Presenters will be required to submit five (5) written copies of their oral testimony to the Child Labor Study office by 5 p.m., May 1. The record will be kept open for additional written testimony until 5 p.m., May 5, 1995.

**ADDRESSES:** Written testimony should be addressed to the International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Daniel Solomon, International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 501–6068; fax (202) 219–4923. Persons with disabilities who need special accommodations should contact Mr. Solomon by April 24, 1995.

## Additional Information

The Senate Appropriations Committee report states:

Child labor is a silent and tragic emergency of our time. Few human rights abuses are so unanimously condemned, while being so universally practiced, as child labor. The number of children working, and the scale of their suffering, increases year by year. UNICEF and the International Labor Organization estimate that hundreds of millions of children are working today, many in servitude and under hazardous conditions.

Therefore, the Committee [directs the Secretary] to continue and expand efforts by the Department to identify foreign industries and their host countries that utilize child labor in the production of goods from industry, plantations, and mining exported to the United States.

The Secretary is directed to utilize all available information, including information made available by UNICEF, the International Labor Organization and human rights organizations and report his findings to the Committee no later than July 30, 1995.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC, this 29th day of March 1995.

**Joaquin F. Otero,**

*Deputy Under Secretary.*

[FR Doc. 95–8225 Filed 4–3–95; 8:45 am]

**BILLING CODE 4510–28–M**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–339]**

## Virginia Electric and Power Co. (North Anna Power Station Unit No. 2); Exemptions

### I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. NPF–7, which authorizes operation of North Anna Power Station, Unit 2 (the facility or NA–2), at a steady-state reactor power level not in excess of 2893 megawatts thermal. The facility is a pressurized water reactor located at the licensee's site in Louisa County, Virginia. The license provides among other things, that it is subject to all rules, regulations, and Orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

### II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the performance of three Type A containment integrated leakage rate tests (ILRTs) of the primary containment, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year inservice inspection program.

Section IV.A of appendix J to 10 CFR part 50 requires that any modification, replacement of a component which is part of the primary reactor containment boundary, or resealing a seal-welded door, performed after the preoperational leakage rate test shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification.

### III

By letter dated March 2, 1995, the licensee requested temporary relief from the requirement to perform a set of three Type A tests at approximately equal intervals during each 10-year service period of the primary containment. The requested exemption would permit a one-time interval extension of the third Type A test by approximately 16 months (from the March 1995 steam generator replacement outage, to the October 1996 refueling outage).

The licensee's March 2, 1995, letter also requested temporary relief from the requirements to perform a type A test following a major modification or replacement of a component which is part of the primary reactor coolant boundary. Specifically, the post-modification exemption is requested from performing a Type A test due to the activities associated with the upcoming NA–2 steam generator replacement. The basis for the post-modification exemption request is that, in this case, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of Appendix J.

The licensee's request cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption to Section III.D.1.a of appendix J to 10 CFR part 50. The licensee points out that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the experience at NA–2 during the Type A tests conducted during the first 10-year inservice inspection interval (1984, 1989, and 1990), that considerable margin exists between the Type A tests and the Technical Specifications (TS) allowable leakage rate limit.

During operation, the NA–2 containment is maintained at a subatmospheric pressure (approximately 10.0 psia) which provides a good indication of the containment integrity. TS require the containment to be subatmospheric when in Modes 4, 3, 2, and 1. Containment air partial pressure is monitored in the control room to ensure TS compliance. If the containment air partial pressure increases above the established TS limit, the unit is required to shut down.

The licensee's request also cites the special circumstances of 10 CFR 50.12, paragraph (a)(2)(ii), as the basis for the exemption to Section IV.A of appendix J to 10 CFR part 50.

The NA–2 plant design incorporates a ''closed system'' for transferring steam from the steam generators inside of the primary containment to the main turbine-generators in the turbine building. The inside containment portion of this closed system consists of the main steam lines, the feedwater lines, and the secondary side of the steam generators. This closed system inside of containment forms a part of the primary reactor containment boundary.

The planned replacement of the NA–2 steam generators includes the following activities:

—Cutting and removing the mainsteam and feedwater lines from the steam generators.
—Cutting and removing the upper assemblies of the steam generators (steam domes).
—Cutting the reactor coolant piping and removing the steam generator lower assemblies (tube bundles).
—Installing the new steam generator lower assemblies and re-welding the reactor coolant piping.
—Re-installing the steam generator upper assemblies on the new lower assemblies.
—Re-installing and re-welding the main steam and feedwater lines.

The planned replacement of the NA–2 steam generators affects only this

closed piping system inside containment. The steam generator replacement activities do not affect the containment structure or the actual containment liner.

Section IV.A to Appendix J, Special Testing Requirements for Containment Modifications, requires that any major modification or replacement of a component which is part of the primary reactor containment boundary shall be followed by either a Type A, Type B, or Type C test, as applicable for the area affected by the modification. The Type C testing requirements of Appendix J apply to leakage testing of containment isolation valves. The planned replacement does not affect any containment isolation valves and, therefore, the Type C testing requirements are not applicable. The Type B testing requirements of appendix J apply to leakage testing of gasketed or sealed containment penetrations (e.g., electrical penetrations), air lock door seals, and other doors with resilient seals or gaskets. Although the secondary side of the steam generators have access manways with gaskets, the Type B testing requirements do not address the other areas of the containment boundary affected by the planned replacement, i.e., weld seams in the steam generator and in the main steam and feedwater piping. Hence, because the affected areas cannot be tested by Type B or Type C testing, Section IV.A of Appendix J would require that a Type A test be performed prior to startup following the planned steam generator replacement.

However, the affected area of the primary containment boundary is also part of the pressure boundary of an ASME Class 2 component/piping system and, as such, the planned replacement of the steam generators is subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure test requirements are more stringent than the Type A testing requirements of Appendix J. The acceptance criteria for ASME Section XI system pressure testing of welded joints is ''zero leakage.'' In addition, the test pressure for the system pressure test will be in excess of 20 times that of a Type A test (1356 psig vs. 44.1 spig).

Therefore, the ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of appendix J.

**IV**

In the licensee's March 2, 1995, exemption request, the licensee stated that special circumstance 50.12(a)(2)(ii) is applicable to this situation, i.e., that application of the regulation is not necessary to achieve the underlying purpose of the rule.

Appendix J states that the leakage test requirements provide for periodic verification by tests of the leak tight integrity of the primary reactor containment. Appendix J further states that the purpose of the tests ''is to assure that leakage through the primary reactor containment shall not exceed the allowable leakage rate values as specified in the Technical Specifications or associated bases.'' Thus, the underlying purpose of the requirement to perform Type A containment leak rate tests at intervals during the 10-year service period is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or becoming unknown.

The NRC staff has reviewed the basis and supporting information provided by the licensee in the exemption request from the requirements of Section III.D.1(a) of appendix J. The NRC staff has noted that the licensee's record of ensuring a leak-tight containment has verified containment integrity and, as noted previously, considerable margin exists between the Type A test results and the TS allowable leakage rate. The Type A tests performed in 1984, 1989, and 1990 have all successfully verified containment integrity. All ''as-found'' Type A test results since 1984 have been confirmatory of the Type B and C tests which will continue to be performed. The licensee will perform the general containment inspection although it is only required by appendix J (Section V.A.) to be performed in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The NA–2 containment is of the subatmospheric design. During operation, the containment is maintained at a subatmospheric pressure (approximately 10 psia) which provides for constant monitoring of the containment integrity and further obviates the need for Type A testing at this time. If the containment air partial pressure exceeds the established TS limit, the unit must be shut down.

The NRC staff has also made use of the information in a draft staff report, NUREG–1493, which provides the technical justification for the present appendix J rulemaking effort which also includes a 10-year test interval for Type A tests. The integrated leakage rate test, or Type A test, measures overall containment leakage. However, operating experience with all types of containments used in this country demonstrates that essentially all containment leakage can be detected by local leakage rate tests (Type B and C). According to results given in NUREG–1493, out of 180 ILRT reports covering 110 individual reactors and approximately 770 years of operating history, only 5 ILRT failures were found which local leakage rate testing could not detect. This is 3% of all failures. This study agrees well with previous NRC staff studies which show that Type B and C testing can detect a very large percentage of containment leaks.

The Nuclear Management and Resources Council (NUMARC), now the Nuclear Energy Institute (NEI), collected and provided the NRC staff with summaries of data to assist in the appendix J rulemaking effort. NUMARC collected results of 144 ILRTs from 33 units; 23 ILRTs exceeded $1.0L_a$. Of these, only nine were not due to Type B or C leakage penalties. The NEI data also added another perspective. The NEI data show that in about one-third of the cases exceeding allowable leakage, the as-found leakage was less than $2L_a$; in one case the leakage was found to be approximately $2L_a$; in one case the as-found leakage was less than $3L_a$; one case approached $10L_a$; and in one case the leakage was found to be approximately $21L_a$. For about half of the failed ILRTs the as-found leakage was not quantified. These data show that, for those ILRTs for which the leakage was quantified, the leakage values are small in comparison to the leakage value at which the risk to the public starts to increase over the value of risk-corresponding to $L_a$ (approximately $200L_a$, as discussed in NUREG–1493). Therefore, based on those considerations, it is unlikely that an extension of one cycle for the performance of the appendix J, Type A test at NA–2 would result in significant degradation of the overall containment integrity. As a result, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that the application of the regulation in these particular circumstances is not needed to achieve the underlying purpose of the rule.

Based on generic and plant specific data, the NRC staff finds the basis for the licensee's proposed exemption to

allow a one-time exemption to permit a schedular extension of one cycle for the performance of the appendix Type A test, provided that the general containment inspection is performed, to be acceptable.

Section IV.A of appendix J would normally require that a Type A test be performed prior to startup following a containment modification such as the planned steam generator replacement. However, in this case, the affected area of the primary containment boundary is also part of the pressure boundary of a ASME Class 2 component/piping system and, as such, the planned replacement of the steam generators is subject to the repair and replacement requirements of ASME Section XI. The ASME Section XI surface examination, volumetric examination, and system pressure testing requirements are more stringent than the Type A testing requirements of appendix J. The objective of the Type A test required by Section IV.A is to assure the leak-tight integrity of the containment area affected by the modification. The ASME Section XI inspection and testing requirements more than fulfill the intent of the requirements of Section IV.A of appendix J. As a result, the special circumstances of 10 CFR 50.12(a)(2)(ii) are present in that the application of the regulation in these particular circumstances is not needed to achieve the underlying purpose of the rule. Therefore, the NRC staff finds the basis for the licensee's proposed exemption to allow a one-time exemption from Type A testing for modification of the primary containment boundary due to the forthcoming NA steam generator replacement to be acceptable.

Pursuant to 10 CFR 51.32, the Commission has determined that granting these Exemptions will not have a significant impact on the environment (60 FR 15945).

The exemption from Section III.D.1.(a) of appendix J to 10 CFR part 50 is effective upon issuance and shall expire at the completion of the NA–2 1996 refueling outage.

The exemption from Section IV.A of appendix J to 10 CFR part 50 is effective upon issuance and shall expire at the completion of the NA–2 1995 steam generator replacement refueling outage.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 29th day of March 1995.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–8166 Filed 4–3–95; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Panel on the Engineered Barrier System: Meeting and Tour of the Idaho National Engineering Laboratory

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a meeting on Tuesday, June 6, 1995, in Idaho Falls, Idaho, and a tour of the Idaho National Engineering Laboratory (INEL) site on Wednesday, June 7, 1995. The meeting will be held at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402; Tel (208) 523–0088; Fax (208) 522–7420. The meeting and tour are open to the public; however, space on the tour is limited and advance reservations are required.

The panel meeting on Tuesday will focus on three areas of interest to the Board: (1) government-owned spent nuclear fuel at INEL (its description and plans for its eventual permanent disposal), (2) contaminated scrap metal and greater-than-class-C waste activities managed by the Department of Energy's Idaho Operations Office that could have an impact on permanent disposal in a repository, and (3) dry storage of spent nuclear fuel, including current research and development activities at INEL for government-owned and commercial spent nuclear fuel. Panel members have invited the Department of Energy and its INEL contractors and INEL researchers to discuss these issues. The panel will also hear about the status of efforts to get INEL high-level defense wastes such as calcine and tank-stored liquids into appropriate forms for transportation to and disposal in a potential repository.

On Wednesday, June 7, the penal will participate in a tour of the INEL facilities discussed in the previous day's meeting. The Board makes every effort to ensure that the general public has access to all of its activities. To that end, the public is invited to attend the tour with the panel. Space is limited, however, and will be filled on a first-come, first-served basis. The tour will begin at the Shilo Inn in Idaho Falls at approximately 8 a.m. and return to the hotel at approximately 6 p.m.

All who wish to join the tour must provide the following information to Frank Randall, (703) 235–4473 or FAX (703) 235–4495.

1. Full name
2. Social security number
3. Date of birth
4. Daytime telephone number
5. Company or organization
6. Place of birth (city and state)
7. Country of citizenship (if non-U.S.)

U.S. citizens must call or fax their data to Mr. Randall by May 19, 1995. Non-U.S. citizens must call or fax their data to Mr. Randall by April 28, 1995. No one will be registered for the tour after the applicable cutoff date.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning July 24, 1995. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: March 29, 1995.

**William Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 95–8146 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–AM–M

## PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

### The Eighth Meeting of the President's Council on Sustainable Development (PCSD) in San Francisco, CA

**SUMMARY:** The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor and civil rights organizations, will convene its eighth meeting in San Francisco, California. Council members will further discuss the PCSD's role in developing recommendations to the President toward the integration of environmental and economic policy and, ultimately, establishing a long-term path toward a sustainable United States by the year 2040.

Council members will discuss at length the draft policy recommendations for a sustainable future, which have been developed by each of the PCSD's task forces. The task forces have generated these policy recommendations based on information

gleaned from programs, initiatives, and efforts currently occurring around the United States and observations of what business and manufacturing practices are sustainable.

The Council will also report on PCSD initiatives, including the Vision and Principles, Challenge Statement, and Goals.

*Dates/Times:* Thursday, 27 April 1995: 1:00–5:30 p.m.; Friday, 28 April 1995: 9:00 a.m.–12:00 p.m.

*Place:* Officer's Club, Presidio of San Francisco, San Francisco, California.

*Status:* Open to the Public.

*For Further Information Contact:* Sarah McCourt, Director of Communications, 202–408–5296.

**Molly Harriss Olson,**

*Executive Director, President's Council on Sustainable Development.*

[FR Doc. 95–8191 Filed 4–3–95; 8:45 am]

BILLING CODE 4310–10–M

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, April 18–19, 1995 at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9:00 a.m. on April 18, 1995, and adjourn at approximately 5:00 p.m. On Wednesday, April 19, 1995, the meeting will convene at 9:00 a.m. and adjourn at noon. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

**Donald A. Young,**

*Executive Director.*

[FR Doc. 95–8341 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–BW–M

## PHYSICIAN PAYMENT REVIEW COMMISSION

### Commission Meeting

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, April 27, and Friday, April 28, 1995, at the Washington Marriott, 1221 22nd Street NW., Washington, DC, in the Dupont Room. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. The Commission will review draft reports on access to care for Medicare beneficiaries. Setting volume performance standards and updating the Medicare Fee Schedule conversion factor for 1995, and Medicare beneficiary financial liability. Other topics for discussion could include graduate medical education, results from a Project HOPE/Commission study, and possible budget cut for the Medicare program. A final agenda will be available on Friday, April 21, 1995.

**ADDRESSES:** 2120 L Street, N.W., Suite 200; Washington D.C. 20037. The telephone number is 202/653–7200.

**FOR FURTHER INFORMATION CONTACT:** Annette Hennessey, Executive Assistant, at 202/653–7200.

**SUPPLEMENTARY INFORMATION:** Agendas for the meeting will be available on Friday, April 21, 1995, and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

**Lauren LeRoy,**

*Acting Executive Director.*

[FR Doc. 95–8140 Filed 4–3–95; 8:45 am]

BILLING CODE 6820–SE–M

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 20972; 813–136]**

### EIP Inc.; Second Notice of Application

March 29, 1995.

**AGENCY:** Securities and Exchange Commission (the ''SEC'').

**ACTION:** Second Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** EIP Inc.

**RELEVANT ACT SECTIONS:** Applicant seeks a conditional order under sections 6(b) and 6(e) granting an exemption from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder.

**SUMMARY OF APPLICATION:** Applicant seeks a conditional order that would exempt employees' securities companies formed by applicant from the above-listed sections of the Act and rules thereunder. On March 2, 1995, a notice of the application was issued (the ''Previous Notice'').[1] Subsequent to the issuance of the Previous Notice, applicant filed an amendment to change a term of the application. Applicant had stated (and the Previous Notice indicated) that the general partner of each employees' securities company would be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). Applicant has amended the application so that it now provides that the general partner will register under the Advisers Act if required under applicable law.

**FILING DATES:** The application was filed on September 1, 1994, and amended on November 1, 1994, January 13, 1995, February 15, 1995, and March 23, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 24, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

**FOR FURTHER INFORMATION CONTACT:** James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (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 at the SEC's Public Reference Branch.

### Applicant's Representations

1. On March 2, 1995, the Previous Notice was issued with respect to applicant's request for an order under sections 6(b) and 6(e) of the Act that would exempt employees' securities companies formed by applicant from all the provisions of the Act, and the rules thereunder, except section 9, certain provisions of section 17 and the related rules thereunder, and sections 36 through 53, and the rules thereunder. After the issuance of the Previous Notice, applicant filed an amendment to change a term of the application. Applicant had stated (and the Previous Notice indicated) that the general partner of each employees' securities company would be registered under the

[1] Investment Company Act Release No. 20937 (Mar. 2, 1995).

Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Applicant has amended the application to provide that the general partner will register under the Advisers Act if required under applicable law. The amendment also states that the determination as to whether the general partner is required to register under the Advisers Act shall be made by the general partner and/or its affiliates, and that the application does not request relief as to that determination.

3. In all other respects, the amendment filed on March 23, 1995, is identical to the application as described in the Previous Notice. Accordingly, the Previous Notice sets forth the representations, legal analysis, and conditions of the application, save for the change discussed here.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8144 Filed 4–3–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–26259]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 29, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 24, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*Allegheny Power System, Inc. (70–8583)*

Notice of Proposal to Amend Charter; Order Authorizing Solicitation of Proxies

Allegheny Power System, Inc. (''APS''), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(e) of the Act and rules 62 and 65 thereunder.

APS proposes to amend its charter and to make conforming changes to its by-laws to (1) eliminate cumulative voting provisions and (2) eliminate preemptive rights provisions. APS proposes to present these amendments for action by its shareholders at APS's annual meeting of shareholders to be held on May 11, 1995, and seeks authorization to solicit proxies from shareholders in connection with this meeting.

APS proposes to eliminate a provision in its charter that confers on holders of APS common stock preemptive rights in some circumstances. The charter states that shares of additional APS common stock or securities convertible into common stock may be issued without first being offered to shareholders if such shares are sold for money in a public offering, or to or through underwriters who agree to make a public offering, or in payment for property. In other cases, shareholders have preemptive rights. APS states that preemptive rights are of little significance to shareholders, since they can maintain their proportionate ownership percentage by purchasing shares on the open market or through the APS dividend reinvestment and stock purchase plan. APS also states that elimination of these rights will give APS greater flexibility and reduce the cost of financings.

APS also proposes to eliminate a provision in its charter that states that, at the election of directors, each share of common stock entitles the holder to as many votes as the number of shares held multiplied by the number of directors to be elected. APS states that elimination of cumulative voting will enable the holders of a majority of the shares of common stock entitled to vote to elect all of the directors. APS also states that elimination of cumulative voting may discourage a merger, tender offer or proxy contest, assumption of control by a holder of a large block of common stock, or removal of incumbent management.

APS proposes to submit the proposed amendments for action at its annual meeting of shareholders to be held May 11, 1995, and to solicit proxies from shareholders to approve the proposed amendments. APS states that adoption of each amendment requires the affirmative vote of two-thirds of the holders of outstanding shares of common stock entitled to vote at the annual meeting, and that proxies will be solicited by mail, by officers, directors and employees of APS personally, by telephone or by facsimile.

APS has filed with the Commission its proxy solicitation material and requests that its declaration with respect to the solicitation of proxies be permitted to become effective as provided in Rule 62(d).

It appearing to the Commission that APS's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, under Rule 62, and subject to the terms and conditions as prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8187 Filed 4–3–95; 8:45 am]

BILLING CODE 8010–01–M

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## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 8⅞ percent for the fiscal quarter beginning April 1, 1995.

On a quarterly basis, the Small Administration also publishes an interest rate called the optional ''peg'' rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April–June quarter of FY 95, this rate will be 7⅞ percent.

**John R. Cox,**

*Associate Administrator for Financial Assistance.*

[FR Doc. 95–8149 Filed 4–3–95; 8:45 am]

BILLING CODE 8025–01–M

## Small Business Investment Company Computation of Alternative Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 limits maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term ''Debenture Rate'', which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate for computation of maximum cost of money pursuant to 13 CFR 107.302 is 7.84 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: March 29, 1995.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 95–8164 Filed 4–3–95; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 93–80; Notice 2]**

## Babyhood Manufacturing, Inc.; Mootness of Petition for Determination of Inconsequential Noncompliance

Babyhood Manufacturing, Inc. (Babyhood) of Shrewsbury, Massachusetts determined that some of its child safety seats failed to comply with the buckle release force requirements of 49 CFR 571.213, ''Child Restraint Systems,'' Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports''. Babyhood also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 4, 1993, and an opportunity afforded for comment (58 FR 58895). No comments were received on the petition. This notice announces that the petition has been mooted by Babyhood's decision to notify and remedy according to the statutory requirements.

Paragraph S5.4.3.5 of FMVSS No. 213 requires in pertinent part that

> [A]ny buckle in a child restraint system belt assembly designed to restrain a child using the system shall: (a) when tested in accordance with S6.2.1 prior to the dynamic test * * * shall release when a force of not more than 14 pounds is applied;
>
> (b) [A]fter the dynamic test of S6.1, when tested in accordance with S6.2.3, release when a force of not more than 16 pounds is applied.

Between January 31, 1992 and June 30, 1993, Babyhood produced approximately 3,100 child restraint seats, with shoulder harness straps that do not comply with the buckle release requirements of FMVSS No. 213. When four Babyhood child restraint seats were tested by the Calspan Corporation for NHTSA, two of the four units required forces of 14.3 and 15.9 pounds to release the buckle, thus failing the requirement specified in S5.4.3.5(a) of the standard. The other two complied. Babyhood performed subsequent tests on buckles it had in inventory and found that approximately 25 percent of the buckles required release forces of over 14 pounds. These belts all complied with the maximum release force requirement of 16 pounds after the test.

Subsequent to the close of the comment period on Babyhood's petition, Calspan conducted additional tests on the buckles in question. These showed pre- and post-impact release forces up to 16.8 and 18.2 pounds, far exceeding the 14 and 16 pound maxima. Partial engagement tests of the buckle were conducted by Detroit Testing Laboratory, and the 5-pound maximum force limit was exceeded in these tests as well. Accordingly, on February 6, 1995, Babyhood submitted a further Part 573 Report in which it agreed to conduct a notification and remedy campaign covering the 3,100 seats in question. Thus, the Administrator has no reason to consider further Babyhood's prior request for exemption from the notification and remedy provisions, as Babyhood's action in filing the new Part 573 Report moots its earlier petition.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 28, 1995.

**Barry Felrice,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 95–8232 Filed 4–3–95; 8:45 am]

BILLING CODE 4910–59–P

# Sunshine Act Meetings

Federal Register
Vol. 60, No. 64
Tuesday, April 4, 1995

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).

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** April 19, 1995, 2:30 p.m. (Eastern Time).

**PLACE:** Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

**STATUS:** The Meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Announcement of Notation Votes.
2. Recommendations on Charge Processing will be heard by the Commission.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice issued March 30, 1995.

[FR Doc. 95–8262 Filed 3–30–95; 4:23 pm]

BILLING CODE 6750–06–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** April 24, 1995, 2:00 P.M. (Eastern Time).

**PLACE:** Conference Room on the Ninth Floor of the EEOC Office Building, 1801, ''L'' Street, N.W., Washington, D.C. 20507.

**STATUS:** The Meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Announcement of Notation Votes.
2. Recommendations on Relationships with Fair Employment Practices Agencies will be heard by the Commission.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice issued March 30, 1995.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 95–8263 Filed 3–30–95; 4:23 pm]

BILLING CODE 6750–06–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** April 25, 1995, 2:00 p.m. (Eastern Time).

**PLACE:** Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

**STATUS:** The Meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Recommendations on Alternative Dispute Resolution will be heard by the Commission.

**Note:** Any matter discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice issued March 30, 1995.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 95–6264 Filed 3–30–95; 4:23 pm]

BILLING CODE 6750–06–M

## FEDERAL COMMUNICATIONS COMMISSION

### FCC to Hold Open Commission Meeting, Wednesday, April 5, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, April 5, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

*Item No., Bureau, and Subject*

1—Mass Media—Title: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations (MM Docket No. 983–48). Summary: The Commission will consider proposing modifications to its rules implementing the Children's Television Act of 1990.

2—Mass Media—Title: Review of the Syndication and Financial Interest Rules, Sections 73.659–73.663 of the Commission's Rules. Summary: The Commission will consider initiating review of the financial interest and syndication rules as called for by the Second Report and Order in MM Docket No. 90–162, 6 FCC Rcd 3094 (1991).

3—Mass Media—Title: Amendment of Part 73 of the Commission's Rules Concerning the Filing of Television Network Affiliation Contacts. Summary: The Commission will consider proposing changes to the current requirement for TV licensees to file broadcast television network affiliation agreements.

4—International—Title: Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems. Summary: The Commission proposes to modify policies governing U.S.-licensed geostationary fixed-satellites.

5—Cable Services—Title: Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92–264). Summary: The Commission will consider action on petitions for reconsideration regarding the number of cable channels that a cable operation can devote to video programming services in which the cable operator has an attributable interest.

6—Office of Engineering and Technology—Title: Amendment of Parts 15 and 90 of the Commission's Rules to Provide Additional Frequencies for Cordless Telephones (ET Docket No. 93–235, RM–8094). Summary: The Commission will consider action on its proposal to provide additional frequencies for cordless telephones.

7—Wireless Telecommunications—Title: Amendment of Part 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553); Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253); and Implementation of Sections 3(n) and 322 of the Communications Act—(GN Docket No. 93–252). Summary: The Commission will consider service, licensing, and auction rules for the

licensing of the 900 MHz Specialized Mobile Radio (SMR) service.

8—Wireless Telecommunications—Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services. Summary: The Commission will consider action concerning interconnection, roaming, and resale obligations of commercial mobile radio service providers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: March 29, 1995.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–8332 Filed 3–31–95; 11:32 am]

BILLING CODE 6712–01–M

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, April 6, 1995.

**PLACE:** Room 600, 1730 K Street, N.W., Washington, D.C.

**MATTERS TO BE CONSIDERED:** In Open session, the Commission will consider and act upon the following:

1. *Peabody Coal Co.,* Docket No. KENT 91–179–R. (Continuation of consideration of issues that include whether the judge correctly found that the deep cut ventilation requirement proposed by the Department of Labor's Mine Safety and Health Administration was suitable to Peabody's mine under 30 U.S.C. § 863(o).

2. *Steele Branch Mining,* Docket No. WEVA 92–953. (Continuation of consideration of issues that include whether the judge correctly concluded that Steele Branch Mining violated 30 C.F.R. § 77.404(a), and that the violation was significant and substantial.)

3. *Madison Branch Mgmt.,* Docket No. WEVA 93–218–R et seq. (Issues on interlocutory review include application of statutory penalty criteria in light of proferred settlement agreement.)

In closed session, the Commission will consider and act upon the following:

1. *Buck Creek Coal, Inc.,* Docket No. LAKE 94–72 (Issues on interlocutory review include whether relief from a judge's stay order should be granted.)

It was determined by a majority vote of the Commissioners that this matter be discussed in closed session.

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: March 30, 1995.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 95–8393 Filed 3–31–95; 8:45 am]

BILLING CODE 6735–01–M

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## SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [To Be Published].

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, N.W., Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** To Be Published.

**CHANGE IN THE MEETING:** Time Change/Date Change.

The closed meeting scheduled for Thursday, April 6, 1995, at 10:00 a.m., has been changed to Tuesday, April 4, 1995, following the 10:00 a.m. open meeting.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: March 31, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–8331 Filed 3–31–95; 11:31 am]

BILLING CODE 8010–01–M

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## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 11:00 a.m., Monday, April 10, 1995.

**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: March 31, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–8392 Filed 3–31–95; 3:27 pm]

BILLING CODE 6210–01–P

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## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of April 3, 10, 17, and 24, 1995.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of April 3**

*Wednesday, April 5*

10:00 a.m.
Briefing on PRA Implementation Plan (Public Meeting)
(Contact: Edward Butcher, 301–415–3183)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (Tentative)
b. Dr. James E. Bauer (Order Prohibiting Involvement in NRC-Licensed Activities) Petition for Review of Atomic Safety and Licensing Board's Order, LBP–94–40 (Tentative)
(Contact: Andrew Bates, 301–415–1963)

**Week of April 10—Tentative**

There are no meetings scheduled for the Week of April 10.

**Week of April 17—Tentative**

*Wednesday, April 19*

10:00 a.m.
Briefing on IPE Program and Severe Accident Research Program (Public Meeting)
(Contact: Themis Speis, 301–415–6802)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

*Friday, April 21*

10:00 a.m.
Briefing on Commission Decision Tracking System (CDTS) (Public Meeting)
(Contact: Samuel Chilk, 301–415–1875)

**Week of April 24—Tentative**

*Tuesday, April 25*

2:00 p.m.
Briefing on NRC Status of High-Level Waste Management Program (Public Meeting)
(Contact: Joseph Holonich, 301–415–6643)

*Wednesday, April 26*

10:00 a.m.
Briefing on Proposed Rule on Safety Equipment Reliability Data (Public Meeting)
(Contact: Charles Rossi, 301–415–7499)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Thursday, April 27*

10:00 a.m.
Briefing by IG and Staff Concerning Audit of HLW Licensing Support System (LSS) (Public Meeting)

*Friday, April 28*

10:00 a.m.
Briefing on Business Process Reengineering for Materials Licensing Area (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)

**ADDITIONAL INFORMATION:** Affirmation of ''Final Rule Revising 10 CFR Part 110, Import and Export of Radioactive Waste'' scheduled for March 29 was postponed.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: March 31, 1995.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 95–8372 Filed 3–31–95; 3:26 pm]

BILLING CODE 7590–01–M

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**LEGAL SERVICES CORPORATION**

Board of Directors Meeting

**TIME AND DATE:** The Legal Services Corporation Board of Directors has scheduled a meeting by telephone on April 11, 1995. The meeting will commence at 6:00 p.m. The Board may vote to cancel the meeting on short notice should Corporate business so require. Interested parties should call (202) 336–8855 for a recorded message regarding the status of the meeting. The recording will be updated daily through the close of business on April 11, 1995. In the event the meeting is held, members of the public wishing to participate may do so via telecommunications equipment at the location noted below.

**PLACE:** Legal Services Corporation, 750 1st Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Approval of Agenda.
2. Consider and Act on Issues Related to Appropriations and Reauthorization Legislation Affecting the Corporation.
3. Consider and Act on Other Business.

**CONTACT PERSON FOR INFORMATION:** Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: March 31, 1995.

**Patricia D. Batie,**

*Corporate Secretary.*

[FR Doc. 95–8348 Filed 3–31–95; 3:24 pm]

BILLING CODE 7050–01–M

federal register

Tuesday
April 4, 1995

## Part II

# Environmental Protection Agency

**40 CFR Part 9, et al.**

**Opting into the Acid Rain Program; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9, 72, 73, 74, 75, 77 and 78**

**[FRL–5178–5]**

**RIN 2060–AD43**

## Opting Into the Acid Rain Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under title IV of the Clean Air Act, Congress authorized the U.S. Environmental Protection Agency (EPA) to establish the Acid Rain Program. The principal goal of the program is to achieve significant environmental benefits through reductions in sulfur dioxide ($SO_2$) and nitrogen oxide ($NO_X$) emissions, the primary components of acid rain. Acid rain causes surface water acidification, damages trees at high elevations and accelerates the decay of building materials. In addition, air concentrations of $SO_2$ and $NO_X$ degrade visibility in large parts of the country and acidic aerosols derived from these emissions may pose a risk to public health.

The Acid Rain Program departs from traditional regulatory methods by introducing an $SO_2$ allowance trading system that lowers the cost of reducing emissions by allowing electric utilities as a group to seek out the least costly methods of control. Utility units affected under title IV are allocated allowances based on their historic emissions and these units may trade allowances, provided that at the end of each year, each unit holds enough allowances to cover its annual $SO_2$ emissions.

Today's action establishes an additional component to the Acid Rain Program called the Opt-in Program. The Opt-in Program allows sources not required to participate in the Acid Rain Program the opportunity to participate on a voluntary basis. Such sources, known as combustion sources, would include small utility units and industrial boilers. These rules detail how combustion sources participate in the allowance market by ''opting in'' to the Acid Rain Program, as provided under section 410 of the Act. Congress envisioned the Opt-in Program as a means of generating additional allowances and through which the compliance costs of acid rain control in the utility sector could be reduced, while still meeting overall emissions reductions goals.

**EFFECTIVE DATE:** These rules become effective on May 4, 1995.

**ADDRESSES:** *Docket.* Docket No. A–93–15, containing information considered during development of the promulgated rule, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket Section (6102), Waterside Mall, room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

*Background information document.* The background information document containing responses to public comments on the proposed standards may be obtained from the docket. Please refer to ''Final Opt-in Rule for Combustion Sources—Comment Response Document.''

**FOR FURTHER INFORMATION CONTACT:** Acid Rain Hotline (202) 233–9620 or Adam Klinger (202) 233–9122, Acid Rain Division; mailing address, U.S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are as follows:

A. Background and Summary
1. Background
2. The Opt-in Program
3. Summary of Final Rule
B. Major Changes Made to the Proposed Rule
1. Acceptable Data Sources
2. Allocation of Opt-in Allowances and Transfer Prohibition
3. Offering Opt-in Allowances on the Acid Rain Auction
4. Thermal Energy Exception
a. Definition of Thermal Energy
b. Emission Rate Used To Calculate Transferable Allowances
c. Methodology Revision for Calculating the Fuel Associated with Thermal Energy
C. Other Significant Changes Made to the Proposed Rule
1. Ineligibility of Non-operating and Retired Units
2. Interpretation of Shutdown, Modification and Reconstruction
3. Incorporation of Efficiency Measures
4. Expiration of a Non-Effective Opt-in Permit
5. Miscellaneous Issues
a. Opt-in Permitting
b. Clarification of Eligible Combustion Sources
c. Modification to Utilization Calculation
d. Efficiency Adjustments for an Opt-in Source Governed by a Thermal Energy Plan
e. Definitions
f. Other Items
g. Display of OMB Control Numbers
D. Impact Analyses
1. Executive Order 12866 (Regulatory Impact Analysis)
2. Regulatory Flexibility Act
3. Paperwork Reduction Act

### A. Background and Summary

*1. Background*

Acid deposition occurs when emissions of sulfur dioxide and oxides of nitrogen are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as wet deposition such as rain, fog, or snow, or dry deposition such as fine particles or gases. Acid deposition damages lakes and harms forests and buildings. $SO_2$ emissions damage ecosystems and materials, contribute to reduced visibility and, at current levels, are suspected of posing a threat to human health.

Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, directs EPA to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. Title IV targets the electric utility industry, which accounts for over two-thirds of $SO_2$ emissions and over one-third of $NO_X$ emissions in the United States. Specifically, the Act mandates a national cap of 8.95 million tons per year on electric utility $SO_2$ emissions by the year 2010 (just over half of the 1980 electric utility $SO_2$ emissions), to be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting utility plants; these plants are specifically listed in the statute. Phase II will begin in 2000 and affects virtually all existing utility units with output capacity greater than 25 megawatts and most new utility units.

The centerpiece of the Acid Rain Program is a unique trading system in which allowances are bought and sold at prices determined in the marketplace. Each allowance authorizes the emission of up to one ton of $SO_2$ during or after a designated year. The majority of utility units—both existing and some new units—are allocated allowances based on their historic fuel use and the emissions limitations specified in the Act. Utility units are required to limit $SO_2$ emissions to the number of allowances they hold, but since allowances are fully transferrable, utilities may meet their emissions control requirements in the most cost-effective manner possible. For instance, a utility may decide to (1) switch to a lower sulfur fuel, (2) install flue gas desulfurization equipment (scrubbers) and bank unused allowances or sell them to other utilities/individuals, (3) forego emissions reductions and buy additional allowances (if necessary), or (4) implement energy efficiency measures. Other options and combinations of options are possible, providing an unusually high degree of

flexibility for affected units to comply with the law. The procedures for transferring and tracking allowances are codified in 40 CFR part 73.

Each affected unit must have a permit in which the affected unit certifies that it will possess a sufficient number of allowances to cover its $SO_2$ emissions and specifies the source's compliance options. The permit regulation is codified in 40 CFR part 72.

To ensure that nationally mandated reductions in $SO_2$ and $NO_X$ emissions are achieved, each affected unit must install a continuous emissions monitoring system and collect, record, and report emissions data. The continuous emissions monitoring rule is codified in 40 CFR part 75.

If an affected unit violates the Act by emitting more emissions than the allowances it holds, the Act requires that the affected unit pay penalties and submit a plan detailing how and when the excess $SO_2$ emissions will be offset. These requirements act as a strong incentive for compliance with the mandated emissions reductions of the Acid Rain Program. Excess emissions penalty requirements are codified in 40 CFR part 77.

Finally, 40 CFR part 78 contains administrative appeals procedures for resolving disputes over decisions by the Administrator regarding any aspect of the Acid Rain Program.

*2. The Opt-in Program*

Although the Acid Rain Program is mandated only for utility sources, section 410 provides opportunities for $SO_2$-emitting sources not otherwise affected by title IV requirements (e.g., industrial sources) to participate in the Acid Rain Program by ''opting in.''

The Opt-in Program is a voluntary economic incentive provision. Congress developed the Opt-in Program to reduce further the cost of complying with the Acid Rain Program. Combustion or process sources not otherwise required to reduce $SO_2$ emissions can opt in and make incremental, lower-cost reductions. Congress envisioned section 410 as a means of generating additional allowances to reduce compliance costs for affected utilities and to encourage combustion or process sources to consider cost-effective emission reduction opportunities:

> (Section 410) adds flexibility and can enlarge the universe of sources for which there are cost-effective reductions in emissions of $SO_2$ * * *. This section provides a useful additional source of reductions that can be made voluntarily by sources choosing to be affected by the provisions of this title. (Senate Committee Report, Report No. 101–228, December 20, 1989, p. 335.)

The reductions—in the form of acid rain allowances—can be transferred to meet mandatory reduction requirements in the utility sector and, thus, lower the overall cost of the Acid Rain Program. However, Congress also intended that this shifting of $SO_2$ emissions between opt-in sources and affected utility units not compromise the overall title IV $SO_2$ emissions reduction goals. Section 410 ''is intended to further the objective of achieving true net reductions of $SO_2$ * * *.'' (*Id.* at 336.) The Opt-in Program has been designed to take advantage of lower cost reduction opportunities at non-affected sources consistent with the statutory requirements of section 410 of the Act and emissions reductions goals (i.e., the required 10 million ton reduction of $SO_2$) of title IV.

*3. Summary of Final Rule*

The final opt-in regulation for combustion sources details the process through which combustion sources can enter the Opt-in Program and the requirements they face while participating. The rule allows any stationary fossil fuel fired combustion device, i.e., any combustion source, to become an affected unit and receive allowances. This rule focuses on combustion sources. The treatment of process sources and specifically the application and monitoring requirements for process sources will be addressed in a subsequent rulemaking. The permitting process finalized in today's rule does pertain to both combustion and process sources.

Allowance allocations for opt-in sources, as for utility units, are based on operations during 1985, 1986, and 1987. Like utilities in the mandatory program, once a combustion source opts in, it must hold allowances to cover its emissions. Presumably, the opt-in source will reduce its emissions from its baseline level to generate excess allowances to sell to other affected units. Because opting in is voluntary, only combustion sources that would profit by selling excess allowances are expected to participate in the program. In addition, since all affected sources must also comply with the other applicable requirements of the Act, revenue generated by selling excess allowances could help opt-in sources to offset costs of compliance with other programs.

Although EPA has attempted to treat opt-in sources comparably to utility units in the mandatory Acid Rain Program, there are some situations where restrictions on opt-in sources are needed to protect the emission goals of the Act. In section 410(f), Congress expressly prohibits opt-in sources from transferring allowances that result when they reduce utilization or shut down. Without this prohibition, an individual opt-in source could increase overall emissions by shifting some or all of its production from the opt-in source to new or existing non-affected sources, accumulating the opt-in source's unused allowances, and then selling them to other affected sources.

In order to ensure the surrender of allowances in cases of reduced utilization and shutdown, EPA reserves the right to cancel allowances produced by reduced utilization or shutdown by removing them from any Allowance Tracking System (ATS) accounts into which they had been transferred. To facilitate this prospect of cancellation and to protect buyers of opt-in allowances, EPA is restricting the transfer of future year allowances. In the final rule, EPA continues to allocate allowances, in perpetuity, upon application, but is prohibiting the transfer of future year allowances from opt-in unit accounts in the ATS; only current year or earlier allowances can be transferred. This policy will eliminate the need to cancel future year allowances in cases where a unit shuts down and sells all its future year allowances. Trades involving future year allowances can still be made; however, delivery of future year allowances to the buyer must wait until the year for which those allowances are to be used for compliance.

Title IV contains one exception to the overall restriction on opt-in allowances generated by reduced utilization and shutdown. When a ''replacement unit'' replaces thermal energy formerly supplied by an opt-in source, then the opt-in source may transfer allowances to the replacement unit to the extent of that replacement, despite the reduction of utilization at the opt-in source. For purposes of this thermal energy exception, EPA defines thermal energy to be steam used in an industrial process, as distinct from steam used to generate electricity, and bases the calculation of transferable allowances on the fuel associated with the thermal energy and the allowable emissions rate at the replacement unit.

Eligible combustion sources may submit applications to EPA, as the permitting authority in the near term, and to a State or local permitting authority, once that permitting authority has an Opt-in Program in place under part 70. Upon receipt of the application, its evaluation proceeds on two parallel paths will commence: (1) The procedure for processing an opt-in permit; and (2) the procedure for evaluating the opt-in

source's monitoring plan and certifying its monitoring systems. After both of these procedures have been successfully completed, the combustion source may enter the Opt-in Program.

**B. Major Changes Made to the Proposed Rule**

Although considerable changes have been made to the language and structure of the proposed opt-in regulation for combustion sources, the essential elements of the program remain unchanged and the final rule is consistent with the regulatory goals discussed in the proposed rule, which the Agency here reaffirms. The bulk of this preamble details the major changes that have been made:

*1. Acceptable Data Sources*

EPA continues to believe that there is no single reliable data base that would provide the Agency with quality information on operations and emissions of potential opt-in sources. Therefore, the Agency must rely on information supplied by the combustion source in an application process. In § 74.20(a)(2) of the proposed rule, EPA established a screen for ensuring that reliable data is submitted to the Agency, by requiring all data to have been previously submitted to a government agency.

Today's rule does not require the previous submission of data to a government agency as a precondition for combustion sources to apply to enter the Opt-in Program. Instead, EPA will conduct its own evaluation of the data submitted for the Opt-in Program using its best judgment, although the burden of proof regarding the data's accuracy will remain with the applying combustion source. Regardless of whether a state permitting program is in place and whether the State or EPA is the permitting authority, EPA will retain this data review authority consistent with its responsibility for all allowance-related activities, as discussed in the preamble to the proposed rule.

EPA will lead an evaluation process that brings in the expertise of state officials as well as other technical data experts. EPA will retain the authority, consistent with § 72.4 of part 72, to request any additional documentation, in addition to the formal opt-in permit application, that it believes is necessary to evaluate the combustion source's data. Previous submittals to government agencies that are in existence will be expected to accompany the application. In addition, EPA may request data for years outside the baseline period, both before and after, to verify that submitted baseline data does not represent an inexplicable spike in the combustion source's operations. EPA may also request additional supporting documentation (e.g., fuel purchasing records, production rates, throughputs, sampling protocols, etc.) that the Agency believes necessary to verify the information contained in the combustion source's opt-in permit application. EPA may, in addition, make inspections and examine records at the combustion source applying to enter the Opt-in Program.

Opt-in permit applications submitted by combustion sources with entries in the National Allowance Data Base (NADB) will still face scrutiny, and the data values within the NADB will not be accepted automatically. Such scrutiny and potential revisions are consistent with previous Agency assertions that the NADB version 2.11 was the final version to be used in the development of allocations for Phase II units (see 57 FR 30034 and 58 FR 15721). Combustion sources, by definition, cannot be Phase II units and were not automatically allocated allowances under section 405 of the Act. Therefore, the NADB data for these sources have not been reviewed by EPA to the same extent as Phase II unit data, and such review has not been precluded by previous regulatory actions.

The evaluation of data by EPA for the purposes of calculating allowances is not unprecedented. In developing Phase II unit data in the NADB, EPA compiled information from a number of sources that included the Energy Information Administration (EIA), the North American Electric Reliability Council (NERC), the affected sources, and, to a lesser extent, states. EPA expects the states to play a larger role in evaluating industrial operating and emissions data, because the states are often the best repository of such information and are aware of the detailed operations of such sources.

Both the applying combustion source and third parties will have access to and be able to assess the information EPA ultimately accepts in its allowance calculation. Both the combustion source and third parties will be able to scrutinize the baseline data and the number of allocated allowances during the public comment period associated with the draft opt-in permit. Furthermore, the combustion source has the opportunity to decline to opt in at any time prior to the effective date of the opt-in permit. The combustion source can also appeal its allowance allocation consistent with the procedures prescribed in part 78.

While the information for industrial opt-in sources will be less readily available, EPA sees no other workable alternative than to assume the responsibility of examining submitted data on a case-by-case basis. The Agency recognizes that some incentives will remain for the combustion source to overstate its baseline for the purposes of increasing its allowance allocation, but believes that such risks will be offset by Agency review of the data and supporting documents, the rejection of insufficiently supported data, and the threat of enforcement actions and penalties for falsely submitted data. Toward these ends, EPA will enhance the certification statements that designated representatives sign when submitting an opt-in permit application to assure that such submittals (1) are believed to be true, accurate, and complete; (2) are accompanied by all available documentation that the combustion source and its state regulatory agencies possess that are relevant to the accuracy of such data; and (3) are not adjusted in any way.

*2. Allocation of Opt-in Allowances and Transfer Prohibition*

In the proposed rule, EPA planned to allocate allowances on a one-time, in perpetuity basis and allowed for the transfer of current and future-year opt-in allowances from opt-in accounts into other accounts in the Allowance Tracking System (ATS). This policy was proposed to promote fungibility of opt-in allowances and provide combustion sources flexibility in their compliance planning. However, in order to uphold the requirements of section 410(f) of the Act, EPA also proposed in § 74.50 of the proposed rule to reserve the right to cancel, under certain circumstances, any allowances that were initially allocated to an opt-in source by removing allowances from any ATS accounts into which they had been transferred.

Under section 410(f), the Act restricts opt-in sources from transferring or banking allowances produced as a result of reduced utilization or shutdown, except as discussed in the proposed rule (58 FR 50103) and later in this preamble under the thermal energy exception. To uphold this restriction, EPA is requiring opt-in sources to surrender allowances generated by reduced utilization or shutdown. In the proposed rule, EPA maintained that in the case where an opt-in source has shut down, reduced its utilization or has excess emissions, *and* fails to supply the equivalent number of allowances owed to EPA (presumably because the opt-in source has sold all of its future-year allowances), EPA must recover and cancel the opt-in source's allowances in

the required number from other ATS accounts into which they were transferred. Canceling opt-in allowances held in other accounts in the ATS was considered the only way to ensure that such allowances did not result in additional emissions and that the $SO_2$ emissions reduction goals of the Acid Rain Program were preserved. EPA maintained in the proposed rule that the allowance market would account for the risk of cancellation by asking lower prices for opt-in allowances and writing protective clauses into sales contracts.

In the final rule, EPA is choosing to allocate allowances, in perpetuity, at the time the combustion source becomes an affected unit, but, based on the comments received, is prohibiting the transfer of future-year opt-in allowances from opt-in source accounts in the Allowance Tracking System (ATS). Transfers of current-year opt-in allowances will only be recorded by EPA following the completion of the end-of-year reconciliation process for the previous compliance year, as set forth in § 73.34(a) of 40 CFR part 73. If an opt-in source is found to have excess emissions for a given year, that opt-in source will be prohibited from transferring the following year's allowances until an offset plan is approved and allowances have been deducted to offset its excess emissions.

When an opt-in source permanently shuts down, it may no longer retain allocated allowances and must surrender to EPA all of its opt-in allowances starting with the year in which the opt-in source shuts down. In the case of an opt-in source that has shut down, as opposed to an opt-in source that is still operating, EPA cannot draw upon future-year allowances to offset excess emissions because such allowances have already been surrendered. Therefore, EPA reserves the right to cancel opt-in allowances (specifically, allowances for the year for which the opt-in source has excess emissions and the year in which the opt-in source shuts down) from any ATS account into which such allowances have been transferred. Previous year opt-in allowances that had subsequently been transferred to other ATS accounts would not be canceled because such allowances were in excess of the number of allowances needed for compliance in previous years.

EPA retains the option of allowance cancellation to ensure that opt-in sources through their operations cannot increase emissions to the environment. EPA believes that the Opt-in Program must be self-enforcing and should not rely on possible future regulation to implement the 5.6 million ton cap for industrial sources because of the reasons discussed in the proposed rule: (1) The incomplete coverage of the Opt-in Program relative to the industrial sector; (2) the importance of achieving title IV emission reduction goals by maintaining the emissions neutrality of the Opt-in Program relative to historic emission levels (rather than future emission inventory levels); and (3) the aggregate nature of emission inventories and their lack of specificity to address emissions and allowance allocations of individual opt-in sources.

Furthermore, EPA agrees with commenters who believe that most trades of future-year opt-in allowances will take the form of ''option contracts,'' e.g., the buyer and seller arrange today for the option to buy allowances at a future time at a quantity, price, and date set today. Buyers are more likely to enter into options contracts for future-year opt-in allowances because, if allowances are canceled, the buyer only loses the option to buy allowances and not the allowances themselves, as would be the case with other types of contracts. If these commenters are correct, then EPA's prohibition of the transfer of future-year opt-in allowances should not significantly alter expected market behavior and its treatment of opt-in allowances. In fact, current allowance market behavior in the utility sector suggests that, in many cases, a portion of the full price is paid now for future-year allowances, but the actual transfer of such allowances and payment of the remaining purchase price will not occur until the allowances become usable for compliance. Buyers are reluctant to pay full price now for allowances that cannot be used until a future date.

Although EPA is restricting the transfer of future-year opt-in allowances, it is allowing the transfer of current-year opt-in allowances as soon as the end-of-year reconciliation process for the previous year is completed. (EPA will allow, for the first current year, the transfer of current-year opt-in allowances upon entry into the Opt-in Program). EPA believes that current-year opt-in allowances may play a valuable role in assisting with compliance for the utility sector and must be available for transfer before the end of the current year. However, in order to uphold the requirements of section 410(f) of the Act, EPA reserves the right to cancel current-year opt-in allowances that have been allocated to the opt-in source in the event that an opt-in source has excess emissions and has shut down, been reconstructed, or become affected under § 72.6. EPA believes that restricting opt-in allowance transfers to current-year allowances will reduce the likelihood of having to cancel purchased opt-in allowances. Buyers of current-year opt-in allowances have a much better chance of accurately assessing the integrity, financial health, and future status of an opt-in source in a short time frame (i.e., within the current year) than they would in making an accurate assessment over a longer time frame (i.e., one extending as long as 31 years into the future). EPA considered not canceling current-year allowances, but instead using enforcement actions to try to recover excess opt-in allowances. EPA rejected this approach because of the concern that if enforcement actions were unsuccessful in the recovery of excess opt-in allowances, the clear direction of section 410(f) of the Act would be violated, and the emission reduction goals of title IV would be compromised.

*3. Offering Opt-in Allowances on the Acid Rain Auction*

In the proposed rule, EPA prohibited the trading of opt-in allowances in the Acid Rain auction. EPA is allowing, in the final rule, the offering of opt-in allowances in the spot auction, provided the compliance use date of the allowances offered is for a prior year. Prior year allowances are allowances dated a year or more prior to the spot auction year. Prior year opt-in allowances will have cleared the end-of-year compliance process including any possible allowance cancellations for reduced utilization, as discussed above. EPA is still prohibiting the submission of offers of current-year opt-in allowances in the Acid Rain auctions because these allowances have a possibility of being canceled by EPA in the future. Buyers of current-year opt-in allowances sold in the auctions have no protection against cancellation as they would if purchasing opt-in allowances through a private contract. EPA believes that if there is demand for an auction that includes current-year opt-in allowances, the private sector will develop such an outlet.

*4. Thermal Energy Exception*

Section 410(f) limits the transfer of opt-in allowances when opt-in sources reduce utilization or shutdown except when the reduced utilization or shutdown results from the replacement of thermal energy. EPA received numerous comments on implementing this thermal energy exception. This section discusses the three main issues associated with the thermal energy exception:

(a) The definition of thermal energy;

(b) The calculation of transferrable allowances; and

(c) The methodology used to calculate the fuel associated with thermal energy.

a. Definition of Thermal Energy

In § 72.2 of the proposed rule, EPA defined thermal energy as the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity. EPA received 29 comments on the definition of thermal energy.

Seventeen commenters disagreed with the proposed definition and argued that the thermal energy definition should include electrical output in addition to steam output. Several commenters argued that EPA has no statutory basis in section 410(f) to define thermal energy to include only steam output because the statute does not specifically cite the Public Utility Regulatory Policies Act (PURPA) definition of thermal energy used by the Agency in the proposed rule. Commenters also maintained that the legislative history does not support a limited definition. Lastly, commenters pointed out that because section 410(f) refers to the term ''unit'' that by definition does not distinguish between facilities that produce steam for generating electrical energy and those that produce steam for direct sale, the definition of thermal energy should not make such a distinction.

One commenter argued that thermal energy means ''heat'' and that the facilities affected by the Act are combustion units that produce heat, which sometimes is used to drive a turbine to create electricity and sometimes is used to create steam. Several other commenters noted that the proposed definition fails to take into account the integrated nature of many industrial facilities and does not consider how difficult it may be to determine how the thermal energy is allocated between steam and electricity.

In addition, a number of commenters believed that in developing the thermal energy definition, EPA ignored the intent of Congress to allow small electric generating units the opportunity to opt in, retire their older units, and transfer allowances to replacement sources.

Four commenters stated that EPA's proposed opt-in rule is inconsistent with the views stated in the ''Dover Letter,'' sent to SFT, Inc. on March 7, 1991. The commenters contended that a representative from EPA's Office of Atmospheric and Indoor Air Programs stated that the City of Dover would be allowed to opt in its exempt boilers used to generate electricity under section 410 of title IV and then transfer the allowances received to a new, replacement boiler. The commenters argued that EPA should uphold its original views and allow electric units to opt in. One commenter, however, recognized that this ''Dover Letter'' was not a legally enforceable, binding statement of law.

Three commenters supported EPA's definition of thermal energy based on the argument that if electricity is included in the definition, the total number of permanent allowances and associated emissions would increase above what is permitted under title IV. These commenters also argue that the Act draws a clear distinction between thermal energy and the energy used for the generation of electric power and thus, small electricity generators should not be considered beneficiaries of the thermal replacement energy exemption.

*Response:* As stated in the preamble to the proposed rule (58 FR 50087), EPA believes defining thermal energy as the steam output used directly as part of a manufacturing process but not used to produce electricity is consistent with the Congressional intent and goals of title IV and section 410. For the reasons set forth in the preamble to the proposed rule, the final rule retains the definition of thermal energy as proposed and limits thermal energy to the steam output used directly in a manufacturing process but not used to produce electricity.

EPA continues to believe that Congress selected the term thermal energy precisely to distinguish between electric energy and thermal energy used in manufacturing processes. If Congress had intended thermal energy to mean total energy, which includes electricity, then it would have had no need to use the term ''thermal'' at all. Furthermore, EPA disagrees with those commenters who claimed that because Congress did not specifically cite the PURPA definition of thermal energy in title IV it is inappropriate to use that definition. With no definition specifically provided in the statute, limited legislative history, and no evidence that Congress intended otherwise, EPA believes that using the PURPA definition is appropriate since it provides a long standing, accepted meaning of the term within the federal regulatory framework governing industrial steam production and electrical generation.

Some commenters argued that because section 410(f) uses the term ''unit'', Congress did not intend to distinguish between sources that produce steam for generating electricity and those that produce steam for direct sale. However, EPA believes that the term ''unit'' as used in section 410(f) provides no basis for defining ''thermal energy'', but rather the term ''unit'' is used in section 410(f) only to limit the transfer of allowances under the thermal energy exception to affected units (i.e., ''any other unit or units subject to the requirements of this title.'')

EPA stated in the so called ''Dover Letter'' that its response to the City of Dover was based on preliminary assessments of the language in title IV and was subject to modification in the final EPA regulations:

> Below are EPA's comments based on the language in Title IV of the Act. You should be aware, however, that the views expressed in this letter are based on our preliminary assessments and could be modified in the final EPA regulations. (March 7, 1991 letter from Eileen Claussen to Tom Fitzpatrick).

By its own terms, the March 7, 1991 letter did not provide guidance, much less a statutory interpretation or an applicability determination for the units in question, that could be relied upon. In fact, the March 7, 1991 letter indicated that this was a preliminary views based only on the statutory language itself and did not indicate that any other material relevant to statutory interpretation (such as legislative history) had been considered. Several months thereafter, EPA sent a retraction letter on January 7, 1992 to the City of Dover reiterating that EPA's response in the March 7, 1991 letter was preliminary and that the Agency was reconsidering the legal and analytic basis of the position it had taken in the March 7, 1991 letter.

Lastly, EPA recognizes the integrated nature of some industrial cogeneration facilities but maintains, as confirmed by historic industrial reporting, that steam and electrical outputs are observable and measurable quantities.

b. Emission Rate Used To Calculate Transferable Allowances

To calculate the number of allowances that can be transferred from the opt-in source to a replacement unit under the thermal energy exception, EPA proposed, under § 74.47(b)(4), to use the lesser of the federally enforceable allowable emission rate at the replacement unit or 1.2 lbs/mmBtu. EPA received eighteen comments on this issue with no commenters supporting the 1.2 lbs/mmBtu emission rate cap as proposed, and six commenters supporting the use of the replacement unit's emission rate. Two commenters contended that the proposed 1.2 lbs/mmBtu emission rate is excessively high given that emission

rates at replacement units are likely to be much lower.

Fifteen commenters objected to EPA's proposal of a 1.2 lbs/mmBtu emission rate limit as too restrictive. These commenters argued that the use of the 1.2 lbs/mmBtu emission rate is arbitrary and not supported by the statute where the replacement unit's emission rate is higher. They also pointed out that the proposed restriction does not recognize all possible replacement units (e.g., existing units) and would unjustifiably restrict allowance transfer during Phase I when the emission rate could be 2.5 lbs/mmBtu.

*Response:* After further consideration, EPA is eliminating the 1.2 lbs/mmBtu emission rate restriction used to calculate the number of allowances that can be transferred to the replacement unit under the thermal energy exception. Today's rule uses the federally enforceable emission rate at the replacement unit to calculate the number of transferable allowances.

The rule was changed because EPA agrees with the comments that the use of the 1.2 lbs/mmBtu does not recognize the different emission rates at potential replacement units, some of which may be existing units. In the preamble to the proposed rule, EPA argued that applying a 1.2 lbs/mmBtu rate is consistent with the requirements for Phase II units. However, since a replacement unit can be any affected unit, the universe of replacement units would include Phase I units with 2.5 lbs/mmBtu rates and other opt-in sources with emission rates that could be even higher. Given that these potential replacement units could have higher rates and that the statute does not set a limit for the emission rate, EPA believes there is no basis for restricting the emission rate to 1.2 lbs/mmBtu.

c. Methodology Revision for Calculating the Fuel Associated with Thermal Energy

In § 74.47(b) of the proposed rule, EPA required that replacement units calculate the fuel associated with thermal energy by dividing the amount of qualifying thermal energy (that is, the replacement thermal energy) by the efficiency associated with the production of thermal energy. EPA received several comments related to this issue.

One commenter suggested that all units of fuel used should be attributable to a unit's steam output because it is not practical to identify a thermal energy fuel increment (used to determine the allowance transfer) and because there is no established method for doing so.

Several commenters offered alternative formulas for calculating the transferable allowances. One suggested that EPA calculate the number of transferable allowances as the product of the ''useful thermal energy output'' of the replacement unit, as defined under PURPA, and the difference between the opt-in source's emission factor and the replacement unit's emission factor. This commenter contended that this will encourage more efficient cogeneration applications. Another suggested that EPA compute the number of transferable allowances by evaluating the portion of an opt-in source's historic thermal energy that is replaced by a cogeneration facility, rather than the portion of the cogeneration facility's energy output that is thermal energy. Other commenters recommended that EPA include provisions that provide an incentive to undertake energy efficiency gains at the replacement unit. The number of transferable allowances should be based on the replacement unit's emission rate taking into consideration any efficiency differences in steam production at the opt-in source and at the replacement unit.

*Response:* Based on the comments received, EPA is changing the methodology for calculating the fuel associated with qualifying thermal energy as discussed under § 74.47. In today's rule, EPA allows opt-in sources to use an efficiency constant when calculating fuel input from thermal output to give them an incentive to make their production processes more efficient.

EPA has chosen to make the calculation of transferred allowances based on a constant value rather than having replacement units calculate fuel utilization each year because relying on actual fuel utilization would discourage improvements in efficiency. By using a constant, a replacement unit that increases its efficiency will use less fuel to produce the same amount of thermal output, but will still have transferred to it the same number of allowances as before the efficiency improvement. In contrast, calculating the fuel utilization each year would reduce the incentives for efficiency improvements. This will be true for either boilers or cogenerators.

The efficiency constants selected represent the fuel utilization of the boiler or cogenerator supplying the replacement steam. Fuel utilization represents the quotient of all energy outputs and the energy content of total fuel input. The Agency distinguishes between boilers and cogenerators in establishing these constants to recognize the greater energy requirements necessary to produce electricity as opposed to producing steam. It would be unfair to compare the efficiency of cogenerators producing electricity and/or steam with the efficiency of boilers producing only steam, because the production of electricity inherently requires more fuel. In today's rule, the Agency sets the efficiency constant for boilers to be 0.85 and the efficiency constant for cogenerators to be 0.80. These constants represent industry averages for modern equipment (see memorandum in the docket entitled, ''Evaluation of EPA's Revised Methodology for Calculating the Transferred Allowances under the Thermal Energy Exception'').

For boilers serving as replacement units, the attribution of fuel associated with thermal energy is straightforward. However, for cogenerators, it is very difficult to distinguish between the fuel going towards steam or electricity, because the production of the two is tightly linked. Using fuel utilization implies that both the fuel input and the efficiency losses associated with the production of each product is proportional to the amount of each product produced.

EPA specifically defines thermal energy to consist of only steam and this definition does not include electricity (see previous discussion of thermal energy definition). In calculating allowances transferred under the thermal energy exception, EPA must distinguish between the fuel used to produce electricity and the fuel used to produce thermal output. The former does not count toward the thermal energy exception, while the latter does. Therefore, EPA does not believe it is appropriate or consistent with the statutory provisions in section 410(f) to attribute all fuel input to steam production, where, in fact, both steam and electricity are being produced.

EPA believes its revised methodology addresses the concerns of commenters seeking to instill incentives for cogeneration and specifically relying on the amount of thermal energy replaced. The alternative suggestion of basing allowance calculations on energy output is inconsistent with all other allowance calculations found in the Acid Rain Program. Allowances for utility units in the Acid Rain Program are generally calculated as a product of a fuel input baseline, expressed in mmBtu, and an emission rate, expressed in lbs. per mmBtu of fuel input. An allowance calculation where emission rates, reflecting energy input, are multiplied by the thermal energy replaced, reflecting energy output, would be internally inconsistent. The revised methodology, therefore, remains

consistent with allowance calculations in the core utility program.

### C. Other Significant Changes Made to the Proposed Rule

*1. Ineligibility of Non-operating and Retired Units*

EPA continues to require that combustion sources seeking to enter the Opt-in Program be operating at the time of application. Combustion sources opting in under the thermal energy exception are also required to be in operation, although they can shut down upon entry into the program.

EPA seeks to restrict the allocation and use of opt-in allowances to instances in which real emissions reductions will take place, and not to award allowances in situations of reduced utilization and shut down. EPA believes that this requirement to be operating at the time of application is consistent with this principle. The provision establishing such a requirement provides a clear criteria for assessing whether a combustion source has reduced its utilization or shut down (i.e. is not operating) for the purposes of accepting the combustion source into the program and allocating allowances.

In the final rule, EPA establishes a definition of operating strictly for the purposes of the Opt-in Program. Operating is defined to mean the documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding application. This level of operating hours was selected because it serves as the upper bound of a peaking unit, that is, 20 percent capacity factor in any calendar year as defined in § 72.2. The Agency kept the 20 percent operating level, but shortened the period of time from one year to six months so that a combustion source could be idle at most approximately four and one half months, rather than twice that amount of time and still be eligible to opt in. EPA expects that combustion sources operating below the 20 percent level would have little interest in participating in the Opt-in Program because the number of allowances freed up from emission reductions would be small and unlikely to cover the costs of opt-in participation.

Whether or not they were operating at the time of application, combustion sources that operated in the 1985–1987 time period would have the necessary data to determine an allocation of opt-in allowances. However, a combustion source that was not operating at the time of application would have all or virtually all of its allowances deducted under the reduced utilization and shutdown provisions. EPA does not believe it is reasonable or administratively practical to grant these opt-in sources allowances and then, from the first year on, take virtually all of them away.

If a combustion source is shut down but plans to restart its operations, EPA believes that the combustion source should apply to opt in upon restart, that is where there is proof that the combustion source is now operating consistent with the above definition. Furthermore, the allowance allocation for opt-in sources that restart would be based on any current allowable $SO_2$ emissions rate in effect at the time of application.

As discussed under the thermal energy exception, non-operating opt-in sources may transfer allowances to replacement units, to the extent that such units can document the replacement of thermal energy. In allowing non-operating sources to participate in the thermal energy exception, but excluding non-operating sources from applying to opt in, the Agency requires that even combustion sources planning to shut down upon entry be operating upon application. The Agency believes a valid distinction exists between replacement arrangements made in response to the Opt-in Program and those that preceded the application to enter the program.

The reason why the combustion source is not operating at the time of application is not relevant to the Agency's determination of whether a retired or non-operating source should be permitted to opt into the Acid Rain Program. Allocating allowances to a retired or non-operating combustion source and allowing the source to trade such allowances would, in effect, allow another source to emit what the retired or non-operating combustion source was emitting before it ceased operations. These allowances would thus result in more pollution being released into the environment. As discussed in the preamble to the proposed rule, Congress expected the $SO_2$ emissions from non-utility sources to remain at a constant level and to reflect a dynamic balancing of emissions caused by fluctuations in economic activity, shutdowns, facility modernization, fuel switching, and cleanup. By granting sources not operating at the time of application the ability to opt-in and receive allowances, EPA would increase emissions above the presumed constant level of non-utility emissions.

*2. Interpretation of Shutdown, Modification and Reconstruction*

In the proposed rule, EPA sought to distinguish the modification of an opt-in source from its outright replacement. EPA recognizes that opt-in sources may need to make changes to their facilities in order to reduce emissions. Here, EPA attempts to address the extreme case in which such changes represent the construction of an essentially ''new'' facility. EPA proposed to consider an opt-in source ''shut down'' in the circumstance in which the opt-in source had been modified to such a large extent that the opt-in source no longer existed and a new one had been put in its place (in the extreme, the construction of a new facility within the shell of the old one). EPA chose as its test for replacement the reconstruction standard established in 40 CFR 60.15, as discussed in the preamble to the proposed rule.

EPA maintains that a new facility constructed in the shell of an older one should not retain the allowances allocated to the original opt-in source and should be removed from the Opt-in Program. Such restrictions are consistent with section 410(f) of the Act in implementing both the reduced utilization provisions as well as the thermal energy exception. The Agency believes its use of the regulatory term ''reconstruction'' and its threshold of 50 percent of what would be required to construct a new comparable facility is entirely appropriate in this context, and therefore the Agency applies this standard for reconstruction from 40 CFR 60.15 to opt-in sources. One commenter correctly acknowledged that the 50 percent criterion would apply to improvements to the facility as a whole; however, EPA disputes the notion that the level of investment would prohibit facility improvements to reduce emissions or would restrict alternatives to strictly end-of-pipe options. EPA believes that this level of expenditure is sufficiently high to allow sources great flexibility in their choice of control options.

EPA modifies in the final rule the regulatory language that would exclude reconstructed units from maintaining their status as opt-in sources. Instead of considering such units as ''shutdown'', the rule explicitly dismisses such units from the program in cases of reconstruction. The effect on sources undergoing modifications qualifying as reconstruction remains the same.

To exclude from consideration the reconstruction of any equipment with equipment that performs the same or similar function would circumvent the

need to remove allowances from sources that are no longer in operation. As discussed previously, emissions from these sources are assumed to disappear, consistent with the Congressionally assumed constant level of industrial emissions, and opt-in allowances are assumed to be generated from emission reductions at the opt-in source. The Opt-in Program should not perpetuate emissions from old to new sources, or in this case, from old to reconstructed sources.

The increase in productive capacity at opt-in sources is relevant only to the extent that such investments would trigger a determination of reconstruction. Finally, the use of the definition of major modification to distinguish between reconstructed units and existing opt-in sources is also not appropriate. If a modification is a major modification because a source achieves a significant increase in a regulated pollutant, the source's permitting levels may change, but such changes would not affect its opt-in permit or its allowance levels, provided that such modifications do not also exceed the threshold for reconstruction.

In the context of the Opt-in Program, a reconstructed opt-in source will not be permitted to enter or remain in the Opt-in Program at its pre-reconstruction baseline and allowance allocation. Should the reconstructed and former opt-in source wish to enter the Opt-in Program, after modifications have been completed, it may do so, once it establishes a three-year alternative baseline. Other regulatory programs, including the non-attainment and Prevention of Significant Deterioration (PSD) programs, may or may not consider the reconstructed opt-in source as a ''new'' source; nevertheless, units undergoing reconstruction will have their allowances deducted and their opt-in permits terminated. Units that do not exceed the level of reconstruction and remain in the Opt-in Program may or may not be subject to New Source Review (NSR) or the New Source Performance Standards (NSPS) but applicability under these programs is independent from participation in the Opt-in Program.

*3. Incorporation of Efficiency Measures*

Under § 74.44 of the proposed regulation, the only efficiency improvements that would be credited toward utilization were improvements that reduced the demand for electricity or that made electricity generation more efficient. Improvements in the efficiency of steam production, measures to reduce steam load (i.e., steam conservation measures), and sulfur-free generation as defined in § 72.2 were not included.

The final rule allows for efficiency improvements to be incorporated in an opt-in source's annual utilization. Efficiency improvements include any expected reduction in the heat rate at the opt-in source, any expected improvement in the efficiency of steam production at the opt-in source, and any kilowatt hour savings or steam savings from demand side measures.

EPA agrees that improvements in the efficiency of steam generation should be encouraged. EPA believes that some restrictions are necessary, however, because cogeneration facilities could shift their output to steam while decreasing the efficiency of electricity generation. Such shifts from electricity to steam should not result in an adjusted increase in utilization and hence in allowances retained.

In order to prevent such shifts from occurring, today's rule requires that the heat rate at an opt-in source not increase in order to claim an efficiency improvement in steam production. If the heat rate increases, that is, if electricity generation becomes less efficient, no credit for gains in the efficiency of steam production will be given towards utilization. The methodology for quantifying this adjustment to utilization from efficiency increases in steam production will be developed by EPA, working with interested opt-in sources.

EPA also agrees that reductions in steam load created by demand side measures that improve the efficiency of steam consumption should be encouraged. EPA is concerned about the identification of such measures and their verifiable contribution towards using steam more efficiently. The burden for documenting such measures is on the opt-in source, which must be able to demonstrate that the reduction in utilization from a steam conservation measure is different than reductions in utilization not related to conservation improvements.

Finally, EPA also believes that opt-in sources should be encouraged to pursue opportunities to increase their use of sulfur-free technologies at their facilities. However, EPA maintains that such technologies are already included in the provisions providing credit for demand-side measures (see Appendix A, Section 1 of part 73 of this chapter which includes sulfur-free technologies in a list of examples of demand-side measures).

EPA does not include, however, a separate provision for ''sulfur-free generation'' in the utilization adjustment, because the term, as defined in § 72.2 of this chapter and used in § 72.91, includes all sulfur-free generators in the utility's system. For opt-in sources, EPA restricts adjustments to utilization for improved efficiency to measures performed at the opt-in source itself or by the ''customers'' of the opt-in source (i.e., electricity or steam users of the opt-in source). The Agency does not include ''sulfur-free generation'', because of concerns of replacing the opt-in source's utilization without any thermal energy transfer, as required by section 410(f).

*4. Expiration of a Non-Effective Opt-in Permit*

The proposed rule created an effective date for an opt-in permit to be the later of the issuance of the opt-in permit by the permitting authority or the completion of the certification of the combustion source's monitoring systems. However, no time period was specified regarding the length of time between the issuance of the opt-in permit and these certifications. One commenter requested clarification about this time period and whether or not the opt-in permit would expire before becoming effective.

*Response:* EPA establishes, in the final rule, an expiration date associated with a non-effective opt-in permit. An opt-in permit will expire 180 days after issuance, if it has not yet become effective. The length of 180 days was selected because the time period incorporates the duration of EPA's review of monitoring certification for the combustion source's CEM systems and two months for the combustion source to arrange testing, should the combustion source wish to wait to certify its monitors until the end of the permitting process.

EPA believes that an expiration date is important to prevent combustion sources from seeking a permit with no immediate intention to opt into the Acid Rain program. A combustion source might apply early to enter the Opt-in Program, but wait to make its permit effective in order to secure an allowance allocation based on its current emissions rate at the time of application. If the combustion source faced the possibility of an impending emission limit that would lower its allowable emissions rate, the combustion source could apply and then wait to install its monitors and undertake its emission reductions. In effect, the combustion source would be seeking to capitalize on emission reductions it would be required to make based on other regulatory requirements.

EPA sees no reason to allow for an extended period of time during which a

combustion source can secure its allowance allocation and keep its application pending. EPA wants its applicants to be serious about entering the Opt-in Program and is concerned about behavior that would lead combustion sources to seek an opt-in permit and secure an allowance allocation because of the prospect of future, more stringent emission limitations. In addition, EPA does not want to waste administrative resources in reviewing applications and processing permits for combustion sources that are not ready to participate in the program and may or may not actually opt in. The Agency believes that the time period for the entire permit process plus the 180 days added here, a total of up to 24 months, is sufficiently long for the combustion source to install and certify its monitors considering that the combustion source must submit upon application a monitoring plan, detailing both the monitors' configuration and equipment. EPA may extend this time period of 180 days, if the applying combustion source can show that despite good faith effort towards certifying its monitors, it was unable to complete such certifications within this time frame.

*5. Miscellaneous Issues*

a. Opt-in Permitting

As discussed in the preamble to the proposed rule (58 FR 50096), the permitting procedures for opt-in sources had been designed to follow the approaches set forth at parts 70 and 72. EPA has found it necessary, however, to modify the permitting procedures in the proposed opt-in regulation to handle inconsistencies between the proposal and parts 70 and 72, some of which were noted by commenters or became evident in permitting Phase I units and establishing part 70 permitting programs. These relatively minor changes in the final rule make the permitting process conform better with the process used to permit utility units affected under the Acid Rain Program.

Of the changes made to improve the regulatory language implementing the opt-in permitting process, a few are worthy of further explanation. First, the roles of the Administrator and the permitting authority have been clarified. Although the Administrator retains an important role in developing an opt-in source's allowance allocation for the combustion source's opt-in permit, the permitting authority has a greater role in the final rule in developing the opt-in permit than was suggested in the proposed regulatory language. Secondly, the time frame under which the State as permitting authority has to process an opt-in permit has been made consistent with part 70. In the final rule, the State has 18 months from the receipt of a complete opt-in permit application or such lesser time as approved under part 70. The proposed regulatory language could have been interpreted to require a permitting decision within 12 months.

There are several other specific changes that relate to opt-in permitting. One concerns the submission of a compliance plan as provided under § 72.40. The opt-in compliance plan must include an explicit commitment on the part of the designated representative to hold allowances in the opt-in source's compliance subaccount equal to or greater than the amount of sulfur dioxide emissions emitted during that year. Another concerns the term of an opt-in permit. Opt-in permits issued prior to January 1, 2000 will expire on December 31, 1999. Opt-in permits issued after January 1, 2000 will have a term of 5 years. Further, a provision has been added to § 74.40 to facilitate the opening of opt-in unit accounts. The designated representative of an opt-in source shall request the opening of such an account in the Allowance Tracking System once its permit is final and effective. In addition, the rule language is clarified concerning the deduction of allowances in the circumstances of withdrawal, shutdown, reconstruction, or change in source's status as unaffected under the mandatory portion of the Acid Rain Program.

EPA neglected to explicitly discuss the permit revision and renewal procedures in the proposed opt-in regulations and includes such language in the final rule. Permit revision procedures follow procedures set forth in subpart H of part 72. The opt-in regulation, part 74, reserves for the permitting authority the preparation of permit revisions and the implementation of such revisions.

Opt-in sources may renew their opt-in permits through the same process in which the opt-in permits were initially issued, except that the permitting authority shall not alter an opt-in source's allowance allocation when issuing a renewal of an opt-in permit. EPA believes that assurance of a consistent stream of opt-in allowances is essential to a viable Opt-in Program. Without a consistent stream of allowances, opt-in sources are unable to plan for future-year compliance, and purchasers of opt-in allowances will be hesitant to enter into forward or futures contracts because of the risk that the allowances may not be available.

EPA also seeks to clarify the relationship of title V and a combustion source's ability to enter the Opt-in Program. Specifically, commenters inquired whether a combustion source must hold a title V permit to be an opt-in source. Another commenter explored the possibility for a mobile source, i.e. a locomotive, to be eligible to opt into the Acid Rain Program.

Consistent with title V of the 1990 Clean Air Act Amendments and regulations promulgated in part 70, all affected sources are considered part 70 sources and therefore are required to meet the permitting requirements under title V. The statute, under section 502(a), makes unlawful ''the operation of an affected source (as provided in title IV) * * * except in compliance with a permit issued by a permitting authority under (title V).'' Opt-in sources are electing to become affected units and, therefore, are included as affected sources under the Acid Rain Program and in title V (see 42 U.S.C. 7651a(1)). Therefore, all opt-in sources must obtain title V permits.

Particularly in light of the obligation for an affected unit to hold a title V permit, nonstationary sources are excluded from entering the Opt-in Program. Title V expressly applies only to stationary sources (see 42 U.S.C. 7402(a)). Consistent with this statutory provision, the Acid Rain regulations define ''source'' in a way that refers only to stationary sources: ''Source means any * * * structure, installation, plant, building or facility * * *.'' Consequently, affected units, which must be located at affected sources, also must be stationary. Locomotives, therefore, will not be accepted as potential opt-in sources. EPA has modified the definition of the term ''combustion source'' to include the explicit requirement that combustion sources be stationary sources.

b. Clarification of Eligible Combustion Sources

The EPA will not require an official applicability determination, as discussed under § 72.6(c), for a combustion source applying to opt into the Acid Rain Program, but the Agency will affirm as part of its review of the opt-in permit application that the combustion source is indeed unaffected and therefore eligible to opt in. Combustion sources should be aware, as detailed in the recently published applicability guidance, ''Do the Acid Rain $SO_2$ Regulations Apply to You?'' (EPA 430–R–94–002), that units may be required to provide documentation supporting their unaffected status. Furthermore, that status may, in fact, change over time as certain unaffected units become affected under particular

operating or construction conditions. As stated in the final rule under § 74.50(a)(3), should an opt-in source become an affected unit, the Administrator will terminate the opt-in source's opt-in permit and deduct all of the allowances allocated under the Opt-in Program for current and future years.

It is the duty of the combustion source's owner and operator to meet the requirements of the Acid Rain Program if the combustion source becomes affected. For purposes of keeping combustion sources aware of their regulatory status, EPA will add certification statements both to the opt-in permit application and to an opt-in source's annual compliance certification report that will state that the opt-in source is only considered an affected unit under part 74 and not an affected utility unit under § 72.6.

Finally, commenters requested clarification on the eligibility of certain types of sources and sources located outside of the continental U.S. Although the proposed rule was ambiguous regarding the eligibility of unaffected municipal waste combustors, the final rule allows such combustors to be eligible to apply for the Opt-in Program provided that they qualify as a ''unit'' and burn some amount of fossil fuel. Combustion and process sources that are located outside the continental U.S. (e.g., in Alaska or Hawaii) are not eligible to opt in and the applicability provisions in § 74.2 have been modified to reflect this prohibition.

c. Modification to Utilization Calculation

As discussed in the proposed rule under § 74.44, EPA selected an average utilization to compare against the baseline for making determinations of reduced utilization. This average utilization was calculated as a rolling average of fuel input over three years.

Four commenters agreed with EPA's proposal to use a three-year rolling average for determining reduced utilization because such an approach would smooth out the peaks and valleys that may occur in steam generation from year to year. Two commenters disagreed with EPA's proposal. One suggests that EPA use a five- to eight-year averaging period in order to account for normal economic cycles. The second commenter believed that an average over multiple years would bias the determination of reduced utilization, awarding unnecessary allowances in individual years when emissions could be low or near zero. The commenter suggested that EPA should use annual data because annual $SO_2$ emissions are proportional to annual fuel use.

*Response:* EPA will keep its calculation of average utilization overall, but will modify its calculation for the first and second years in which the opt-in source participates in the program and for the first and second years in which the opt-in source is governed by a thermal energy plan. Average utilization for the first year will equal the fuel input of that year. Average utilization for the second year will equal the average of the first two years. Thereafter, average utilization will be as proposed and equal a rolling average of three years.

EPA believes the purpose of using a three-year rolling average to determine whether an opt-in source has reduced its utilization remains the same and remains valid: namely, as the commenters recognize, to smooth out small fluctuations in the operation of opt-in sources. The three-year interval is consistent with the baseline period and provides for a more accurate comparison with the baseline as a measure of utilization than would longer intervals.

EPA modifies its calculation of average utilization for the first two years described above to address possible bias. With regard to the calculation of average utilization outside the context of a thermal energy plan, the Agency notes that in the proposed rule (58 FR 50124), the average for the first two years was based on the baseline level of utilization rather than actual utilization of the opt-in source. With such a methodology, an opt-in source that consistently operates below its baseline level could calculate an artificially high average utilization for its first two years as an opt-in source and thereby avoid allowance surrender. EPA feels that such a windfall would be inappropriate and that the methodology could create the potential for abuse. Therefore, EPA bases average utilization in these first two years on actual utilization for the opt-in source in the first year and then the first two years.

With regard to the calculation of average utilization once an opt-in source becomes governed by a thermal energy plan, EPA believes that the use of a continuing three-year average for the first two years under the plan would distort the number of allowances retained by the opt-in source. The reasoning for modifying the average utilization calculation is similar. Rather than reflecting normal fluctuations in the operation of the opt-in source whose thermal energy has been replaced, the three-year average utilization calculated for the first two years under the plan would award allowances based on the opt-in source's prereplacement levels of utilization and could result in an allowance windfall. Therefore, EPA bases average utilization for the two years immediately after the thermal energy plan takes effect on the actual utilization for the first year and then the average for the first two years.

d. Efficiency Adjustments for an Opt-in Source Governed by a Thermal Energy Plan

EPA clarifies an ambiguity in the proposed rule regarding allowance holdings among an opt-in source and its replacement units if the opt-in source claims efficiency improvements as part of its annual utilization. If the opt-in source has estimated efficiency improvements in its annual utilization and these estimates prove to be incorrect, EPA could be placed in the position of adjusting not only the allowance holdings of the opt-in source, but also the holdings of all replacement units after the reconciliation process has ended (recall that annual compliance reports are submitted in March, while confirmation of energy efficiency estimates are not submitted until July). In order to avoid reassessing the compliance of perhaps multiple replacement units, EPA will consider the number of allowances transferred to replacement units fixed after the reconciliation process has ended and rely on the opt-in source to surrender any additional allowances needed to make the accounting consistent with the confirmed efficiency estimates. EPA maintains that it is reasonable for the opt-in source, which made the initial efficiency estimates, to bear the allowance consequences of correcting those estimates.

e. Definitions

EPA has found it useful to modify certain definitions and to explain certain terms applicable to the Opt-in Program to make its provisions clearer. Consistent with the procedures established in part 72 subpart B and referenced in § 74.4, the owners and operators of a combustion or process source seeking to opt into the Acid Rain Program must select a designated representative. This designated representative is charged with representing the combustion or process source with regards to all matters under the Acid Rain Program. However, during the opt-in permit application process, the combustion or process source is not yet an affected unit nor an affected source, and strictly speaking, may not have a designated representative under the existing definition in § 72.2.

The Agency amends the definition of designated representative in § 72.2 to include a responsible person authorized by the owners and operators of a combustion or process source as a designated representative. This individual has the same role and responsibilities as designated representatives for units affected under the other provisions of title IV and must complete a Certification of Representation as specified in § 72.24. The Certification of Representation should be submitted prior to or concurrent with the opt-in permit application. Further, the definitions of owner and owner or operator have been modified to include the appropriate individuals at combustion and process sources.

In addition, the definition of affected unit has been clarified to include units covered under § 72.6 and part 74 of this chapter to be subject to the Acid Rain emissions reduction requirements or the Acid Rain emissions limitations. EPA also has clarified the usage of the terms ''combustion source'' and ''opt-in source'' because of confusion expressed by individual commenters on the proposed rule. Prior to entering the Opt-in Program, the entity wishing to opt-in is referred to, in the final rule, as a combustion source or a process source, as appropriate. Once in the Opt-in Program, the combustion source becomes an opt-in source and is referred to as such throughout the remainder of the rule. An opt-in source is an affected unit under the Acid Rain Program.

Finally, in the preamble to the proposed rule, Table 2 was in error regarding the definition of the opt-in source in various circumstances. The revised Table 2 is as follows:

TABLE 2.—OPT-IN SOURCE DEFINITIONS

| Type of configuration at a single site | Single discrete entity? | What is the opt-in source? |
|---|---|---|
| Individual boiler emitting to single stack. | Yes ..... | Boiler and stack. |
| Individual boiler as part of multiple boilers sharing single stack. | Yes, to the extent that monitoring is specific to the opt-in source. | Boiler, duct to the stack. |
| Multiple boilers sharing single stack. | No ..... | Each boiler and its appropriate duct.* |

TABLE 2.—OPT-IN SOURCE DEFINITIONS

| Type of configuration at a single site | Single discrete entity? | What is the opt-in source? |
|---|---|---|
| Individual boiler emitting to multiple stacks. | Yes ..... | Boiler and all stacks. |
| Multiple boilers sharing multiple stacks. | No ..... | Each boiler and its appropriate ducts.* |
| Multiple boilers and affected units sharing single/multiple stacks. | No ..... | Each unaffected boiler and its appropriate ducts.* |

*—If the combustion sources wish to employ common stack monitoring they may do so according to the provisions of part 75 generally and § 75.16 in particular of the Acid Rain Program.

f. Other Items

Three other miscellaneous changes warrant mention. First, EPA has decided to allow submission of annual data as an alternative to monthly data for baseline calculations. The rule has been altered in several places accordingly. Second, EPA has modified a provision in part 77 to incorporate adjustments to allowance deductions due to differences between estimated and verified reductions in heat input due to conservation, improved electric efficiency, and improved steam production efficiency. Third, Appendix A, containing a draft opt-in permit application form, has been removed from the regulation. Forms will be issued during program implementation and will reflect, where appropriate, comments submitted.

EPA has also made revisions to parts 74 and 75 to better integrate the Opt-in Program with the rest of the Acid Rain Program. The bulk of the regulatory language relating to the monitoring of combustion sources has been moved from Subpart F in part 74 and integrated into part 75 to consolidate all monitoring requirements for all affected units in part 75.

EPA has retained general references to part 76, which is reserved for $NO_x$ regulation, but removed specific references to sections within part 76 in the final rule. This reflects the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit vacating part 76.

Finally, the proposed amendments to part 78 involving the exhaustion of administrative appeals as a necessary prerequisite to judicial review will not be finalized in this rulemaking. Final provisions concerning the exhaustion of administrative remedies will be addressed in a subsequent rulemaking.

g. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3) to make the amendments effective immediately.

**D. Impact Analyses**

*1. Executive Order 12866 (Regulatory Impact Analysis)*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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, OMB has notified EPA that it considers this a ''significant

regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Any changes made in response to OMB suggestions or recommendations are be documented in the public record.

EPA estimated the total cost savings of the opt-in regulations for the time period from 1994 through 2010. Cost savings are expected to accrue to both affected utilities and opt-in sources. The cost savings depend on the number of allowances sold by opt-in sources and the price of allowances. The estimates assume the use of 1985–87 baseline data, the use of the lesser of 1985 actual or allowable rate, or the current rate at the time the combustion source applies to opt in, reduced allowance allocations for reduced utilization, the transfer of allowances as a result of the replacement of thermal energy at the allowable emission rate at the replacement source, the installation and operation of continuous emissions monitoring systems, and opt-in sources are allowed to withdraw from the program. Given these assumptions, an estimated 408 combustion sources would opt in resulting in annual net cost savings of approximately $10 million. The analysis is contained in the Economic Impact Analysis (EIA) of the Opt-in Regulations, September, 1994, EPA, Office of Atmospheric Programs.

*2. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a ''significant impact on a substantial number of small entities.'' Because the Opt-in Program is a voluntary cost reducing component of the Acid Rain Program, it will not affect small entities adversely. Sources that will not benefit from their participation will choose not to participate. Based on this analysis and pursuant to the provisions of 5 U.S.C. 605(b), EPA hereby certifies that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

*3. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned control number 2060–0258.

This collection of information has an estimated reporting burden averaging 80 hours per response and an estimated annual recordkeeping burden averaging 2 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

**List of Subjects**

*40 CFR Part 9*

Reporting and recordkeeping requirements.

*40 CFR Part 72*

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 73*

Environmental protection, Acid rain, Air pollution control, Electric utilities, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 74*

Environmental protection, Acid rain, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 75*

Environmental protection, Acid rain, Air pollution control, Carbon dioxide, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 77*

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Penalties, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 78*

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 20, 1995.

**Carol M. Browner,**

*Administrator, U.S. Environmental Protection Agency.*

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 9—[AMENDED]

1. In part 9:

a. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding a new heading and entries in numerical order to the table to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| Sulfur Dioxide Opt-ins: | |
| 74.12 | 2060–0258 |
| 74.14 | 2060–0258 |
| 74.16 | 2060–0258 |
| 74.18 | 2060–0258 |
| 74.20 | 2060–0258 |
| 74.22 | 2060–0258 |
| 74.24–74.25 | 2060–0258 |
| 74.41 | 2060–0258 |
| 74.43–74.44 | 2060–0258 |
| 74.46–74.47 | 2060–0258 |
| 74.60–74.64 | 2060–0258 |
| * * * * * | |

## PART 72—PERMITS REGULATION

2. The authority citation for part 72 is revised to read as follows:

**Authority:** 42 U.S.C. 7601, 7651, et seq.

3. Section 72.2 is amended as follows:

a. By revising the introductory text;

b. By revising the term for ''Acid Rain compliance option'';

c. By revising paragraph (1)(i) of the term ''Acid Rain emissions limitation'';

d. By revising the terms ''Acid Rain Program'', ''Affected unit'', ''Allowable $SO_2$ emissions rate'', ''Allowance deduction'', ''Compensating unit'', ''Compliance certification'', ''Compliance plan; Designated Representative'', ''Owner'', ''Owner or Operator'', ''Phase I unit'', ''Phase II unit; and Reduced utilization''; and

e. By adding the following terms in alphabetical order, ''Combustion source'', ''Operating'', ''Opt-in'', ''Opt-in permit'', ''Opt-in source'', ''Replacement unit'', and ''Thermal energy''.

**§ 72.2 Definitions.**

The terms used in this part, in parts 73, 74, 75, 76, 77 and 78 of this chapter shall have the meanings set forth in the Act, including sections 302 and 402 of the Act, and in this section as follows:

* * * * *

*Acid Rain compliance option* means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance plan submitted and approved in accordance with subpart D of this part, part 74 of this chapter or part 76 of this chapter.

*Acid Rain emissions limitation* means:

(1) For the purposes of sulfur dioxide emissions:

(i) The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under section 404(a)(1) and (a)(3) of the Act, the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under section 410 of the Act for use in a calendar year;

* * * * *

*Acid Rain Program* means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with title IV of the Act, this part, and parts 73, 74, 75, 76, 77, and 78 of this chapter.

* * * * *

*Affected unit* means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation under § 72.6 or part 74 of this chapter.

* * * * *

*Allowable $SO_2$ emissions rate* means the most stringent federally enforceable emissions limitation for sulfur dioxide (in lb/mmBtu) applicable to the unit or combustion source for the specified calendar year, or for such subsequent year as determined by the Administrator where such a limitation does not exist for the specified year; provided that, if a Phase I or Phase II unit is listed in the NADB, the ''1985 allowable $SO_2$ emissions rate'' for the Phase I or Phase II unit shall be the rate specified by the Administrator in the NADB under the data field ''1985 annualized boiler $SO_2$ emission limit.''

* * * * *

*Allowance deduction, or deduct* when referring to allowances, means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount, or future year subaccount, to account for the number of tons of $SO_2$ emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in part 75 of this chapter, or for any other allowance surrender obligations of the Acid Rain Program.

* * * * *

*Combustion source* means a stationary fossil fuel fired boiler, turbine, or internal combustion engine that has submitted or intends to submit an opt-in permit application under § 74.14 of this chapter to enter the Opt-in Program.

* * * * *

*Compensating unit* means an affected unit that is not otherwise subject to Acid Rain emissions limitation or Acid Rain emissions reduction requirements during Phase I and that is designated as a Phase I unit in a reduced utilization plan under § 72.43; provided that an opt-in source shall not be a compensating unit.

* * * * *

*Compliance certification* means a submission to the Administrator or permitting authority, as appropriate, that is required by this part, by part 73, 74, 75, 76, 77, or 78 of this chapter, to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with subparts B and I of this part and the Acid Rain Program regulations generally.

* * * * *

*Compliance plan,* for the purposes of the Acid Rain Program, means the document submitted for an affected source in accordance with subpart C of this part or subpart E of part 74 of this chapter, or part 76 of this chapter, specifying the method(s) (including one or more Acid Rain compliance options as provided under subpart D of this part or subpart E of part 74 of this chapter, or part 76 of this chapter by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.

* * * * *

*Designated representative* means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with subpart B of this part, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term ''responsible official'' is used in part 70 of this chapter, in any other regulations implementing title V of the Act, or in a State operating permit program, it shall be deemed to refer to the ''designated representative'' with regard to all matters under the Acid Rain Program.

* * * * *

*Operating* when referring to a combustion or process source seeking entry into the Opt-in Program, means that the source had documented consumption of fuel input for more than 876 hours in the 6 months immediately preceding the submission of a combustion source's opt-in application under § 74.16(a) of this chapter.

* * * * *

*Opt in or opt into* means to elect to become an affected unit under the Acid Rain Program through the issuance of the final effective opt-in permit under § 74.14 of this chapter.

*Opt-in permit* means the legally binding written document that is contained within the Acid Rain permit and sets forth the requirements under part 74 of this chapter for a combustion source or a process source that opts into the Acid Rain Program.

*Opt-in source* means a combustion source or process source that has elected to become an affected unit under the Acid Rain Program and whose opt-in permit has been issued and is in effect.

* * * * *

*Owner* means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in an affected unit or in a combustion source or process source; or

(2) Any holder of a leasehold interest in an affected unit or in a combustion source or process source; or

(3) Any purchaser of power from an affected unit or from a combustion source or process source under a life-of-the-unit, firm power contractual arrangement as the term is defined herein and used in section 408(i) of the Act. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

(4) With respect to any Allowance Tracking System general account, any

person identified in the submission required by § 73.31(c) of this chapter that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

* * * * *

*Owner or operator* means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

* * * * *

*Phase I unit* means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitations beginning in Phase I.

* * * * *

*Phase II unit* means any affected unit, except an affected unit under part 74 of this chapter, that is subject to an Acid Rain emissions reduction requirement or Acid Rain emissions limitation during Phase II only.

* * * * *

*Reduced utilization* means a reduction, during any calendar year in Phase I, in the heat input (expressed in mmBtu for the calendar year) at a Phase I unit below the unit's baseline, where such reduction subjects the unit to the requirement to submit a reduced utilization plan under § 72.43; or, in the case of an opt-in source, means a reduction in the average utilization, as specified in § 74.44 of this chapter, of an opt-in source below the opt-in source's baseline.

* * * * *

*Replacement unit* means an affected unit replacing the thermal energy provided by an opt-in source, where both the affected unit and the opt-in source are governed by a thermal energy plan.

* * * * *

*Thermal energy* means the thermal output produced by a combustion source used directly as part of a manufacturing process but not used to produce electricity.

* * * * *

4. Section 72.4 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

**§ 72.4 Federal authority.**

(a) * * *

(1) Secure information needed for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter;

(2) Make inspections, conduct tests, examine records, and require an owner or operator of an affected unit to submit information reasonably required for the purpose of developing, revising, or implementing, or of determining whether any person is in violation of, any standard, method, requirement, or prohibition of the Act, this part, parts 73, 74, 75, 76, 77, and 78 of this chapter.

* * * * *

5. Section 72.9 is amended by revising paragraphs (g)(6) and (g)(7) to read as follows:

**§ 72.9 Standard requirements.**

* * * * *

(g) * * *

(6) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under § 72.41 (substitution plans), § 72.42 (Phase I extension plans), § 72.43 (reduced utilization plans), § 72.44 (Phase II repowering extension plans), § 74.47 of this chapter (thermal energy plans), and part 76 of this chapter ($NO_X$ averaging plans), and except with regard to the requirements applicable to units with a common stack under part 75 of this chapter (including §§ 75.16, 75.17 and 75.18 of this chapter), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(7) Each violation of a provision of this part, parts 73, 74, 75, 76, 77, and 78 of this chapter, by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

* * * * *

6. Section 72.21 is amended by revising paragraph (e) to read as follows:

**§ 72.21 Submissions.**

* * * * *

(e) The provisions of this section shall apply to a submission made under parts 73, 74, 75, 76, 77, and 78 of this chapter only if it is made or signed or required to be made or signed, in accordance with parts 73, 74, 75, 76, 77, and 78 of this chapter, by:

(1) The designated representative; or

(2) The authorized account representative or alternate authorized account representative of a unit account.

7. Section 72.30 is amended by revising paragraph (c) to read as follows:

**§ 72.30 Requirement to apply.**

* * * * *

(c) *Duty to reapply.* The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing the unit during Phase II or an opt-in permit governing an opt-in source or such longer time as may be approved under part 70 of this chapter that ensures that the term of the existing permit will not expire before the effective date of the permit for which the application is submitted.

8. Section 72.40 is amended by revising paragraph (b)(1) introductory text to read as follows:

**§ 72.40 General.**

* * * * *

(b) *Multi-unit compliance options.* (1) A plan for a compliance option, under § 72.41, 72.42, 72.43, or 72.44 of this part, under § 74.47 of this chapter, or an $NO_X$ averaging plan contained in part 76 of this chapter, that includes units at more than one affected source shall be complete only if:

* * * * *

9. Section 72.72 is amended by revising paragraph (b)(1) introductory text; and paragraphs (b)(1)(i) (A) and (B); (b)(1)(ii) (A) and (C), (b)(1)(v), (b)(1)(xiv); the first sentence of (b)(5)(i), and paragraph (b)(5)(vi) to read as follows:

**§ 72.72 State permit program approval criteria.**

* * * * *

(b) * * *

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application—*

(A) *Requirement to comply.*

*(1)* The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

*(2)* The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting

authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain Permit Application.* A complete Acid Rain permit application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

* * * * *

(ii) *Draft permit.*

(A) The State permitting authority shall prepare the draft Acid Rain permit in accordance with subpart E of this part or, for a combustion or process source, subpart B of part 74 of this chapter, or deny a draft Acid Rain permit.

* * * * *

(C) Prior to issuance of a draft permit for a combustion or process source, the State permitting authority shall provide the designated representative of a combustion or process source an opportunity to confirm its intention to opt-in, in accordance with § 74.14 of this chapter.

* * * * *

(v) *Proposed Permit.* Following the public notice and comment period on a draft Acid Rain permit, the permitting authority shall incorporate all changes necessary and issue a proposed Acid Rain permit in accordance with subpart E of this part or, for combustion or process sources, in accordance with subpart B of part 74 of this chapter or deny a proposed Acid Rain permit.

* * * * *

(xiv) Except as provided in § 72.73(b) and, with regard to combustion or process sources, in § 74.14(c)(6) of this chapter, the State permitting authority shall issue or deny an Acid Rain permit within 18 months of receiving a complete Acid Rain permit application submitted in accordance with § 72.21 or such lesser time approved under part 70 of this chapter.

* * * * *

(5) *Acid Rain appeal procedures.*

(i) Appeals of the Acid Rain portion of an operating permit issued by the State permitting authority that do not challenge or involve decisions or actions of the Administrator under this part, parts 73, 74, 75, 76, 77 and 78 of this chapter, shall be conducted according to procedures established by the State under § 70.4(b)(3)(x) of this chapter. * * *

* * * * *

(vi) A failure of the State permitting authority to issue an Acid Rain permit in accordance with § 72.73(b)(1)(i) or, with regard to combustion or process sources, § 74.14(c)(6) of this chapter shall be ground for filing an appeal.

* * * * *

10. Section 72.81 is amended by removing the word ''and'' from the end of paragraph (b)(3); by replacing the period with ''; and'' at the end of paragraph (b)(4) and by adding paragraph (b)(5) to read as follows:

**§ 72.81 Permit modifications.**

* * * * *

(b) * * *

(5) Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

* * * * *

11. Section 72.83 is amended by revising paragraph (a)(6), (a)(11), and by adding paragraph (a)(12) to read as follows:

**§ 72.83 Administrative permit amendment.**

(a) * * *

(6)(i) Termination of a compliance option in the permit; provided that all requirements for termination under subpart D of this part are met and this procedure shall not be used to terminate a repowering plan after December 31, 1999 or a Phase I extension plan;

(ii) For opt-in sources, termination of a compliance option in the permit; provided that all requirements for termination under § 74.47 of this chapter are met.

* * * * *

(11) Changes in a thermal energy plan that do not result in the addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

(12) Incorporation of changes that the Administrator has determined to be similar to those in paragraphs (a)(1) through (11) of this section.

* * * * *

## PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

12. The authority citation for part 73 is revised to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651 *et seq.*

13. Section 73.34 is amended by revising paragraphs (c)(2) and (c)(6) to read as follows:

**§ 73.34 Recordation in accounts.**

* * * * *

(c) * * *

(2) All allowances allocated or deducted pursuant to §§ 72.41, 72.42, 72.43, and 72.44 and part 74 of this chapter;

* * * * *

(6) All allowances deducted or returned pursuant to §§ 73.35(d), 72.91 and 72.92, part 74, and part 77 of this chapter.

* * * * *

14. Section 73.35 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 73.35 Compliance.**

* * * * *

(b) *Deductions for compliance.* (1) Except as provided in paragraph (d) of this section, following the recordation of transfers submitted correctly for recordation in the compliance subaccount pursuant to paragraph (a) of this section and subpart D of this part, the Administrator will deduct allowances from each affected unit's compliance subaccount in accordance with the allowance deduction formula in § 72.95 of this chapter, or, for opt-in sources, the allowance deduction formula in § 74.49 of this chapter, and any correction made under § 72.96 of this chapter. (2) The Administrator will make deductions until either the number of allowances deducted is equal to the amount calculated in accordance with § 72.95 of this chapter, or, for opt-in sources, in accordance with § 74.49 of this chapter, as modified under § 72.96 of this chapter or until no more allowances remain in the compliance subaccount.

* * * * *

15. Section 73.52 is amended by revising paragraphs (a)(3) to read as follows:

**§ 73.52 EPA recordation.**

* * * * *

(a) * * *

(3) If the allowances identified by serial number specified pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, § 74.42 of this chapter, or § 74.47(c) of this chapter, the transfer is in accordance with such limitation; and

* * * * *

16. Title 40 is amended by adding part 74 to read as follows:

# PART 74—SULFUR DIOXIDE OPT-INS


## Subpart A—Background and Summary

Sec.
74.1 Purpose and scope.
74.2 Applicability.
74.3 Relationship to the Acid Rain program requirements.
74.4 Designated representative.

## Subpart B—Permitting Procedures

74.10 Roles—EPA and permitting authority.
74.12 Opt-in permit contents.
74.14 Opt-in permit process.
74.16 Application requirements for combustion sources.
74.17 Application requirements for process sources [Reserved]
74.18 Withdrawal.
74.19 Revision and renewal of opt-in permit.

## Subpart C—Allowance Calculation for Combustion Sources

74.20 Data for baseline and alternative baseline.
74.22 Actual $SO_2$ emissions rate.
74.23 1985 Allowable $SO_2$ emissions rate.
74.24 Current allowable $SO_2$ emissions rate.
74.25 Current promulgated $SO_2$ emissions limit.
74.26 Allocation formula.
74.28 Allowance Allocation for combustion sources becoming opt-in sources on a date other than January 1.

## Subpart D—Allowance Calculation for Process Sources [Reserved]

## Subpart E—Allowance Tracking and Transfer and End of Year Compliance

74.40 Establishment of opt-in source allowance accounts.
74.41 Identifying allowances.
74.42 Prohibition of future year transfers.
74.43 Annual compliance certification report.
74.44 Reduced utilization for combustion sources.
74.45 Reduced utilization for process sources [Reserved].
74.46 Opt-in source shutdown, reconstruction or change in affected status.
74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.
74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved].
74.49 Calculation of deducting allowances.
74.50 Deducting opt-in source allowances from ATS accounts.

## Subpart F—Monitoring Emissions: Combustion Sources

74.60 Monitoring requirements.
74.61 Monitoring plan.

## Subpart G—Monitoring Emissions: Process Sources [Reserved]


**Authority:** 42 U.S.C. 7601 and 7651 *et seq.*

## Subpart A—Background and Summary

### § 74.1 Purpose and scope.

The purpose of this part is to establish the requirements and procedures for:

(a) The election of a combustion or process source that emits sulfur dioxide to become an affected unit under the Acid Rain Program, pursuant to section 410 of title IV of the Clean Air Act, 42 U.S.C. 7401, *et seq.*, as amended by Public Law 101–549 (November 15, 1990); and

(b) Issuing and modifying operating permits; certifying monitors; and allocating, tracking, transferring, surrendering and deducting allowances for combustion or process sources electing to become affected units.

### § 74.2 Applicability.

Combustion or process sources that are not affected units under § 72.6 of this chapter and that are operating and are located in the 48 contiguous States or the District of Columbia may submit an opt-in permit application to become opt-in sources upon issuance of an opt-in permit. Units for which a written exemption under § 72.7 or § 72.8 of this chapter is in effect and combustion or process sources that are not operating are not eligible to submit an opt-in permit application to become opt-in sources.

### § 74.3 Relationship to the Acid Rain program requirements.

(a) *General.* (1) For purposes of applying parts 72, 73, 75, 77 and 78, each opt-in source shall be treated as an affected unit.

(2) Subpart A, B, G, and H of part 72 of this chapter, including §§ 72.2 (definitions), 72.3 (measurements, abbreviations, and acronyms), 72.4 (federal authority), 72.5 (State authority), 72.6 (applicability), 72.7 (New units exemption), 72.8 (Retired units exemption), 72.9 (Standard Requirements), 72.10 (availability of information), and 72.11 (computation of time), shall apply to this part.

(b) *Permits.* The permitting authority shall act in accordance with this part and parts 70 and 72 of this chapter in issuing or denying an opt-in permit and incorporating it into a combustion or process source's operating permit. To the extent that any requirements of this part, part 72, and part 78 of this chapter are inconsistent with the requirements of part 70 of this chapter, the requirements of this part, part 72, and part 78 of this chapter shall take precedence and shall govern the issuance, denials, revision, reopening, renewal, and appeal of the opt-in permit.

(c) *Appeals.* The procedures for appeals of decisions of the Administrator under this part are contained in part 78 of this chapter.

(d) *Allowances.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of subparts C and D of part 73 of this chapter.

(e) *Excess emissions.* A combustion or process source that becomes an affected unit under this part shall be subject to the requirements of part 77 of this chapter applicable to excess emissions of sulfur dioxide and shall not be subject to the requirements of part 77 of this chapter applicable to excess emissions of nitrogen oxides.

(f) *Monitoring.* A combustion or process source that becomes an affected unit under this part shall be subject to all the requirements of part 75, consistent with subparts F and G of this part.

### § 74.4 Designated representative.

(a) The provisions of subpart B of part 72 of this chapter shall apply to the designated representative of an opt-in source.

(b) If a combustion or process source is located at the same source as one or more affected units, the combustion or process source shall have the same designated representative as the other affected units at the source.

## Subpart B—Permitting Procedures

### § 74.10 Roles—EPA and permitting authority.

(a) *Administrator responsibilities.* The Administrator shall be responsible for the following activities under the opt-in provisions of the Acid Rain Program:

(1) *Calculating* the baseline or alternative baseline and allowance allocation, and allocating allowances for combustion or process sources that become affected units under this part;

(2) Certifying or recertifying monitoring systems for combustion or process sources as provided under § 74.62;

(3) Establishing allowance accounts, tracking allowances, assessing end-of-year compliance, determining reduced utilization, approving thermal energy transfer and accounting for the replacement of thermal energy, closing accounts for opt-in sources that shut down, are reconstructed, become affected under § 72.6 of this chapter, or fail to renew their opt-in permit, and deducting allowances as provided under subpart E of this part; and

(4) Ensuring that the opt-in source meets all withdrawal conditions prior to withdrawal from the Acid Rain Program as provided under § 74.18; and

(5) Approving and disapproving the request to withdraw from the Acid Rain Program.

(b) *Permitting authority responsibilities.* The permitting authority shall be responsible for the following activities:

(1) Issuing the draft and final opt-in permit;

(2) Revising and renewing the opt-in permit; and

(3) Terminating the opt-in permit for an opt-in source as provided in § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction or change in affected status) and § 74.50 (deducting allowances).

**§ 74.12 Opt-in permit contents.**

(a) The opt-in permit shall be included in the Acid Rain permit.

(b) *Scope.* The opt-in permit provisions shall apply only to the opt-in source and not to any other affected units.

(c) *Contents.* Each opt-in permit, including any draft or proposed opt-in permit, shall contain the following elements in a format specified by the Administrator:

(1) All elements required for a complete opt-in permit application as provided under § 74.16 for combustion sources or under § 74.17 for process sources or, if applicable, all elements required for a complete opt-in permit renewal application as provided in § 74.19 for combustion sources or under § 74.17 for process sources;

(2) The allowance allocation for the opt-in source as determined by the Administrator under subpart C of this part for combustion sources or subpart D of this part for process sources;

(3) The standard permit requirements as provided under § 72.9 of this chapter, except that the provisions in § 72.9(d) of this chapter shall not be included in the opt-in permit; and

(4) *Termination.* The provision that participation of a combustion or process source in the Acid Rain Program may be terminated only in accordance with § 74.18 (withdrawal), § 74.46 (shutdown, reconstruction, or change in affected status), and § 74.50 (deducting allowances).

(d) Each opt-in permit is deemed to incorporate the definitions of terms under § 72.2 of this chapter.

(e) *Permit shield.* Each opt-in source operated in accordance with the opt-in permit that governs the opt-in source and that was issued in compliance with title IV of the Act, as provided in this part and parts 72, 73, 75, 77, and 78 of this chapter, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in § 72.9(g)(6) of this chapter.

(f) *Term of opt-in permit.* An opt-in permit shall be issued for a period of 5 years and may be renewed in accordance with § 74.19; provided

(1) If an opt-in permit is issued prior to January 1, 2000, then the opt-in permit may, at the option of the permitting authority, expire on December 31, 1999; and

(2) If an affected unit with an Acid Rain permit is located at the same source as the combustion source, the combustion source's opt-in permit may, at the option of the permitting authority, expire on the same date as the affected unit's Acid Rain permit expires.

**§ 74.14 Opt-in permit process.**

(a) *Submission.* The designated representative of a combustion or process source may submit an opt-in permit application and a monitoring plan to the Administrator at any time for any combustion or process source that is operating.

(b) *Issuance or denial of opt-in permits.* The permitting authority shall issue or deny opt-in permits or revisions of opt-in permits in accordance with the procedures in part 70 of this chapter and subparts F and G of part 72 of this chapter, except as provided in this section.

(1) *Supplemental information.* Regardless of whether the opt-in permit application is complete, the Administrator or the permitting authority may request submission of any additional information that the Administrator or the permitting authority determines to be necessary in order to review the opt-in permit application or to issue an opt-in permit.

(2) *Interim review of monitoring plan.* The Administrator will determine, on an interim basis, the sufficiency of the monitoring plan, accompanying the opt-in permit application. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that all $SO_2$ emissions, $NO_x$ emissions, $CO_2$ emissions, and opacity of the combustion or process source are monitored and reported in accordance with part 75 of this chapter. This interim review of sufficiency shall not be construed as the approval or disapproval of the combustion or process source's monitoring system.

(3) *Issuance of draft opt-in permit.* After the Administrator determines whether the combustion or process source's monitoring plan is sufficient under paragraph (b)(2) of this section, the permitting authority shall serve the draft opt-in permit or the denial of a draft permit or the draft opt-in permit revisions or the denial of draft opt-in permit revisions on the designated representative of the combustion or process source submitting an opt-in permit application. A draft permit or draft opt-in permit revision shall not be served or issued if the monitoring plan is determined not to be sufficient.

(4) *Confirmation by source of intention to opt-in.* Within 21 calendar days from the date of service of the draft opt-in permit or the denial of the draft opt-in permit, the designated representative of a combustion or process source submitting an opt-in permit application must submit to the Administrator, in writing, a confirmation or recision of the source's intention to become an opt-in source under this part. The Administrator shall treat the failure to make a timely submission as a recision of the source's intention to become an opt-in source and as a withdrawal of the opt-in permit application.

(5) *Issuance of draft opt-in permit.* If the designated representative confirms the combustion or process source's intention to opt in under paragraph (b)(4) of this section, the permitting authority will give notice of the draft opt-in permit or denial of the draft opt-in permit and an opportunity for public comment, as provided under § 72.65 of this chapter with regard to a draft permit or denial of a draft permit if the Administrator is the permitting authority or as provided in accordance with part 70 of this chapter with regard to a draft permit or the denial of a draft permit if the State is the permitting authority.

(6) *Permit decision deadlines.* (i) If the Administrator is the permitting authority, an opt-in permit will be issued or denied within 12 months of receipt of a complete opt-in permit application.

(ii) If the State is the permitting authority, an opt-in permit will be issued or denied within 18 months of receipt of a complete opt-in permit application or such lesser time approved under part 70 of this chapter.

(7) *Withdrawal of opt-in permit application.* A combustion or process source may withdraw its opt-in permit application at any time prior to the issuance of the final opt-in permit. Once a combustion or process source withdraws its application, in order to re-apply, it must submit a new opt-in permit application in accordance with § 74.16 for combustion sources or § 74.17 for process sources.

(d) *Entry into Acid Rain Program.*—(1) *Effective date.* The effective date of the opt-in permit shall be the January 1, April 1, July 1, or October 1 for a combustion or process source providing

monthly data under § 74.20, or January 1 for a combustion or process source providing annual data under § 74.20, following the later of the issuance of the opt-in permit by the permitting authority or the completion of monitoring system certification, as provided in subpart F of this part for combustion sources or subpart G of this part for process sources. The combustion or process source shall become an opt-in source and an affected unit as of the effective date of the opt-in permit.

(2) *Allowance allocation.* After the opt-in permit becomes effective, the Administrator will allocate allowances to the opt-in source as provided in § 74.40. If the effective date of the opt-in permit is not January 1, allowances for the first year shall be pro-rated as provided in § 74.28.

(e) *Expiration of opt-in permit.* An opt-in permit that is issued before the completion of monitoring system certification under subpart F of this part for combustion sources or under subpart G of this part for process sources shall expire 180 days after the permitting authority serves the opt-in permit on the designated representative of the combustion or process source governed by the opt-in permit, unless such monitoring system certification is complete. The designated representative may petition the Administrator to extend this time period in which an opt-in permit expires and must explain in the petition why such an extension should be granted. The designated representative of a combustion source governed by an expired opt-in permit and that seeks to become an opt-in source must submit a new opt-in permit application.

**§ 74.16 Application requirements for combustion sources.**

(a) *Opt-in permit application.* Each complete opt-in permit application for a combustion source shall contain the following elements in a format prescribed by the Administrator:

(1) Identification of the combustion source, including company name, plant name, plant site address, mailing address, description of the combustion source, and information and diagrams on the combustion source's configuration;

(2) Identification of the designated representative, including name, address, telephone number, and facsimile number;

(3) The year and month the combustion source commenced operation;

(4) The number of hours the combustion source operated in the six months preceding the opt-in permit application and supporting documentation;

(5) The baseline or alternative baseline data under § 74.20;

(6) The actual $SO_2$ emissions rate under § 74.22;

(7) The allowable 1985 $SO_2$ emissions rate under § 74.23;

(8) The current allowable $SO_2$ emissions rate under § 74.24;

(9) The current promulgated $SO_2$ emissions rate under § 74.25;

(10) If the combustion source seeks to qualify for a transfer of allowances from the replacement of thermal energy, a thermal energy plan as provided in § 74.47 for combustion sources; and

(11) A statement whether the combustion source was previously an affected unit under this part;

(12) A statement that the combustion source is not an affected unit under § 72.6 of this chapter;

(13) A complete compliance plan for $SO_2$ under § 72.40 of this chapter; and

(14) The following statement signed by the designated representative of the combustion source: ''I certify that the data submitted under subpart C of part 74 reflects actual operations of the combustion source and has not been adjusted in any way.''

(b) *Accompanying documents.* The designated representative of the combustion source shall submit a monitoring plan in accordance with § 74.61.

**§ 74.17 Application requirements for process sources [Reserved].**

**§ 74.18 Withdrawal.**

(a) *Withdrawal through administrative amendment.* An opt-in source may request to withdraw from the Acid Rain Program by submitting an administrative amendment under § 72.83 of this chapter; provided that the amendment will be treated as received by the permitting authority upon issuance of the notification of the acceptance of the request to withdraw under paragraph (f)(1) of this section.

(b) *Requesting withdrawal.* To withdraw from the Acid Rain Program, the designated representative of an opt-in source shall submit to the Administrator and the permitting authority a request to withdraw effective January 1 of the year after the year in which the submission is made. The submission shall be made no later than December 1 of the calendar year preceding the effective date of withdrawal.

(c) *Conditions for withdrawal.* In order for an opt-in source to withdraw, the following conditions must be met:

(1) By no later than January 30 of the first calendar year in which the withdrawal is to be effective, the designated representative must submit to the Administrator an annual compliance certification report pursuant to § 74.43.

(2) If the opt-in source has excess emissions in the calendar year before the year for which the withdrawal is to be in effect, the designated representative must submit an offset plan for excess emissions, pursuant to part 77 of this chapter, that provides for immediate deduction of allowances.

(d) *Administrator's action on withdrawal.* After the opt-in source meets the requirements for withdrawal under paragraphs (b) and (c) of this section, the Administrator will deduct allowances required to be deducted under § 73.35 of this chapter and part 77 of this chapter and allowances equal in number to and with the same or earlier compliance use date as those allocated under § 74.40 for the first year for which the withdrawal is to be effective and all subsequent years. The Administrator will close the opt-in source's unit account and transfer any remaining allowances to a new general account as specified under § 74.46(c).

(e) *Opt-in source's prior violations.* An opt-in source that withdraws from the Acid Rain Program shall comply with all requirements under the Acid Rain Program concerning all years for which the opt-in source was an affected unit, even if such requirements arise, or must be complied with after the withdrawal takes effect. The withdrawal shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the withdrawal takes effect.

(f) *Notification.* (1) After the requirements for withdrawal under paragraphs (b) and (c) of this section are met and after the Administrator's action on withdrawal under paragraph (d) of this section is complete, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source of the acceptance of the opt-in source's request to withdraw.

(2) If the requirements for withdrawal under paragraphs (b) and (c) of this section are not met or the Administrator's action under paragraph (d) of this section cannot be completed, the Administrator will issue a notification to the permitting authority and the designated representative of the opt-in source that the opt-in source's request to withdraw is denied. If the opt-in source's request to withdraw is denied, the opt-in source shall remain

in the Opt-in Program and shall remain subject to the requirements for opt-in sources contained in this part.

(g) *Permit amendment.* (1) After the Administrator issues a notification under paragraph (f)(1) of this section that the requirements for withdrawal have been met (including the deduction of the full amount of allowances as required under paragraph (d) of this section), the permitting authority shall amend, in accordance with §§ 72.80 and 72.83 (administrative amendment) of this chapter, the opt-in source's Acid Rain permit to terminate the opt-in permit, not later than 60 days from the issuance of the notification under paragraph (f) of this section.

(2) The termination of the opt-in permit under paragraph (g)(1) of this section will be effective on January 1 of the year for which the withdrawal is requested. An opt-in source shall continue to be an affected unit until the effective date of the termination.

(h) *Reapplication upon failure to meet conditions of withdrawal.* If the Administrator denies the opt-in source's request to withdraw, the designated representative may submit another request to withdraw in accordance with paragraphs (b) and (c) of this section.

(i) *Ability to return to the Acid Rain Program.* Once a combustion or process source withdraws from the Acid Rain Program and its opt-in permit is terminated, a new opt-in permit application for the combustion or process source may not be submitted prior to the date that is four years after the date on which the opt-in permit became effective.

**§ 74.19 Revision and renewal of opt-in permit.**

(a) The designated representative of an opt-in source may submit revisions to its opt-in permit in accordance with subpart H of part 72 of this chapter.

(b) The designated representative of an opt-in source may renew its opt-in permit by meeting the following requirements:

(1)(i) In order to renew an opt-in permit if the Administrator is the permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the Administrator an opt-in permit application at least 6 months prior to the expiration of an existing opt-in permit.

(ii) In order to renew an opt-in permit if the State is the permitting authority for the renewed permit, the designated representative of an opt-in source must submit to the permitting authority an opt-in permit application at least 18 months prior to the expiration of an existing opt-in permit or such shorter time as may be approved for operating permits under part 70 of this chapter.

(2) Each complete opt-in permit application submitted to renew an opt-in permit shall contain the following elements in a format prescribed by the Administrator:

(i) Elements contained in the opt-in source's initial opt-in permit application as specified under § 74.16(a)(1), (2), (10), (11), (12), and (13).

(ii) An updated monitoring plan, if applicable under § 75.53(b) of this chapter.

(c)(1) Upon receipt of an opt-in permit application submitted to renew an opt-in permit, the permitting authority shall issue or deny an opt-in permit in accordance with the requirements under subpart B of this part, except as provided in paragraph (c)(2) of this section.

(2) When issuing a renewed opt-in permit, the permitting authority shall not alter an opt-in source's allowance allocation as established, under subpart B and subpart C of this part for combustion sources and under subpart B and subpart D of this part for process sources, in the opt-in permit that is being renewed.

## Subpart C—Allowance Calculations for Combustion Sources

**§ 74.20 Data for baseline and alternative baseline.**

(a) *Acceptable data.* (1) The designated representative of a combustion source shall submit either the data specified in this paragraph or alternative data under paragraph (c) of this section. The designated representative shall also submit the calculations under this section based on such data.

(2) The following data shall be submitted for the combustion source for the calendar year(s) under paragraph (a)(3) of this section:

(i) Monthly or annual quantity of each type of fuel consumed, expressed in thousands of tons for coal, thousands of barrels for oil, and million standard cubic feet (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(ii) Monthly or annual heat content of fuel consumed for each type of fuel consumed, expressed in British thermal units (Btu) per pound for coal, Btu per barrel for oil, and Btu per standard cubic foot (scf) for natural gas. If other fuels are used, the combustion source must specify units of measure.

(iii) Monthly or annual sulfur content of fuel consumed for each type of fuel consumed, expressed as a percentage by weight.

(3) *Calendar Years.* (i) For combustion sources that commenced operating prior to January 1, 1985, data under this section shall be submitted for 1985, 1986, and 1987.

(ii) For combustion sources that commenced operation after January 1, 1985, the data under this section shall be submitted for the first three consecutive calendar years during which the combustion source operated after December 31, 1985.

(b) *Calculation of baseline and alternative baseline.*

(1) For combustion sources that commenced operation prior to January 1, 1985, the baseline is the average annual quantity of fuel consumed during 1985, 1986, and 1987, expressed in mmBtu. The baseline shall be calculated as follows:

$$\text{baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{annual fuel consumption}}{3}$$

where,

(i) for a combustion source submitting monthly data,

$$\text{annual fuel consumption} = \sum_{\text{months=Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[ \begin{array}{c} \text{quantity of fuel consumed} \\ \times \text{ heat content} \times \text{ unit conversion} \end{array} \right]$$

and unit conversion
= 2 for coal
= 0.001 for oil
= 1 for gas
For other fuels, the combustion source must specify unit conversion; or

(ii) for a combustion source submitting annual data,

$$\text{annual fuel consumption} = \sum_{\text{Fuel Types}} \left[ \begin{array}{c} \text{quantity of fuel consumed} \\ \times \text{ heat content} \times \text{ unit conversion} \end{array} \right]$$

and unit conversion
= 2 for coal
= 0.001 for oil
= 1 for gas
For other fuels, the combustion source must specify unit conversion.

(2) For combustion sources that commenced operation after January 1, 1985, the alternative baseline is the average annual quantity of fuel consumed in the first three consecutive calendar years during which the combustion source operated after December 31, 1985, expressed in mmBtu. The alternative baseline shall be calculated as follows:

$$\text{alternative baseline} = \frac{\sum_{\text{First 3 consecutive years}} \text{annual fuel consumption}}{3}$$

where,
''annual fuel consumption'' is as defined under paragraph (b)(1)(i) or (ii) of this section.

(c) *Alternative data.*

(1) For combustion sources for which any of the data under paragraph (b) of this section is not available due solely to a natural catastrophe, data as set forth in paragraph (a)(2) of this section for the first three consecutive calendar years for which data is available after December 31, 1985, may be submitted. The alternative baseline for these combustion sources shall be calculated using the equation for alternative baseline in paragraph (b)(2) of this section and the definition of annual fuel consumption in paragraphs (b)(1)(i) or (ii) of this section.

(2) Except as provided in paragraph (c)(1) of this section, no alternative data may be submitted. A combustion source that cannot submit all required data, in accordance with this section, shall not be eligible to submit an opt-in permit application.

(d) *Administrator's action.* The Administrator may accept in whole or in part or with changes as appropriate, request additional information, or reject data or alternative data submitted for a combustion source's baseline or alternative baseline.

**§ 74.22 Actual $SO_2$ emissions rate.**

(a) *Data requirements.* The designated representative of a combustion source shall submit the calculations under this section based on data submitted under § 74.20 for the following calendar year:

(1) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for calculating the actual $SO_2$ emissions rate shall be 1985.

(2) For combustion sources that commenced operation after January 1, 1985, the calendar year for calculating the actual $SO_2$ emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.20(b)(2).

(3) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the actual $SO_2$ emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *$SO_2$ emissions factor calculation.* The $SO_2$ emissions factor for each type of fuel consumed during the specified year, expressed in pounds per thousand tons for coal, pounds per thousand barrels for oil and pounds per million cubic feet (scf) for gas, shall be calculated as follows:

$SO_2$ Emissions Factor
= (average percent of sulfur by weight) x (k),

where,
average percent of sulfur by weight
= annual average, for a combustion source submitting annual data
= monthly average, for a combustion source submitting monthly data
k = 39,000 for bituminous coal or anthracite
= 35,000 for subbituminous coal
= 30,000 for lignite
= 5,964 for distillate (light) oil
= 6,594 for residual (heavy) oil
= 0.6 for natural gas
For other fuels, the combustion source must specify the $SO_2$ emissions factor.

(c) *Annual $SO_2$ emissions calculation.* Annual $SO_2$ Emissions for the specified calendar year, expressed in pounds, shall be calculated as follows:

(1) For a combustion source submitting monthly data,

$$\text{Annual } SO_2 \text{ Emissions} = \sum_{\text{months=Jan}}^{\text{Dec}} \sum_{\text{Fuel Types}} \left[ \begin{array}{c} \text{quantity of fuel consumed} \\ \times SO_2 \text{ emissions factor} \\ \times (1 - \text{control system efficiency}) \\ \times (1 - \text{fuel pre-treatment efficiency}) \end{array} \right]$$

(2) For a combustion source submitting annual data:

$$\text{Annual } SO_2 \text{ Emissions} = \sum_{\text{Fuel Types}} \left[ \begin{array}{c} \text{quantity of fuel consumed} \\ \times\ SO_2 \text{ emissions factor} \\ \times\ (1 - \text{control system efficiency}) \\ \times\ (1 - \text{fuel pre-treatment efficiency}) \end{array} \right]$$

where,

''quantity of fuel consumed'' is as defined under § 74.20(a)(2)(A);

''$SO_2$ emissions factor'' is as defined under paragraph (b) of this section;

''control system efficiency'' is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable; and

''fuel pre-treatment efficiency'' is as defined under § 60.48(a) and part 60, Appendix A, Method 19 of this chapter, if applicable.

(d) *Annual fuel consumption calculation.* Annual fuel consumption for the specified calendar year, expressed in mmBtu, shall be calculated as defined under § 74.20(b)(1) (i) or (ii).

(e) *Actual $SO_2$ emissions rate calculation.* The actual $SO_2$ emissions rate for the specified calendar year, expressed in lbs/mmBtu, shall be calculated as follows:

$$\text{Actual } SO_2 \text{ Emissions Rate} = \frac{\text{Annual } SO_2 \text{ Emissions}}{\text{Annual Fuel Consumption}}$$

**§ 74.23 1985 Allowable $SO_2$ emissions rate.**

(a) *Data requirements.* (1) The designated representative of the combustion source shall submit the following data and the calculations under paragraph (b) of this section based on the submitted data:

(i) Allowable $SO_2$ emissions rate of the combustion source expressed in lbs/mmBtu as defined under § 72.2 of this chapter for the calendar year specified in paragraph (a)(2) of this section. If the allowable $SO_2$ emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the emissions rate by the appropriate factor as specified in Table 1 of this section.

TABLE 1.—FACTORS TO CONVERT EMISSION LIMITS TO POUNDS OF $SO_2$/mmBtu

| Unit measurement | Bituminous coal | Subbituminous coal | Lignite coal | Oil |
|---|---|---|---|---|
| lbs Sulfur/mmBtu | 2.0 | 2.0 | 2.0 | 2.0 |
| % Sulfur in fuel | 1.66 | 2.22 | 2.86 | 1.07 |
| ppm $SO_2$ | 0.00287 | 0.00384 | ..... | 0.00167 |
| ppm Sulfur in fuel | ..... | ..... | ..... | 0.00334 |
| tons $SO_2$/hour | 2×8760/(annual fuel consumption for specified year [1]×$10^3$) | | | |
| lbs $SO_2$/hour | 8760/(annual fuel consumption for specified year [1]×$10^6$) | | | |

1 Annual fuel consumption as defined under § 74.20(b)(1) (i) or (ii); specified calendar year as defined under § 74.23(a)(2).

(ii) Citation of statute, regulations, and any other authority under which the allowable emissions rate under paragraph (a)(1) of this section is established as applicable to the combustion source;

(iii) Averaging time associated with the allowable emissions rate under paragraph (a)(1) of this section.

(iv) The annualization factor for the combustion source, based on the type of combustion source and the associated averaging time of the allowable emissions rate of the combustion source, as set forth in the Table 2 of this section:

TABLE 2.—ANNUALIZATION FACTORS FOR $SO_2$ Emission Rates

| Type of combustion source | Annualization factor for scrubbed unit | Annualization factor for unscrubbed unit |
|---|---|---|
| Unit Combusting Oil, Gas, or some combination | 1.00 | 1.00 |
| Coal Unit with Averaging Time <= 1 day | 0.93 | 0.89 |
| Coal Unit with Averaging Time = 1 week | 0.97 | 0.92 |
| Coal Unit with Averaging Time = 30 days | 1.00 | 0.96 |
| Coal Unit with Averaging Time = 90 days | 1.00 | 1.00 |
| Coal Unit with Averaging Time = 1 year | 1.00 | 1.00 |
| Coal Unit with Federal Limit, but Averaging Time Not Specified | 0.93 | 0.89 |

(2) *Calendar* Year.

(i) For combustion sources that commenced operation prior to January 1, 1985, the calendar year for the allowable $SO_2$ emissions rate shall be 1985.

(ii) For combustion sources that commenced operation after January 1, 1985, the calendar year for the allowable $SO_2$ emissions rate shall be the first year of the three consecutive calendar years of the alternative baseline under § 74.20(b)(2).

(iii) For combustion sources meeting the requirements of § 74.20(c), the calendar year for calculating the allowable $SO_2$ emissions rate shall be the first year of the three consecutive calendar years to be used as alternative data under § 74.20(c).

(b) *1985 Allowable $SO_2$ emissions rate calculation.* The allowable $SO_2$ emissions rate for the specified calendar year shall be calculated as follows:

1985 Allowable $SO_2$ Emissions Rate = (Allowable $SO_2$ Emissions Rate) × (Annualization Factor)

**§ 74.24 Current allowable $SO_2$ emissions rate.**

The designated representative shall submit the following data:

(a) Current allowable $SO_2$ emissions rate of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit in effect as of the date of submission of the opt-in application. If the allowable $SO_2$ emissions rate is not expressed in lbs/mmBtu, the allowable emissions rate shall be converted to lbs/mmBtu by multiplying the allowable rate by the appropriate factor as specified in Table 1 in § 74.23(a)(1)(i).

(b) Citations of statute, regulation, and any other authority under which the allowable emissions rate under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the allowable emissions rate under paragraph (a) of this section.

**§ 74.25 Current promulgated $SO_2$ emissions limit.**

The designated representative shall submit the following data:

(a) Current promulgated $SO_2$ emissions limit of the combustion source, expressed in lbs/mmBtu, which shall be the most stringent federally enforceable emissions limit that has been promulgated as of the date of submission of the opt-in permit application and that either is in effect on that date or will take effect after that date. If the promulgated $SO_2$ emissions limit is not expressed in lbs/mmBtu, the limit shall be converted to lbs/mmBtu by multiplying the limit by the appropriate factor as specified in Table 1 of § 74.23(a)(1)(i).

(b) Citations of statute, regulation and any other authority under which the emissions limit under paragraph (a) of this section is established as applicable to the combustion source;

(c) Averaging time associated with the emissions limit under paragraph (a) of this section.

(d) Effective date of the emissions limit under paragraph (a) of this section.

**§ 74.26 Allocation formula.**

(a) The Administrator will calculate the annual allowance allocation for a combustion source based on the data, corrected as necessary, under § 74.20 through § 74.25 as follows:

(1) For combustion sources for which the current promulgated $SO_2$ emissions limit under § 74.25 is greater than or equal to the current allowable $SO_2$ emissions rate under § 74.24, the number of allowances allocated for each year equals:

$$\text{Allowances} = \frac{\begin{bmatrix}\text{baseline}\\ \text{or}\\ \text{alternative baseline}\end{bmatrix} \times \text{the lesser of} \begin{bmatrix}\text{the actual } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the 1985 allowable } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the current allowable } SO_2 \text{ emissions rate}\end{bmatrix}}{2000}$$

(2) For combustion sources in which the current promulgated $SO_2$ emissions limit under § 74.25 is less than the current allowable $SO_2$ emissions rate under § 74.24.

(i) The number of allowances for each year ending prior to the effective date of the promulgated $SO_2$ emissions limit equals:

$$\text{Allowances} = \frac{\begin{bmatrix}\text{baseline}\\ \text{or}\\ \text{alternative baseline}\end{bmatrix} \times \text{the lesser of} \begin{bmatrix}\text{the actual } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the 1985 allowable } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the current allowable } SO_2 \text{ emissions rate}\end{bmatrix}}{2000}$$

(ii) The number of allowances for the year that includes the effective date of the promulgated $SO_2$ emissions limit and for each year thereafter equals:

$$\text{Allowances} = \frac{\begin{bmatrix}\text{baseline}\\ \text{or}\\ \text{alternative baseline}\end{bmatrix} \times \text{the lesser of} \begin{bmatrix}\text{the actual } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the 1985 allowable } SO_2 \text{ emissions rate}\\ \text{or}\\ \text{the current promulgated } SO_2 \text{ emissions rate}\end{bmatrix}}{2000}$$

**§ 74.28 Allowance allocation for combustion sources becoming opt-in sources on a date other than January 1.**

(a) *Dates of entry.* (1) If an opt-in source provided monthly data under § 74.20, the opt-in source's opt-in permit may become effective at the beginning of a calendar quarter as of January 1, April 1, July 1, or October 1.

(2) If an opt-in source provided annual data under § 74.20, the opt-in source's opt-in permit must become effective on January 1.

(b) *Prorating by Calendar Quarter.* Where a combustion source's opt-in permit becomes effective on April 1, July 1, or October 1 of a given year, the Administrator will prorate the allowance allocation for that first year by the calendar quarters remaining in the year as follows:

Allowances for the first year

$$= \left(\frac{\text{first year partial baseline}}{\text{baseline or alternative baseline}}\right) \times \text{annual allocation of allowances for the first year}$$

(1) For combustion sources that commenced operations before January 1, 1985,

$$\text{first year partial baseline} = \frac{\sum_{\text{Year}=1985}^{1987} \text{fuel consumption for remaining calendar quarters}}{3}$$

(2) For combustion sources that commenced operations after January 1, 1985,

$$\text{first year partial baseline} = \sum_{\text{First 3 consecutive years}} \frac{\text{fuel consumption for the remaining calendar quarters}}{3}$$

(3) Under paragraphs (b) (1) and (2) of this section,

(i) ''Remaining calendar quarters'' shall be the calendar quarters in the first year for which the opt-in permit will be effective.

(ii) Fuel consumption for remaining calendar quarters =

$$\sum_{\text{months}=\text{Apr., Jul., or Oct.}}^{\text{Dec}} \cdot \sum_{\text{Fuel Types}} \text{quantity of fuel consumed} \times \text{heat content} \times \text{unit conversion}$$

where unit conversion

= 2 for coal

= 0.001 for oil

= 1 for gas

For other fuels, the combustion source must specify unit conversion;

and where starting month

= April, if effective date is April 1;

= July, if effective date is July 1; and

= October, if effective date is October 1.

## Subpart D—Allowance Calculations for Process Sources—[Reserved]

## Subpart E—Allowance Tracking and Transfer and End of Year Compliance

**§ 74.40 Establishment of opt-in source allowance accounts.**

(a) *Establishing accounts.* Not earlier than the date on which a combustion or process source becomes an affected unit under this part and upon receipt of a request for an opt-in account under paragraph (b) of this section, the Administrator will establish an account and allocate allowances in accordance with subpart C of this part for combustion sources or subpart D of this part for process sources. A separate unit account will be established for each opt-in source.

(b) *Request for opt-in account.* The designated representative of the opt-in source shall, on or after the effective date of the opt-in permit as specified in § 74.14(d), submit a letter requesting the opening of an allowance account in the

Allowance Tracking System to the Administrator.

**§ 74.41 Identifying allowances.**

(a) *Identifying allowances.* Allowances allocated to an opt-in source will be assigned a serial number that identifies them as being allocated under an opt-in permit.

(b) *Submittal of opt-in allowances for auction.* (1) An authorized account representative may offer for sale in the spot auction under § 73.70 of this chapter allowances that are allocated to opt-in sources, if the allowances have a compliance use date earlier than the year in which the spot auction is to be held and if the Administrator has completed the deductions for compliance under § 73.35(b) for the compliance year corresponding to the compliance use date of the offered allowances.

(2) Authorized account representatives may not offer for sale in the advance auctions under § 73.70 of this chapter allowances allocated to opt-in sources.

**§ 74.42 Prohibition on future year transfers.**

(a) The Administrator will not record a transfer of opt-in allowances allocated to opt-in sources from a future year subaccount into any other future year subaccount in the Allowance Tracking System.

**§ 74.43 Annual compliance certification report.**

(a) *Applicability and deadline.* For each calendar year in which an opt-in source is subject to the Acid Rain emissions limitations, the designated representative of the opt-in source shall submit to the Administrator, no later than 60 days after the end of the calendar year, an annual compliance certification report for the opt-in source in lieu of any annual compliance certification report required under subpart I of part 72 of this chapter.

(b) *Contents of report.* The designated representative shall include in the annual compliance certification report the following elements, in a format prescribed by the Administrator, concerning the opt-in source and the calendar year covered by the report:

(1) Identification of the opt-in source;

(2) An opt-in utilization report in accordance with § 74.44 for combustion sources and § 74.45 for process sources;

(3) A thermal energy compliance report in accordance with § 74.47 for combustion sources and § 74.48 for process sources, if applicable;

(4) Shutdown or reconstruction information in accordance with § 74.46, if applicable;

(5) A statement that the opt-in source has not become an affected unit under § 72.6 of this chapter;

(6) At the designated representative's option, the total number of allowances to be deducted for the year, using the formula in § 74.49, and the serial numbers of the allowances that are to be deducted; and

(7) At the designated representative's option, for opt-in sources that share a common stack and whose emissions of sulfur dioxide are not monitored separately or apportioned in accordance with part 75 of this chapter, the percentage of the total number of allowances under paragraph (b)(6) of this section for all such affected units that is to be deducted from each affected unit's compliance subaccount; and

(8) The compliance certification under paragraph (c) of this section.

(c) *Annual compliance certification.* In the annual compliance certification report under paragraph (a) of this section, the designated representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the opt-in source in compliance with the Acid Rain Program, whether the opt-in source was operated during the calendar year covered by the report in compliance with the requirements of the Acid Rain Program applicable to the opt-in source, including:

(1) Whether the opt-in source was operated in compliance with applicable Acid Rain emissions limitations, including whether the opt-in source held allowances, as of the allowance transfer deadline, in its compliance subaccount (after accounting for any allowance deductions or other adjustments under § 73.34(c) of this chapter) not less than the opt-in source's total sulfur dioxide emissions during the calendar year covered by the annual report;

(2) Whether the monitoring plan that governs the opt-in source has been maintained to reflect the actual operation and monitoring of the opt-in source and contains all information necessary to attribute monitored emissions to the opt-in source;

(3) Whether all the emissions from the opt-in source or group of affected units (including the opt-in source) using a common stack were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports in accordance with part 75 of this chapter;

(4) Whether the facts that form the basis for certification of each monitor at the opt-in source or group of affected units (including the opt-in source) using a common stack or of an opt-in source's qualifications for using an Acid Rain Program excepted monitoring method or approved alternative monitoring method, if any, have changed;

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitoring recertification; and

(6) When applicable, whether the opt-in source was operating in compliance with its thermal energy plan as provided in § 74.47 for combustion sources and § 74.48 for process sources.

**§ 74.44 Reduced utilization for combustion sources.**

(a) *Calculation of Utilization.*

(1) *Annual utilization.* (i) Except as provided in paragraph (a)(1)(ii) of this section, annual utilization for the calendar year shall be calculated as follows:

Annual Utilization = Actual heat input + Reduction from improved efficiency

where,

(A) ''Actual heat input'' shall be the actual annual heat input (in mmBtu) of the opt-in source for the calendar year determined in accordance with Appendix F of part 75 of this chapter.

(B) ''Reduction from improved efficiency'' shall be the sum of the following four elements: Reduction from demand side measures that improve the efficiency of electricity consumption; reduction from demand side measures that improve the efficiency of steam consumption; reduction from improvements in the heat rate at the opt-in source; and reduction from improvement in the efficiency of steam production at the opt-in source. Qualified demand side measures applicable to the calculation of utilization for opt-in sources are listed in Appendix A, Section 1 of part 73 of this chapter.

(C) ''Reduction from demand side measures that improve the efficiency of electricity consumption'' shall be a good faith estimate of the expected kilowatt hour savings during the calendar year for such measures and the corresponding reduction in heat input (in mmBtu) resulting from those measures. The demand side measures shall be implemented at the opt-in source, in the residence or facility to which the opt-in source delivers electricity for consumption or in the residence or facility of a customer to whom the opt-in source's utility system

sells electricity. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(D) ''Reduction from demand side measures that improve the efficiency of steam consumption'' shall be a good faith estimate of the expected steam savings (in mmBtu) from such measures during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of those measures. The demand side measures shall be implemented at the opt-in source or in the facility to which the opt-in source delivers steam for consumption. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(E) ''Reduction from improvements in heat rate'' shall be a good faith estimate of the expected reduction in heat rate during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved unit efficiency measures at the opt-in source and may include supply-side measures listed in Appendix A, section 2.1 of part 73 of this chapter. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(F) ''Reduction from improvement in the efficiency of steam production at the opt-in source'' shall be a good faith estimate of the expected improvement in the efficiency of steam production at the opt-in source during the calendar year and the corresponding reduction in heat input (in mmBtu) at the opt-in source as a result of all improved steam production efficiency measures. In order to claim improvements in the efficiency of steam production, the designated representative of the opt-in source must demonstrate to the satisfaction of the Administrator that the heat rate of the opt-in source has not increased. The verified amount of such reduction shall be submitted in accordance with paragraph (c)(2) of this section.

(G) Notwithstanding paragraph (a)(1)(i)(B) of this section, where two or more opt-in sources, or two or more opt-in sources and Phase I units, include in their annual compliance certification reports their good faith estimate of kilowatt hour savings or steam savings from the same demand side measures that improve the efficiency of electricity or steam consumption:

(*1*) The designated representatives of all such opt-in sources and Phase I units shall submit with their annual compliance certification reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or steam savings among such opt-in sources and Phase I units.

(*2*) Each designated representative shall include in its annual compliance certification report only its share of kilowatt hour savings or steam savings.

(ii) For an opt-in source whose opt-in permit becomes effective on a date other than January 1, annual utilization for the first year shall be calculated as follows:

$$\text{Annual Utilization} = \begin{array}{c}\text{Actual heat input}\\ \text{for the remaining calendar quarters}\end{array} + \begin{array}{c}\text{Reduction from improved efficiency}\\ \text{for the remaining calendar quarters}\end{array}$$

where ''actual heat input'' and ''reduction from improved efficiency'' are defined as set forth in paragraph (a)(1)(i) of this section but are restricted to data or estimates for the ''remaining calendar quarters'', which are the calendar quarters that begin on or after the date the opt-in permit becomes effective.

(2) *Average utilization.* Average utilization for the calendar year shall be defined as the average of the annual utilization calculated as follows:

(i) For the first two calendar years after the effective date of an opt-in permit taking effect on January 1 or for the first two calendar years after the effective date of a thermal energy plan governing an opt-in source in accordance with § 74.47 of this chapter, average utilization will be calculated as follows:

(A) Average utilization for the first year = annual utilization$_{\text{year 1}}$

where ''annual utilization$_{\text{year 1}}$'' is as calculated under paragraph (a)(1)(i) of this section.

(B) Average utilization for the second year

$$= \left(\frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{2}\right)$$

where,

''revised annual utilization$_{\text{year 1}}$'' is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section;

''annual utilization$_{\text{year 2}}$'' is as calculated under paragraph (a)(1)(i) of this section.

(ii) For the first three calendar years after the effective date of the opt-in permit taking effect on a date other than January 1, average utilization will be calculated as follows:

(A) Average utilization for the first year after opt-in = annual utilization$_{\text{year 1}}$

where ''annual utilization$_{\text{year 1}}$'' is as calculated under paragraph (a)(1)(ii) of this section.

(B) Average utilization for the second year after opt-in

where,

$$= \left( \frac{\text{revised annual utilization}_{\text{year 1}} + \text{annual utilization}_{\text{year 2}}}{\left( \begin{array}{c} \text{Number of months} \\ \text{in year 1 and year 2 for which} \\ \text{the opt-in permit is effective} \end{array} \right)} \right) \times 12$$

''revised annual utilization$_{\text{year 1}}$'' is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

''annual utilization$_{\text{year 2}}$'' is as calculated under paragraph (a)(1)(ii) of this section.

(C) Average utilization for the third year after opt-in

$$= \left( \frac{\text{revised annual utilization}_{\text{year 1}} + \text{revised annual utilization}_{\text{year 2}} + \text{annual utilization}_{\text{year 3}}}{\left( \begin{array}{c} \text{Number of months} \\ \text{in year 1, year 2, and year 3} \\ \text{for which the opt-in permit is effective} \end{array} \right)} \right) \times 12$$

where,

''revised annual utilization$_{\text{year 1}}$'' is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

''revised annual utilization$_{\text{year 2}}$'' is as submitted for the year under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section; and

''annual utilization$_{\text{year 3}}$'' is as calculated under paragraph (a)(1)(ii) of this section.

(iii) Except as provided in paragraphs (a)(2)(i) and (a)(2)(ii), average utilization shall be the sum of annual utilization for the calendar year and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted by the Administrator under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years divided by 3.

(b) *Determination of reduced utilization and calculation of allowances.*—

(1) *Determination of reduced utilization.* For a year during which its opt-in permit is effective, an opt-in source has reduced utilization if the opt-in source's average utilization for the calendar year, as calculated under paragraph (a) of this section, is less than its baseline.

(2) *Calculation of allowances deducted for reduced utilization.* If the Administrator determines that an opt-in source has reduced utilization for a calendar year during which the opt-in source's opt-in permit is in effect, the Administrator will deduct allowances, as calculated under paragraph (b)(2)(i) of this section, from the compliance subaccount of the opt-in source's Allowance Tracking System account.

(i) Allowances deducted for reduced utilization =

$$\text{Number of allowances allocated for the calendar year} \times \left( 1 - \left( \frac{\text{average utilization}_{\text{calendar year}}}{\text{baseline}} \right) \right)$$

(ii) The allowances deducted shall have the same or an earlier compliance use date as those allocated under subpart C of this part for the calendar year for which the opt-in source has reduced utilization.

(c) *Compliance.*—(1) *Opt-in Utilization Report.* The designated representative for each opt-in source shall submit an opt-in utilization report for the calendar year, as part of its annual compliance certification report under § 74.43, that shall include the following elements in a format prescribed by the Administrator:

(i) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(ii) The opt-in source's account identification number in the Allowance Tracking System;

(iii) The opt-in source's annual utilization for the calendar year, as defined under paragraph (a)(1) of this section, and the revised annual utilization, submitted under paragraph (c)(2)(i)(B) of this section and adjusted under paragraph (c)(2)(iii) of this section, for the two immediately preceding calendar years;

(iv) The opt-in source's average utilization for the calendar year, as defined under paragraph (a)(2) of this section;

(v) The difference between the opt-in source's average utilization and its baseline;

(vi) The number of allowances that shall be deducted, if any, using the formula in paragraph (b)(2)(i) of this section and the supporting calculations;

(2) *Confirmation report.* (i) If the annual compliance certification report for an opt-in source includes estimates of any reduction in heat input resulting from improved efficiency as defined under paragraph (a)(1)(i) of this section, the designated representative shall submit, by July 1 of the year in which the annual compliance certification report was submitted, a confirmation report, concerning the calendar year covered by the annual compliance certification report. The Administrator may grant, for good cause shown, an extension of the time to file the confirmation report. The confirmation

report shall include the following elements in a format prescribed by the Administrator:

(A) *Verified reduction in heat input.* Any verified kwh savings or any verified steam savings from demand side measures that improve the efficiency of electricity or steam consumption, any verified reduction in the heat rate at the opt-in source, or any verified improvement in the efficiency of steam production at the opt-in source achieved and the verified corresponding reduction in heat input for the calendar year that resulted.

(B) *Revised annual utilization.* The opt-in source's annual utilization for the calendar year as provided under paragraph (c)(1)(iii) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(C) *Revised average utilization.* The opt-in source's average utilization as provided under paragraph (c)(1)(iv) of this section, recalculated using the verified reduction in heat input for the calendar year under paragraph (c)(2)(i)(A) of this section.

(D) *Recalculation of reduced utilization.* The difference between the opt-in source's recalculated average utilization and its baseline.

(E) *Allowance adjustment.* The number of allowances that should be credited or deducted using the formulas in paragraphs (c)(2)(iii)(C) and (D) of this section and the supporting calculations; and the number of adjusted allowances remaining using the formula in paragraph (c)(2)(iii)(E) of this section and the supporting calculations.

(ii) *Documentation.* (A) For all figures under paragraphs (c)(2)(i)(A) of this section, the opt-in source must provide as part of the confirmation report, documentation (which may follow the EPA Conservation Verification Protocol) verifying the figures to the satisfaction of the Administrator.

(B) Notwithstanding paragraph (c)(2)(i)(A) of this section, where two or more opt-in sources, or two or more opt-in sources and Phase I units include in the confirmation report under paragraph (c)(2) of this section or § 72.91(b) of this chapter the verified kilowatt hour savings or steam savings defined under paragraph (c)(2)(i)(A) of this section, for the calendar year, from the same specific measures:

*(1)* The designated representatives of all such opt-in sources and Phase I units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or steam savings as defined under paragraph (c)(2)(i)(A) of this section for the calendar year among such opt-in sources.

*(2)* Each designated representative shall include in the opt-in source's confirmation report only its share of the verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year under the certification under paragraph (c)(2)(ii)(B)(1) of this section.

(iii) *Determination of reduced utilization based on confirmation report.* (A) If an opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the Administrator, upon such submittal, will adjust his or her determination of reduced utilization for the calendar year for the opt-in source. Such adjustment will include the recalculation of both annual utilization and average utilization, using verified reduction in heat input as defined under paragraph (c)(2)(i)(A) of this section for the calendar year instead of the previously estimated values.

(B) *Estimates confirmed.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input equals the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report a statement indicating that is true.

(C) *Underestimate.* If the total, included in the confirmation report, of the amounts of verified reduction in the opt-in source's heat input is greater than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be credited to the opt-in source's compliance subaccount calculated using the following formula:

Allowances credited for the calendar year in which the reduced utilization occurred=

$$\text{Number of allowances allocated for the calendar year} \times \left[ \frac{\text{Average utilization}_{\text{Verified}} - \text{Average utilization}_{\text{Estimate}}}{\text{baseline}} \right]$$

where,

Average $\text{Utilization}_{\text{estimate}}$=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the estimated reduction in the opt-in source's heat input under (a)(1) of this section, and submitted in the annual compliance certification report for the calendar year.

Average $\text{Utilization}_{\text{verified}}$=

the average utilization of the opt-in source as defined under paragraph (a)(2) of this section, calculated using the verified reduction in the opt-in source's heat input as submitted under paragraph (c)(2)(i)(A) of this section by the designated representative in the confirmation report.

(D) *Overestimate.* If the total of the amounts of verified reduction in the opt-in source's heat input included in the confirmation report is less than the total estimated in the opt-in source's annual compliance certification report for the calendar year, then the designated representative shall include in the confirmation report the number of allowances to be deducted from the opt-in source's compliance subaccount, which equals the absolute value of the result of the formula for allowances credited under paragraph (c)(2)(iii)(C) of this section.

(E) *Adjusted allowances remaining.* Unless paragraph (c)(2)(iii)(B) of this section applies, the designated representative shall include in the confirmation report the adjusted amount of allowances that would have been held in the opt-in source's compliance subaccount if the deductions made under § 73.35(b) of this chapter had been based on the verified, rather than the estimated, reduction in the opt-in source's heat input, calculated as follows:

$$\text{Adjusted amount of allowances} = \begin{array}{c} \text{Allowances held after deduction} - \text{Excess emissions} \\ + \text{Allowances credited} - \text{Allowances deducted} \end{array}$$

where:

''Allowances held after deduction'' shall be the amount of allowances held in the opt-in source's compliance subaccount after deduction of allowances was made under § 73.35(b) of this chapter based on the annual compliance certification report.

''Excess emissions'' shall be the amount (if any) of excess emissions determined under § 73.35(d) for the calendar year based on the annual compliance certification report.

''Allowances credited'' shall be the amount of allowances calculated under paragraph (c)(2)(iii)(C) of this section.

''Allowances deducted'' shall be the amount of allowances calculated under paragraph (c)(2)(iii)(D) of this section.

*(1)* If the result of the formula for ''adjusted amount of allowances'' is negative, the absolute value of the result constitutes excess emissions of sulfur dioxide. If the result is positive, there are no excess emissions of sulfur dioxide.

*(2)* If the amount of excess emissions of sulfur dioxide calculated under ''adjusted amount of allowances'' differs from the amount of excess emissions of sulfur dioxide determined under § 73.35 of this chapter based on the annual compliance certification report, then the designated representative shall include in the confirmation report a demonstration of:

*(i)* The number of allowances that should be deducted to offset any increase in excess emissions or returned to the account for any decrease in excess emissions; and

*(ii)* The amount of the excess emissions penalty (excluding interest) that should be paid or returned to the account for the change in excess emissions.

*(3)* The Administrator will deduct immediately from the opt-in source's compliance subaccount the amount of allowances necessary to offset any increase in excess emissions or will return immediately to the opt-in source's compliance subaccount the amount of allowances that he or she determines is necessary to account for any decrease in excess emissions.

*(4)* The designated representative may identify the serial numbers of the allowances to be deducted or returned. In the absence of such identification, the deduction will be on a first-in, first-out basis under § 73.35(c)(2) of this chapter and the identification of allowances returned will be at the Administrator's discretion.

*(5)* If the designated representative of an opt-in source fails to submit on a timely basis a confirmation report, in accordance with paragraph (c)(2) of this section, with regard to the estimate of reductions in heat input as defined under paragraph (c)(2)(i)(A) of this section, then the Administrator will reject such estimate and correct it to equal zero in the opt-in source's annual compliance certification report that includes that estimate. The Administrator will deduct immediately, on a first-in, first-out basis under § 73.35(c)(2) of this chapter, the amount of allowances that he or she determines is necessary to offset any increase in excess emissions of sulfur dioxide that results from the correction and will require the owners and operators of the opt-in source to pay an excess emission penalty in accordance with part 77 of this chapter.

(F) If the opt-in source is governed by an approved thermal energy plan under § 74.47 and if the opt-in source must submit a confirmation report as specified under paragraph (c)(2) of this section, the adjusted amount of allowances that should remain in the opt-in source's compliance subaccount shall be calculated as follows:

Adjusted amount of allowances =

$$= \text{allowances allocated} - \text{tons emitted} - \text{the larger of} \begin{pmatrix} \text{allowances transferred} \\ \text{to all replacement units} \\ \text{or} \\ \text{allowances deducted} \\ \text{for reduced utilization} \end{pmatrix}$$

where,

''Allowances allocated'' shall be the original number of allowances allocated under section § 74.40 for the calendar year.

''Tons emitted'' shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources.

''Allowances transferred to all replacement units'' shall be the sum of allowances transferred to all replacement units under an approved thermal energy plan in accordance with § 74.47 and adjusted by the Administrator in accordance with § 74.47(d)(2).

''Allowances deducted for reduced utilization'' shall be the total number of allowances deducted for reduced utilization as calculated in accordance with this section including any adjustments required under paragraph (c)(iii)(E) of this section.

**§ 74.45 Reduced utilization for process sources. [Reserved]**

**§ 74.46 Opt-in source permanent shutdown, reconstruction, or change in affected status.**

(a) *Notification.* (1) When an opt-in source has permanently shutdown during the calendar year, the designated representative shall notify the Administrator of the date of shutdown, within 30 days of such shutdown.

(2) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter, the designated representative shall notify the Administrator of the date of completion of the reconstruction, within 30 days of such completion.

(3) When an opt-in source becomes an affected unit under § 72.6 of this chapter, the designated representative shall notify the Administrator of such change in the opt-in source's affected status within 30 days of such change.

(b) *Administrator's action.* (1) The Administrator will terminate the opt-in source's opt-in permit and deduct allowances as provided below in the following circumstances:

(i) When an opt-in source has permanently shutdown. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the shut down occurs and for all future years following the year in which the shut down occurs; or

(ii) When an opt-in source has undergone a modification that qualifies as a reconstruction as defined in § 60.15 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the reconstruction is completed and all future years following

the year in which the reconstruction is completed; or

(iii) When an opt-in source becomes an affected unit under § 72.6 of this chapter. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source becomes affected under § 72.6 of this chapter and all future years following the calendar year in which the opt-in source becomes affected under § 72.6; or

(iv) When an opt-in source does not renew its opt-in permit. The Administrator shall deduct allowances equal in number to and with the same or earlier compliance use date as those allocated to the opt-in source under § 74.40 for the calendar year in which the opt-in source's opt-in permit expires and all future years following the year in which the opt-in source's opt-in permit expires.

(2) After the allowance deductions under paragraph (b)(1) of this section are made, the Administrator will close the opt-in source's unit account in the Allowance Tracking System. If any allowances remain in the opt-in source's unit account after allowance deductions are made under paragraph (b)(1) of this section, and any deductions made under part 77 of this chapter, the Administrator will establish a general account for the opt-in source, and transfer any remaining allowances into this general account. The designated representative for the opt-in source shall become the authorized account representative for the general account.

**§ 74.47 Transfer of allowances from the replacement of thermal energy—combustion sources.**

(a) *Thermal energy plan.—(1) General provisions.* The designated representative of an opt-in source that seeks to qualify for the transfer of allowances based on the replacement of thermal energy by a replacement unit shall submit a thermal energy plan subject to the requirements of § 72.40(b) of this chapter for multi-unit compliance options and this section. The effective period of the thermal energy plan shall begin from January 1 of the first full calendar year for which the plan is approved and end December 31 of the last full calendar year for which the opt-in permit containing the plan is in effect.

(2) *Applicability.* This section shall apply to any designated representative of an opt-in source and any designated representative of each replacement unit seeking to transfer allowances based on the replacement of thermal energy.

(3) *Contents.* Each thermal energy plan shall contain the following elements in a format prescribed by the Administrator:

(i) The calendar year that the thermal energy plan takes effect, which shall be the first year the replacement unit(s) will replace thermal energy of the opt-in source;

(ii) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(iii) The name, authorized account representative identification number, and telephone number of the designated representative of each replacement unit;

(iv) The opt-in source's account identification number in the Allowance Tracking System;

(v) Each replacement unit's account identification number in the Allowance Tracking System (ATS);

(vi) The type of fuel used by each replacement unit;

(vii) The allowable $SO_2$ emissions rate, expressed in lbs/mmBtu, of each replacement unit for the calendar year for which the plan will take effect. When a thermal energy plan is renewed in accordance with paragraph (a)(9) of this section, the allowable $SO_2$ emission rate at each replacement unit will be the most stringent federally enforceable allowable $SO_2$ emissions rate applicable at the time of renewal for the calendar year for which the renewal will take effect. This rate will not be annualized;

(viii) The estimated amount of total thermal energy to be reduced at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(ix) The estimated total thermal energy at each replacement unit for the year prior to the year for which the plan is to take effect, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(x) The estimated amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(xi) The estimated amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(xii) Estimated total annual fuel input at each replacement unit after replacing thermal energy at the opt-in source;

(xiii) The number of allowances calculated under paragraph (b) of this section that the opt-in source will transfer to each replacement unit represented in the thermal energy plan.

(xiv) The estimated number of allowances to be deducted for reduced utilization under § 74.44;

(xv) Certification that each replacement unit has entered into a legally binding steam sales agreement to provide the thermal energy, as calculated under paragraph (a)(3)(xi) of this section, that it is replacing for the opt-in source. The designated representative of each replacement unit shall maintain and make available to the Administrator, at the Administrator's request, copies of documents demonstrating that the replacement unit is replacing the thermal energy at the opt-in source.

(4) *Submission.* The designated representative of the opt-in source seeking to qualify for the transfer of allowances based on the replacement of thermal energy shall submit a thermal energy plan to the permitting authority by no later than July 1 of the calendar year prior to the first calendar year for which the plan is to be in effect. The thermal energy plan shall be signed and certified by the designated representative of the opt-in source and each replacement unit covered by the plan.

(5) *Retirement of opt-in source upon enactment of plan.* (i) If the opt-in source will be permanently retired as of the effective date of the thermal energy plan, the opt-in source shall not be required to monitor its emissions upon retirement, consistent with § 75.67 of this chapter, provided that the following requirements are met:

(A) The designated representative of the opt-in source shall include in the plan a request for an exemption from the requirements of part 75 in accordance with § 75.67 of this chapter and shall submit the following statement: ''I certify that the opt-in source (''is'' or ''will be'', as applicable) permanently retired on the date specified in this plan and will not emit any sulfur dioxide or nitrogen oxides after such date.''

(B) The opt-in source shall not emit any sulfur dioxide or nitrogen oxides after the date specified in the plan.

(ii) Notwithstanding the monitoring exemption discussed in paragraph (a)(5)(i) of this section, the designated representative for the opt-in source shall submit the annual compliance certification report provided under paragraph (d) of this section.

(6) *Administrator's action.* If the permitting authority approves a thermal

energy plan, the Administrator will annually transfer allowances to the Allowance Tracking System account of each replacement unit, as provided in the approved plan.

(7) *Incorporation, modification and renewal of a thermal energy plan.* (i) An approved thermal energy plan, including any revised or renewed plan that is approved, shall be incorporated into both the opt-in permit for the opt-in source and the Acid Rain permit for each replacement unit governed by the plan. Upon approval, the thermal energy plan shall be incorporated into the Acid Rain permit for each replacement unit pursuant to the requirements for administrative permit amendments under § 72.83 of this chapter.

(ii) In order to revise an opt-in permit to add an approved thermal energy plan or to change an approved thermal energy plan, the designated representative of the opt-in source shall submit a plan or a revised plan under paragraph (a)(4) of this section and meet the requirements for permit revisions under § 72.80 and either § 72.81 or § 72.82 of this chapter.

(8) *Termination of plan.* (i) A thermal energy plan shall be in effect until the earlier of the expiration of the opt-in permit for the opt-in source or the year for which a termination of the plan takes effect under paragraph (a)(8)(ii) of this section.

(ii) *Termination of plan by opt-in source and replacement units.* A notification to terminate a thermal energy plan in accordance with § 72.40(d) of this chapter shall be submitted no later than December 1 of the calendar year for which the termination is to take effect.

(iii) If the requirements of paragraph (a)(8)(ii) of this section are met and upon revision of the opt-in permit of the opt-in source and the Acid Rain permit of each replacement unit governed by the thermal energy plan to terminate the plan pursuant to § 72.83 of this chapter, the Administrator will adjust the allowances for the opt-in source and the replacement units to reflect the transfer back to the opt-in source of the allowances transferred from the opt-in source under the plan for the year for which the termination of the plan takes effect.

(9) *Renewal of thermal energy plan.* The designated representative of an opt-in source may renew the thermal energy plan as part of its opt-in permit renewal in accordance with § 74.19.

(b) *Calculation of transferable allowances*—(1) *Qualifying thermal energy.* The amount of thermal energy credited towards the transfer of allowances based on the replacement of thermal energy shall equal the qualifying thermal energy and shall be calculated for each replacement unit as follows:

$$\text{Qualifying thermal energy} = \begin{array}{c}\text{the estimated thermal energy}\\ \text{at the replacement unit}\\ \text{under paragraph (a)(3)(xi) of this section}\end{array}$$

(2) *Fuel associated with qualifying thermal energy.* The fuel associated with the qualifying thermal energy at each replacement unit shall be calculated as follows:

$$\begin{array}{c}\text{Fuel associated with}\\ \text{Qualifying thermal energy}\end{array} = \frac{\text{Qualifying thermal energy}}{\text{Efficiency constant}}$$

where,

''Qualifying thermal energy'' for the replacement unit is as defined in paragraph (b)(1) of this section;

''Efficiency constant'' for the replacement unit

= 0.85, where the replacement unit is a boiler

= 0.80, where the replacement unit is a cogenerator

(3) *Allowances transferable from the opt-in source to each replacement unit.* The number of allowances transferable from the opt-in source to each replacement unit for the replacement of thermal energy is calculated as follows:

$$\begin{array}{c}\text{transferable allowances}\\ \text{for the replacement unit}\end{array} = \frac{\begin{array}{c}\text{Fuel Associated with}\\ \text{Qualifying thermal energy}\end{array} \times \begin{array}{c}\text{allowable } SO_2 \text{ emission rate}_{\text{replacement unit}}\\ \text{(in lb/mmBtu)}\end{array}}{2000}$$

where,

''Allowable $SO_2$ emission rate'' for the replacement unit is as defined in paragraph (a)(3)(vii) of this section;

''Fuel associated with qualifying thermal energy'' is as defined in paragraph (b)(2) of this section;

(c) *Transfer prohibition.* The allowances transferred from the opt-in source to each replacement unit shall not be transferred from the unit account of the replacement unit to any other account in the Allowance Tracking System.

(d) *Compliance*—(1) *Annual compliance certification report.* (i) As required for all opt-in sources, the designated representative of the opt-in source covered by a thermal energy plan must submit an opt-in utilization report for the calendar year as part of its annual compliance certification report under § 74.44(c)(1).

(ii) The designated representative of an opt-in source must submit a thermal energy compliance report for the calendar year as part of the annual compliance certification report, which must include the following elements in a format prescribed by the Administrator:

(A) The name, authorized account representative identification number, and telephone number of the designated representative of the opt-in source;

(B) The name, authorized account representative identification number,

and telephone number of the designated representative of each replacement unit;

(C) The opt-in source's account identification number in the Allowance Tracking System (ATS);

(D) The account identification number in the Allowance Tracking System (ATS) for each replacement unit;

(E) The actual amount of total thermal energy reduced at the opt-in source during the calendar year, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(F) The actual amount of thermal energy at each replacement unit, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application, replacing the thermal energy at the opt-in source;

(G) The actual amount of total thermal energy at each replacement unit after replacing thermal energy at the opt-in source, including all energy flows (steam, gas, or hot water) used for any process or in any heating or cooling application;

(H) Actual total fuel input at each replacement unit as determined in accordance with part 75 of this chapter;

(I) Calculations of allowance adjustments to be performed by the Administrator in accordance with paragraph (d)(2) of this section.

(2) *Allowance adjustments by Administrator.* (i) The Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any changes between the estimated values submitted in the thermal energy plan pursuant to paragraph (a) of this section and the actual values submitted in the thermal energy compliance report pursuant to paragraph (d) of this section. The values to be considered for this adjustment include:

(A) The number of allowances transferable by the opt-in source to each replacement unit, calculated in paragraph (b) of this section using the actual, rather than estimated, thermal energy at the replacement unit replacing thermal energy at the opt-in source.

(B) The number of allowances deducted from the Allowance Tracking System account of the opt-in source, calculated under § 74.44(b)(2).

(ii) If the opt-in source includes in the opt-in utilization report under § 74.44 estimates for reductions in heat input, then the Administrator will adjust the number of allowances in the Allowance Tracking System accounts for the opt-in source and for each replacement unit to reflect any differences between the estimated values submitted in the opt-in utilization report and the actual values submitted in the confirmation report pursuant to § 74.44(c)(2).

(3) *Liability.* The owners and operators of an opt-in source or a replacement unit governed by an approved thermal energy plan shall be liable for any violation of the plan or this section at that opt-in source or replacement unit that is governed by the thermal energy plan, including liability for fulfilling the obligations specified in part 77 of this chapter and section 411 of the Act.

### § 74.48 Transfer of allowances from the replacement of thermal energy—process sources [Reserved]

### § 74.49 Calculation for deducting allowances.

(a) *Allowance deduction formula.* The following formula shall be used to determine the total number of allowances to be deducted for the calendar year from the allowances held in an opt-in source's compliance subaccount as of the allowance transfer deadline applicable to that year:

Total allowances deducted = Tons emitted + Allowances deducted for reduced utilization where:

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, ''Tons emitted'' shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar year, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(ii) If the effective date of the opt-in source's permit took effect on a date other than January 1, ''Tons emitted'' for the first calendar year shall be the total tons of sulfur dioxide emitted by the opt-in source during the calendar quarters for which the opt-in source's opt-in permit is effective, as reported in accordance with subpart F of this part for combustion sources or subpart G of this part for process sources.

(2) ''Allowances deducted for reduced utilization'' shall be the total number of allowances deducted for reduced utilization as calculated in accordance with § 74.44 for combustion sources or § 74.45 for process sources.

### § 74.50 Deducting opt-in source allowances from ATS accounts.

(a) *Deduction of allowances.* The Administrator may deduct any allowances that were allocated to an opt-in source under § 74.40 by removing, from any Allowance Tracking System accounts in which they are held, the allowances in an amount specified in paragraph (d) of this section, under the following circumstances:

(1) When the opt-in source has permanently shut down; or

(2) When the opt-in source has been reconstructed; or

(3) When the opt-in source becomes an affected unit under § 72.6 of this chapter; or

(4) When the opt-in source fails to renew its opt-in permit.

(b) *Method of deduction.* The Administrator will deduct allowances beginning with those allowances with the latest recorded date of transfer out of the opt-in source's unit account.

(c) *Notification of deduction.* When allowances are deducted, the Administrator will send a written notification to the authorized account representative of each Allowance Tracking System account from which allowances were deducted. The notification will state:

(1) The serial numbers of all allowances deducted from the account,

(2) The reason for deducting the allowances, and

(3) The date of deduction of the allowances.

(d) *Amount of deduction.* The Administrator may deduct allowances in accordance with paragraph (a) of this section in an amount required to offset any excess emissions in accordance with part 77 of this chapter and when an opt-in source does not hold allowances equal in number to and with the same or earlier compliance use date for the calendar years specified under § 74.46(b)(1) (i) through (iv) in an amount required to be deducted under § 74.46(b)(1) (i) through (iv).

## Subpart F—Monitoring Emissions: Combustion Sources

### § 74.60 Monitoring requirements.

(a) *Monitoring requirements for combustion sources.* The owner or operator of each combustion source shall meet all of the requirements specified in part 75 of this chapter for the owners and operators of an affected unit to install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, or an approved alternative monitoring system in accordance with part 75 of this chapter.

(b) *Monitoring requirements for opt-in sources.* The owner or operator of each opt-in source shall install, certify, operate, and maintain a continuous emission monitoring system, an excepted monitoring system, an approved alternative monitoring system in accordance with part 75 of this chapter.

**§ 74.61 Monitoring plan.**

(a) *Monitoring plan*. The designated representative of a combustion source shall meet all of the requirements specified under part 75 of this chapter for a designated representative of an affected unit to submit to the Administrator a monitoring plan that includes the information required in a monitoring plan under § 75.53 of this chapter. This monitoring plan shall be submitted as part of the combustion source's opt-in permit application under § 74.14 of this part.

(b) [Reserved].

## Subpart G—Monitoring Emissions: Process Sources—[Reserved]

## PART 75—CONTINUOUS EMISSION MONITORING

17. The authority citation for part 75 continues to read as follows:

**Authority:** 42 U.S.C. 7651, *et seq.*

18. Section 75.4 is amended by revising paragraph (a) introductory text, and by adding paragraph (a)(5) to read as follows:

**§ 75.4 Compliance dates.**

(a) The provisions of this part apply to each existing Phase I and Phase II unit on February 10, 1993. For substitution or compensating units that are so designated under the acid rain permit which governs the unit and contains the approved substitution or reduced utilization plan, pursuant to § 72.41 or § 72.43 of this chapter, the provisions of this part become applicable upon the issuance date of the acid rain permit. For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the provisions of this part become applicable upon the submission of an opt-in permit application in accordance with § 74.14 of this chapter. In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all certification tests for the required continuous emission monitoring systems and continuous opacity monitoring systems are completed not later than the following dates (except as provided in paragraphs (d) and (e) of this section):

* * * * *

(5) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter, the expiration date of a combustion source's opt-in permit under § 74.14(e) of this chapter.

* * * * *

19. Section 75.16 is amended by revising paragraph (a)(2)(ii)(A) and (b)(2)(ii)(A) to read as follows:

**§ 75.16 Special provisions for monitoring emissions from common by-pass, and multiple stacks for $SO_2$ emissions and heat input determinations.**

(a) * * *

(2) * * *

(ii) * * *

(A) Designate the Phase II units as substitution units according to the procedure in part 72 of this chapter and the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Designate the non-affected units as opt-in sources in accordance with part 74 of this chapter and combine emissions for compliance purposes; or

* * * * *

20. Section 75.20 is amended by revising the first sentence after the heading in paragraph (a)(3) to read as follows:

**§ 75.20 Certification and recertification procedures.**

(a) * * *

(3) *Provisional approval of certification applications.* Upon the successful completion of the required certification procedures for each continuous emission or opacity monitoring system or component thereof and subsequent submittal of a complete certification application in accordance with § 75.63, each continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification application; provided that no continuous emission or opacity monitoring systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified for use under the Acid Rain Program. * * *

* * * * *

21. Section 75.63 is amended by revising paragraph (a) and (b)(1) to read as follows:

**§ 75.63 Certification or recertification application.**

(a) *Submission*. The designated representative for an affected unit or a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall submit the request to the Administrator within 30 days after completing the certification test.

(b) * * *

(1) A copy of the monitoring plan (or any modifications to the monitoring plan) for the unit, or units, or combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter, if not previously submitted.

* * * * *

22. Section 75.67 is revised to read as follows:

**§ 75.67 Retired units petitions.**

(a) For units that will be permanently retired prior to January 1, 1995, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits a complete petition, as required in § 72.8 of this chapter, to the Administrator prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

(b) For combustion sources seeking to enter the Opt-in Program in accordance with part 74 of this chapter that will be permanently retired and governed upon entry into the Opt-in Program by a thermal energy plan in accordance with § 74.47 of this chapter, an exemption from the requirements of this part, including the requirement to install and certify a continuous emissions monitoring system, may be obtained from the Administrator if the designated representative submits to the Administrator a petition for such an exemption prior to the deadline in § 75.4 by which the continuous emission or opacity monitoring systems must complete the required certification tests.

## PART 77—EXCESS EMISSIONS

23. The authority citation for part 77 revised to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, et seq.

24. Section 77.6 is amended by revising paragraph (a) to read as follows:

**§ 77.6 Penalties for excess emissions of sulfur dioxide and nitrogen oxides.**

(a) If excess emissions of sulfur dioxide or nitrogen oxides occur at an affected unit during any year, the owners and operators of the affected unit shall pay, without demand, an excess emissions penalty, as calculated under paragraph (b) of this section.

Such payment shall be submitted to the Administrator no later than 60 days after the end of any year during which excess emissions occurred at an affected unit or, for any increase in excess emissions of sulfur dioxide determined after adjustments made under § 72.91(b) of this chapter, or § 74.44(c)(2) of this chapter, by July 31 of the year in which the adjustments are made.

* * * * *

## PART 78—APPEALS PROCEDURES FOR ACID RAIN PROGRAM

25. The authority citation for part 78 continues to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, *et seq.*

26. Section 78.1 is amended by revising paragraphs (b)(3) and (b)(4) and by adding paragraph (b)(5) to read as follows:

### § 78.1 Purpose and scope.

(b) * * *

(3) Under part 74 of this chapter,

(i) The determination of incompleteness of an opt-in permit application;

(ii) The issuance or denial of an opt-in permit and approval or disapproval of the transfer of allowances for the replacement of thermal energy;

(iii) The approval or disapproval of a permit revision to an opt-in permit;

(iv) The decision on the deduction or return of allowances under subpart E of part 74 of this chapter;

(4) Under part 75 of this chapter,

(i) The decision on a petition for approval of an alternative monitoring system;

(ii) The approval or disapproval of a monitoring system certification or recertification;

(iii) The finalization of annual emissions data, including retroactive adjustment based on audit;

(iv) The determination of the percentage of emissions reduction achieved by qualifying Phase I technology; and

(v) The determination on the acceptability of parametric missing data procedures for a unit equipped with add-on controls for sulfur dioxide and nitrogen oxides in accordance with part 75 of this chapter.

(5) Under part 77 of this chapter, the determination of incompleteness of an offset plan and the approval or disapproval of an offset plan under § 77.4 of this chapter and the deduction of allowances under § 77.5(c) of this chapter.

* * * * *

27. Section 78.3 is amended by revising paragraph (a)(1) introductory text, and paragraph (d)(2) to read as follows:

### § 78.3 Petition for administrative review and request for evidentiary hearing.

(a) * * *

(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a) of this part:

* * * * *

(d) * * *

(2) Any provision or requirement of parts 72, 73, 74, 75, 76, or 77 of this chapter, including any standard requirement under § 72.9 of this chapter and any emissions monitoring or reporting requirements under part 75 of this chapter;

* * * * *

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# Part III

# Department of Transportation

## Coast Guard

**33 CFR Parts 154 and 155**

**46 CFR Part 12, et al.**

**Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases; Interim Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 154 and 155**

**46 CFR Parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154**

**[CGD 79–116]**

**RIN 2115–AA03**

## Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule.

**SUMMARY:** The Coast Guard is issuing an interim rule that sets out qualifications for tankermen, and for persons in charge of, and assisting in, the handling, transfer, and transport of oil and certain hazardous liquid cargoes in bulk aboard vessels. It intends the establishment of training standards, of operational requirements, and of a certification procedure to ensure that these persons are competent to perform their duties even during emergencies. Implementation of this rule will improve the handling, transfer, and transport of these cargoes and reduce the risk and severity of spillage from tank vessels.

**DATES:** This interim rule is effective March 31, 1996. Comments must be received by June 30, 1995.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA–2, 3406) (CGD 79–116), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR David C. Paxton, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MVP), phone (202) 267–0224.

**SUPPLEMENTARY INFORMATION:** Although this is a rule, not a notice, it is an interim rule; changes may be made, where warranted. Therefore, interested persons may participate in evaluating this rule by submitting written data, views, or arguments. Each written comment should include the name and address of the person making it, identify this rule (CGD 79–116) and the specific section of the rule to which the comment applies, and give a reason for the comment. Please submit two copies of each comment and attachment in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. A person desiring an acknowledgment that his or her comment has been received should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period before it decides whether to modify or confirm this rule.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

### Drafting Information

The principal persons involved in drafting this document are LCDR David C. Paxton, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

### Regulatory History

The Coast Guard published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM), on October 17, 1989: CGD 79–116 and CGD 79–116a (54 FR 42624), entitled, ''Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations''. The Coast Guard received 42 comments on this SNPRM. No public meeting was requested, nor was one held.

Before the SNPRM, the Coast Guard had published in the **Federal Register** two notices of proposed rulemaking (NPRMs), both on December 18, 1980: CGD 79–116 (45 FR 83290), with proposed rules for tankermen; and CGD 79–116a (45 FR 83268), with proposed rules for persons in charge of oil transfers. The Coast Guard combined these two rulemakings in the SNPRM, and withdrew docket 79–116a as a distinct rulemaking.

### Background and Purpose

Since the early 1970s, a number of major marine casualties have occurred through human error and a lack of awareness on the part of personnel involved in the handling, transfer, and transport of dangerous liquids and liquefied gases as cargo on vessels. Among these were the explosions of the M/V VENUS in 1972 and of the SS SANSINENA in 1976.

In 1978 there occurred two events that established a legal framework for this interim rule. First, there was enacted the Port and Tanker Safety Act (PTSA) (codified as 46 U.S.C., Chapter 37) of that year, one of whose provisions required the Secretary of Transportation to prescribe regulations on, among other things, personnel qualifications and manning standards for tank vessels of the United States. (The NPRMs published in 1980, on tankermen (45 FR 83290) and on persons in charge of oil transfers (45 FR 83268), were intended to implement, in part, that statutory mandate.) Second, there was adopted the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, at a conference sponsored by the International Maritime Consultative Organization (IMCO; International Maritime Organization (IMO) since 1982). STCW and its associated resolutions contain a number of regulations and recommendations on training and qualifications for personnel with responsibilities related to the cargo and cargo equipment on tankers. During the 1980s the Coast Guard revised its rules on these in 46 CFR parts 10 and 15, to render them compatible with STCW.

IMO developed a number of revisions to STCW. Among these revisions was a set of amendments to Chapter V adding requirements for personnel on tankers. (The amendments were adopted by the Maritime Safety Committee in May 1994, and come into force in May 1995.) After these amendments come into force, Chapter V will contain more detailed requirements on training and qualifications than it does now; and Administrations will have to ensure either that an authorized document is issued to officers and rated personnel found qualified in accordance with the new requirements or that an appropriate existing document is endorsed. (Chapter V is undergoing a review along with the rest of STCW, which should be complete in 1995. Amendments adopted at that time will probably come into force in 1996 or 1997. If necessary, this interim rule will be revised to conform with any new requirements due to those amendments.)

Since the stranding of the M/V EXXON VALDEZ, Congress has enacted the Oil Pollution Act of 1990. This statute, too, concerns manning standards for tank vessels, including a requirement that the manning of each of these vessels take into account ''the navigation, *cargo handling*, and maintenance functions of that vessel for protection of life, property, and the environment'' (Subsection 4114(c), amending 46 U.S.C. 8101(a)(3); emphasis added). This statute gives new impetus to the development of rules for tankermen and for persons in charge of oil transfers.

In the last few years, the Coast Guard's Towing Safety Advisory Committee (TSAC) has considered many of the issues addressed in the SNPRM. TSAC has made valuable contributions to the development of these regulations.

**Discussion of Comments**

All of the 42 comments on the SNPRM supported the SNPRM in principle, and none recommended major changes. The Coast Guard takes this to indicate that the SNPRM addressed all of the significant issues raised by those who submitted comments on the NPRMs. The specific comments are summarized and discussed below.

*1. Persons in Charge (PICs) Under 33 CFR Parts 154 and 155*

One comment recommended that a definition for *Tankship* should be provided in part 154. The Coast Guard agrees and has added a definition in § 154.105.

One comment suggested that the wording of § 155.700 be revised to indicate that the person in charge (PIC) could be designated by name or by position in the crew. The Coast Guard agrees with this suggestion and has revised the wording of § 155.700.

Another comment urged that the reference to in *agent* §§ 155.700 and .710 be clarified. The Coast Guard agrees and has clarified the sections.

One comment said that § 155.710 should apply to any tankship ''required to be'' documented under the laws of the United States. The Coast Guard agrees and has added appropriate language to § 155.710(a).

Three comments stated that the wording of § 155.710(a)(1)(ii) was unclear, particularly with reference to Boundary Lines. The Coast Guard agrees, and has reworded the section and added a cross-reference to 46 CFR part 7, where specific Boundary Lines are described, to indicate that the Boundary Lines in that part apply to the rules in § 155.710.

One comment said the PIC should be required, under § 155.710, to be trained in and familiar with the emergency equipment aboard the vessel, the oil-transfer procedures for that vessel, and requirements and procedures for reporting spills. The Coast Guard agrees and has revised §§ 155.710(a)(1)(i), (b)(1)(i), (c)(1), and (d)(1).

One comment recommended that § 155.710(e)(1) be revised to clarify that the scope of the rule encompasses every vessel that must be operated by a licensed person and not just by a licensed officer. The Coast Guard agrees and has revised the section to refer to ''licensed person.''

*2. Credentials of Personnel on Foreign-Flag Vessel Under 33 CFR Part 155*

One comment stated that §§ 155.710(c) and (d) should be amended to allow qualifications for a PIC aboard a foreign tankship at a shipyard or tank-cleaning facility to be satisfied by a marine chemist's certificate issued from the National Fire Protection Association. The Coast Guard agrees in substance and has added the appropriate wording in § 155.710(g).

One comment recommended that § 155.710(c)(3) indicate that, for vessels of countries signatory to STCW, a Dangerous-Cargo Endorsement or Certificate issued by the flag state is sufficient to attest the holder's qualifications. The Coast Guard agrees and has revised §§ 155.710(c)(3) and (d)(2).

One comment recommended adding a paragraph to require the operator or agent to verify that the person designated as PIC of a transfer of fuel oil aboard a foreign vessel holds a license or certificate authorizing service as master, mate, pilot, or engineer. The Coast Guard agrees and has added a paragraph to § 155.710(e)(4).

*3. Language of Crewmembers Under 33 CFR Part 155*

Two comments wanted §§ 155.710(c)(4) and (d)(3) revised to clarify the required ability to communicate.

One comment stated that the rule should allow PICs to use any mutually-agreed-upon language as an alternative to English. This comment also urged that, if an interpreter is used, the interpreter be fluent in the terminology of ships and of transfers. The Coast Guard agrees and has incorporated these suggestions into §§ 155.710(c)(4) and (d)(3).

The other comment recommended adding a provision to require that the PIC on a foreign vessel be able to communicate effectively with all crewmembers involved in the transfer. If an interpreter is used, the interpreter should be fluent in the terminology of ships and of transfers. The Coast Guard agrees and has added §§ 155.710(c)(5) and (d)(4).

*4. Certification of Tankerman, General (46 CFR Part 13, Subpart A)*

One comment noted that the phrase ''grades of cargo (dangerous liquids (DL), liquefied gases (LG), or specific products)'' is not a technically precise term used throughout the shipping and pollution-prevention regulations, and at best describes categories of cargo. The Coast Guard doubts whether the lack of precision in any of these terms will result in any confusion or misinterpretation, so it has left them as they were.

One comment stated that the definition for *liquid cargo in bulk* should include a reference to portable tanks. The Coast Guard agrees and has augmented the definition in § 13.103 with a reference to portable tanks.

This comment also recommended revising the definition of *tank vessel.* The Coast Guard has revised the definition to make it consistent with the statutory definition in 46 U.S.C. 2101(39).

The Coast Guard has also added a definition of *transfer* as it applies in this rulemaking.

One comment questioned whether § 13.107(c) should require that a Tankerman-Assistant maintain contact with the PIC during a transfer. The Coast Guard agrees that it should and has added language requiring this.

Two comments recommended changes to the provision on the Tankerman-Engineer under § 13.107(d). One observed that the primary responsibility of a person with a Tankerman-Engineer endorsement on a tank vessel carrying DL or LG is to maintain the cargo systems and equipment for transfer of liquids aboard. The other urged a requirement that a licensed person serving as a chief engineer, first assistant engineer, or cargo engineer on an inspected tank vessel carrying liquid cargo in bulk or cargo residue hold the Tankerman-Engineer endorsement. The Coast Guard accepts both of these changes and has incorporated them in the revision of § 13.107(d).

One comment recommended that the rule clearly state that applicants for restricted endorsements may apply to Coast Guard Regional Examination Centers (RECs). The Coast Guard agrees and has revised § 13.111.

One comment suggested the replacement of the term *discharge* by the term *certificate of discharge.* The Coast Guard has accomplished this replacement in the appropriate paragraphs of § 13.113.

One comment stated that it would be inequitable to give full credit to a master or chief mate for service on a tankship and yet to give only half credit to second and third mates for such service. The Coast Guard agrees. Deck officers aboard tankships serve as PICs of transfers, and their names appear on Declarations of Inspection and in the deck logs upon relief of watches. The

Coast Guard has revised § 13.113(c)(iii)(B).

This comment also expressed concern over silence of the proposed rule on second or third mates' qualifying for the DL or LG endorsements on the Tankerman-PIC. The Coast Guard agrees and has changed § 13.113(c) to reflect that masters and mates aboard tankships certificated to carry DL and LG may qualify for the appropriate endorsement.

Another comment said that a tankerman certified under prior regulations should have the option of passing a Coast Guard examination to earn an endorsement as Tankerman-PIC (Barge), just as a new applicant has the option of passing one under § 13.301(f). The Coast Guard has eliminated the option for an applicant to become a Tankerman-PIC (Barge) by passing a Coast Guard examination. This is an adverse change from the SNPRM, but both of the two reports—that of the Focus Group, ''Licensing 2000 and Beyond'', and that of the Coast Guard, ''Review of Marine Safety Issues Related to Uninspected Towing Vessels''—urge more emphasis on formalized methods of training and less on passing a Coast Guard examination. The Coast Guard invites comments on the elimination of the option. The Coast Guard has left § 13.113(d)(1)(ii) as it was and has eliminated the examination option in § 13.301.

A number of comments expressed the view that requiring service to have occurred within three years of application to be valid under §§ 13.113(c)(1)(iii)(A)(1) and (d)(1)(iii) might penalize persons with service less recent. The Coast Guard agrees and has revised these sections, and §§ 13.115(a) and (b), allowing service to be valid if it has occurred within five years of application.

One comment rationalized that all engineers in service on LNG tankships should be grandfathered because of the requirements they must already meet. These engineers, however, should have no difficulty acquiring the endorsement without grandfathering, because of those very requirements. Therefore, the Coast Guard does not agree that grandfathering is necessary or appropriate for these engineers, and has left § 13.115 as it was.

Numerous comments urged that the tankerman endorsement be subject to an expiration date. The Coast Guard agrees with the intent of these comments. The Oil Pollution Act of 1990 (OPA 90) mandated that U.S. Merchant Mariners' Documents (MMDs) themselves be limited to five years' duration, and 46 CFR 12.02–29 (59 FR 49302 (September 27, 1994)) now limits endorsements on MMDs to the same duration. Therefore, the period of validity of the tankerman endorsement is tied to the term of the MMD in § 13.119. 46 CFR 12.02–27 now requires MMDs to expire after five years. To help manage the work load over the initial five-year renewal cycle, the Coast Guard will require individuals acting as ''Tankerman-PIC'', ''Tankerman-PIC (Barge)'', ''Tankerman-Engineer'', and ''Tankerman-Assistant'' with the first renewal date of their MMDs, under § 12.02–27, that occurs after March 31, 1997, to obtain their new tankerman endorsement. This change affects §§ 13.113(a), 13.113(b), 13.115, and 13.117. The phase-in period allows tankermen a minimum of two years to obtain a new endorsement, one year for the effective date of this publication and one year until commencing the five-year renewal cycle. A person who served as PIC for the transfer of liquid cargoes in bulk listed in subchapter O but who did not require a tankerman endorsement, because they were non-flammable or non-combustible liquids, may continue to act as a PIC for those liquid cargoes five years after the effective date of this rulemaking as discussed in the SNPRM. After that point, the PIC must have obtained his or her ''Tankerman-PIC (Barge)'' endorsement.

One comment suggested that licensed engineers and tankerman-assistants with service on tankships under prior rules should be able to invoke recency of service, too. The Coast Guard agrees that all applicants alike should be able to invoke recency of service for an original tankerman endorsement and has revised § 13.123 to let them; it has also revised the section to reflect that the service should occur within five, not just three, years immediately preceding application, keeping this section consistent with other sections concerning recency of service.

The Coast Guard has added § 13.127 as a general section on service, both to consolidate the requirements for a service letter and to determine the number and kinds of transfers.

*5. ''Tankerman-PIC'' Endorsement (46 CFR Part 13, Subpart B)*

One comment recommended that an applicant for an original Tankerman-PIC endorsement be capable of reading and writing English. The Coast Guard agrees that the PIC needs to be capable of understanding the information contained in Declarations of Inspection, vessel response plans, and Cargo Information Cards and it has added the requirement to §§ 13.201 and 13.301 for all PICs to demonstrate an ability to read and understand English found in these items.

A number of comments indicated that an applicant for a Tankerman-PIC endorsement should have participated in more than one commencement of loading and more than one of discharge, and in more than one completion of loading and more than one of discharge. The Coast Guard agrees and has increased the number of commencements and completions required to two each in §§ 13.203(b)(2) and (3). At the same time, however, it has left § 13.203(c) unchanged.

One comment recommended that an applicant for a Tankerman-PIC endorsement have to prove a working knowledge of a vessel's oil-transfer procedures, of its emergency procedures, and requirements for reporting oil spills. The Coast Guard agrees. Tankermen must become familiar with the relevant characteristics of each vessel, with the vessel's response plan, and with all appropriate procedures before commencing a transfer, relieving the watch or duty, or completing a transfer. The person certifying the service (signing the letter attesting the service) of an applicant for tankerman should be satisfied that the applicant is knowledgeable and able to manage liquid cargo before certifying the service.

One comment questioned whether it was necessary to require that an applicant be capable of calculating rates of loading and discharge. The Coast Guard considers the ability to calculate such rates on tankships an important aspect of ensuring safe transfers. It has required the ability to calculate rates of loading in § 13.127(a)(3)(vii). However, the corresponding ability for rates of discharge does not involve skills different in any significant way from those involved in the ability for rates of loading, so the Coast Guard has not explicitly required the ability for rates of discharge.

*6. ''Tankerman-PIC (Barge)'' Endorsements (46 CFR Part 13, Subpart C)*

One comment recommended that an applicant for an original ''Tankerman-PIC (Barge)'' endorsement be required both to take a training course and to pass a Coast Guard examination. The Coast Guard believes that a course, when coupled with the other standards under § 13.301, will provide satisfactory evidence that the applicant has qualified for the endorsement. The Coast Guard has eliminated the option for an applicant to become a Tankerman-PIC (Barge) by passing a Coast Guard examination or by using extended service. The Coast Guard has

revised §§ 13.303 and .309 to require formal training.

Three comments stated that the Coast Guard should require its own examination whether or not an applicant completes a course. As above, both of the two reports—that of the Focus Group, ''Licensing 2000 and Beyond'', and that of the Coast Guard, ''Review of Marine Safety Issues Related to Uninspected Towing Vessels''—urge more emphasis on formalized methods of training and less on passing a Coast Guard examination. The Coast Guard believes that formal training is the appropriate method without the need for an additional examination, while it effectively monitors approved training programs. The Coast Guard has revised § 13.309 to allow only formal training.

One comment suggested that the ability to read and write English should be required of each applicant for an original ''Tankerman-PIC (Barge)'' endorsement under § 13.301, and for an original restricted ''Tankerman-PIC (Barge)'' endorsement under § 13.111. The Coast Guard agrees that all PICs need to be capable of understanding the information in Declarations of Inspection, vessel response plans, and Cargo Information Cards and it has added the requirement to §§ 13.201 and .301 for all PICs to demonstrate an ability to read and understand English found in these items. It has revised § 13.111(d)(5) to require a similar ability respecting restricted ''Tankerman-PIC (Barge)'' endorsements.

All eight comments on service requirements indicated that a single commencement or completion of loading and a single commencement or completion of discharge was insufficient, and recommended that five commencements and five completions be required. While the Coast Guard agrees that every participation in these critical stages of a transfer enhances an individual's qualifications, it does not consider a large number of participations necessary to establish minimal qualification for a ''Tankerman-PIC (Barge)'' endorsement. Therefore, it has revised § 13.303(b)(2) to require at least two commencements and two completions of loading and § 13.303(b)(3) to require at least two commencements and two completions of discharge.

One comment urged that an applicant have to prove a working knowledge of a vessel's oil-transfer procedures, its emergency procedures, and requirements for reporting oil spills. As previously stated, the person certifying the service of an applicant for tankerman should be satisfied that the applicant is knowledgeable and able to manage liquid cargo before certifying the service.

Three comments expressed the view that it was unnecessary to require that an applicant for a ''Tankerman-PIC (Barge)'' endorsement be capable of calculating rates of loading or discharge. These comments said that a tankerman could monitor such rates on barges without calculating them. The Coast Guard agrees and has eliminated these requirements for ''Tankerman-PIC (Barge).''

One comment stated that the use of the term ''competent person'' in these regulations might create confusion with regulations developed by the Occupational Safety and Health Administration (OSHA) and the National Fire Protection Association (NFPA), and recommended that the jurisdictional boundaries between OSHA and the Coast Guard in safety of personnel be clarified. The Coast Guard partly agrees, but believes that requiring a shipyard worker to be certified by OSHA as a ''competent person'' to supervise gas-freeing and tank-cleaning will cause no confusion. To eliminate any lingering confusion the Coast Guard has eliminated ''competent person'' from the title of the endorsement and renamed the restricted endorsement ''Tankerman-PIC (Barge)'' restricted to a tank-cleaning and gas-freeing facility. The Coast Guard doubts whether this rulemaking provides the appropriate forum for addressing jurisdictional boundaries between agencies.

Another comment suggested that a new subpart describe requirements for restricted ''Tankerman-PIC (Barge)'' endorsements. The Coast Guard does not agree that such a separate subpart is needed. It considers the use of restricted endorsements adequately addressed in § 13.111 and has combined all the restricted endorsements into this section.

*7. ''Tankerman Assistant'' Endorsement (46 CFR Part 13, Subpart D)*

One comment asserted that an applicant for an original ''Tankerman Assistant'' endorsement should be able to read and write English. Since the ''Tankerman Assistant'' is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers reading and writing non-essential to a safe transfer. It considers the requirement that an applicant be capable of clearly understanding and speaking all necessary instructions in English adequate for qualification and, therefore, it has not revised § 13.401(f).

One comment found the requirement of recency in training restrictive in that an applicant might have completed qualifying courses before the cutoffs imposed in these regulations and so might have to repeat the courses to satisfy the training. The Coast Guard partly agrees. If training facilities request, the Coast Guard will evaluate *bona fide* training courses in existence before the effective date of these regulations and may let the student's completion satisfy the training.

*8. ''Tankerman-Engineer'' Endorsement (46 CFR Part 13, Subpart E)*

One comment recommended that an applicant for a ''Tankerman-Engineer'' endorsement be capable of reading and writing English. Since the ''Tankerman-Engineer'' is not in charge of the transfer and does not have to sign the Declaration of Inspection, the Coast Guard considers reading and writing non-essential to a safe transfer. It considers the requirement that an applicant be capable of clearly understanding and speaking all necessary instructions in English adequate for qualification and, therefore, it has not revised § 13.501(g).

One comment noted the use of the term ''cargo engineer'' for both dangerous liquid and liquefied gas in § 13.503. The Coast Guard has included the definition of this term in § 13.103 to cover both dangerous-liquid and liquefied-gas tankships.

*9. Manning-Requirements (46 CFR Part 15)*

One comment stated that manning should depend on a vessel's deadweight tonnage, which relates directly to cargo capacity, rather than on gross tonnage. Because the statutes concerned with manning, and regulations like this derived from them, base manning on gross tonnage, the Coast Guard believes that it would be inappropriate to use another criterion here. Therefore, it has retained the criterion of gross tonnage in § 15.860.

One comment urged that ships in service on the Great Lakes be explicitly included in the provision relating to ships not certified for voyages beyond the Boundary Lines. The Coast Guard agrees and has revised § 15.860(d).

This comment also suggested that a table of manning-requirements would be useful and should be included in the final rule. The Coast Guard agrees and has prepared two tables. Table 15.860(a)(1) lists the minimal requirements for tankermen aboard manned tank vessels; Table 15.860(a)(2) lists the tankerman endorsements required for personnel aboard tankships.

One comment recommended a change to take into account that not every

tankship need carry a cargo engineer. The Coast Guard agrees and has revised § 15.860(f)(2) to address this possibility.

One comment urged the Coast Guard to clarify that the PIC retains authority over those crewmembers assigned duties and responsibilities during a transfer though not directly supervised by the PIC. The Coast Guard agrees that greater clarity to this effect is both possible and desirable, and has revised § 15.860(f)(4).

*10. Operations of Tank Vessels (46 CFR Part 35)*

One comment suggested that the ''owner and managing operator'' not be assigned responsibility for certain matters relating to an unmanned tank barge, since only the master or PIC of a towing vessel can oversee these matters. While the Coast Guard recognizes that, in practice, the master, operator, or PIC must see to the matters associated with the responsibility, the owner should share responsibility for these matters. This will encourage shoreside management to maintain some superintendence of and involvement in the operation of these tank barges. The Coast Guard has left § 35.05–15(b)(1) substantially as it was.

One comment recommended distinguishing leakage of cargo into the water from leakage of water into tanks, and requiring checks for both. The Coast Guard considers this a good idea and has revised §§ 35.05–15(b)(1) (i) and (iii).

One comment argued that addressing persons on duty only for any documented tankship was too permissive; it urged addressing them also for any tankship ''required to be documented''. The Coast Guard agrees and has made this change to § 35.35–1(a).

The same comment argued that addressing persons on duty only for any inspected tank barge was too permissive; it urged addressing them also for any tank barge ''required to be inspected''. The Coast Guard agrees and has made this change to § 35.35–1(b).

One comment recommended that the Declaration of Inspection Before Transfer of Bulk Liquid Cargo contain a space for the PIC to identify the product or products for transfer, by classification and kind. The Coast Guard agrees and has added such a space to the form specified by § 35.35–30.

A rule instated since the SNPRM has established a requirement of familiarity with the vessel response plan. This interim rule adds an appropriate space to the form specified by § 35.35–30.

*11. Cargoes at Elevated Temperatures (46 CFR Part 36)*

One comment recommended that certain sections of part 36 be deleted as obsolete or as superseded by this interim rule. Because the SNPRM did not address this issue, the Coast Guard does not consider this rule the appropriate place to revise part 36.

*12. Cargo Vessels and Miscellaneous Vessels (46 CFR Part 98)*

One comment suggested requiring that the person designated as PIC, for the transfer of liquid cargo in bulk to or from a portable tank on a vessel subject to part 98, hold a license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel ''when liquid cargo in bulk of grade D or E is carried in limited amounts.'' The Coast Guard agrees and has added this phrase to § 98.30–17(b)(3)(i).

*13. Commercial Fishing Vessels Dispensing Petroleum Products (46 CFR Part 105)*

One comment urged that the authority of the Coast Guard over fishing vessels under this part needs to be clearly stated by reference to 46 U.S.C. 4502 (the Commercial Fishing Industry Vessel Safety Act of 1988) in the citation of authority for the part. The Coast Guard agrees and has amended the citation of authority for that part to include the appropriate statutory citation. Although the Coast Guard will no longer regulate certain fishing vessels as tank vessels, it will still regulate them as fishing vessels.

*14. Barges Carrying Cargoes of Liquid Hazardous Materials in Bulk (46 CFR Part 151)*

Again, one comment recommended distinguishing leakage of cargo into the water from leakage of water into tanks, and requiring checks for both. The Coast Guard considers this a good idea and has revised §§ 151.45–2(f)(1) (i) and (iii).

*15. Ships Carrying Hazardous Materials of Liquid, Liquefied Gas, or Compressed Gas in Bulk (46 CFR Part 153); and Safety Standards for Self-Propelled Vessels Carrying Liquefied Gases in Bulk (46 CFR Part 154)*

One comment asked whether the Coast Guard meant that an operator should communicate with the Officer in Charge, Marine Inspection (OCMI), before each transfer to inform the OCMI that the PIC is competent. The Coast Guard neither means nor believes that an operator should so communicate. It has clarified the rule in §§ 153.957(b) and 154.1831(b) to indicate that the *documentary evidence,* to the effect that the person designated as PIC is fully trained and is competent to perform his or her duties, need be provided only when requested by the OCMI.

One comment recommended clarification of § 154.1831 to better describe the qualifications of PICs on tank vessels in LG service. The Coast Guard agrees and has modified this section to clarify the qualifications required to conduct transfers of, and preparation of tanks for, cargoes of LG.

*16. Work Hours*

The Coast Guard understands that the Oil Pollution Act (OPA) of 1990, section 4114, amends 46 U.S.C. 8104 as it limits hours of work for licensed persons or seamen on a tanker and limits hours of work for tankermen aboard tankers. No tankerman may perform work for more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. The term ''work'' includes all administrative duties associated with the vessel whether performed aboard the vessel or ashore.

The Coast Guard is deliberating new work-hour limits due to OPA for foreign-flag vessels. These limits, under 46 U.S.C. Chapter 37, would apply to all personnel involved in transfers whatever flags the vessels fly. These limits would apply to any person serving as a tankerman during the transfer of oil and of certain hazardous liquid cargoes in bulk, when the transfer takes place in a port or other place subject to the jurisdiction of the United States. Among the issues to weigh are the definition of the class of personnel and the kind of transfer to cover; the practical difficulties of ensuring compliance with such limits in respect of a crewmember on a foreign vessel; and the cost of effectively extending the limits to vessels other than tankers. The Coast Guard invites comments on these issues and any others that bear on including such limits in the final rule that will follow from this interim rule.

*17. Requirements for Training Courses*

The outlines of curricula as printed in the SNPRM produced positive comments and therefore move into this interim rule. The format has changed to allow for easier reading and to reduce the length of this rule.

One comment recommended that awareness of safe entry into confined spaces be included in the curricula as acknowledgment of the hazards associated with the products being either carried in cargo tanks or transferred. The Coast Guard agrees with this recommendation and has

included the subject in each course on cargo of DL or LG.

*18. Training Courses, Approval*

An organization seeking approval by the Coast Guard of a course required for a tankerman endorsement will have to apply in accordance with 46 CFR 10.302 and meet the general requirement of 46 CFR 10.303. The Coast Guard expects that the instructor of each course, except the firefighting course, will hold as a minimum an MMD with a tankerman endorsement appropriate for the course, or will establish equivalent qualifications to the satisfaction of the Coast Guard. The firefighting course for tank barges must include actual practice in extinguishing fires; all other courses may include field training or simulation instead. Satisfactory completion of an approved course will be evidenced by a certificate, issued by the organization and signed by the head of the organization or a designated representative.

The Coast Guard will evaluate courses including simulated transfer of cargo to determine the credit allowed towards meeting the proposed service requirements, and the certificates will reflect the credit granted. The Coast Guard maintains a list of organizations conducting approved courses. This information is available upon request by writing to Commandant (G–MVP), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; or by calling (202) 267–0214.

The Coast Guard has expanded the curricula for courses on cargoes of DL and LG enough to cover vapor-control systems and to satisfy the training requirements listed in 33 CFR 154.840. The course-outlines reflect current efforts of the Coast Guard and marine industry on training in vapor-control systems and on requirements for vessel response plans, as mandated by subsection 311(j) of the Federal Water Pollution Control Act (FWPCA) as amended by OPA 90.

The Coast Guard has eliminated the familiarization courses and is requiring only four liquid-cargo courses and the firefighting course for tank barges. It will evaluate for approval courses submitted for transfer credit and refresher training.

The Coast Guard invites comments on the subjects of courses; the appropriate minimal amounts of instruction; and the advisability of substituting field training or simulations for actual practice.

*Tankship: Dangerous Liquids.* This course consists of a training program appropriate to the duties of the Tankerman-PIC responsible for loading and discharging and for care in transit of or handling cargo on oil and chemical tankers; the course covers safety of oil and chemical tankers, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. It is designed to take full account of STCW regulations V/1 and V/2. Successful completion of it will satisfy the training requirements of §§ 13.209, 13.309, 13.409, and 13.509 for dangerous liquids. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

*Tankship: Liquefied Gases.* This course consists of a training program appropriate to the duties of the Tankerman-PIC responsible for loading and discharging and for care in transit of or handling cargo on liquefied-gas tankers; the course covers safety of liquefied-gas tankers, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. It is designed to take full account of STCW regulation V/3. Successful completion of it will satisfy the training requirements of §§ 13.209, 13.309, 13.409, and 13.509 for liquefied gases. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

*Tank barge: Dangerous Liquids.* This course consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for loading and discharging and for care in transit of or handling cargo on oil and chemical tank barges; the course covers safety of oil and chemical tank barges, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. Successful completion of it will meet the training requirements of § 13.309 for dangerous liquids. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

*Tank barge: Liquefied gases.* This course consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for loading and discharging and for care in transit of or handling cargo on liquefied-gas tank barges; the course covers safety of liquefied-gas tank barges, fire-safety measures and systems, pollution prevention and control, operational practice, and regulations. Successful completion of it will meet the training requirements of § 13.309 for liquefied gases. To adequately cover the required material, the Coast Guard reckons, the course must last 40 hours.

*Firefighting.* The course in *tank-barge firefighting* consists of a training program appropriate to the duties of the Tankerman-PIC (Barge) responsible for fire-safety training. The methods must include hands-on practice in extinguishing fires with portable fire extinguishers. Successful completion of it will meet the requirements of § 13.307 for fire-safety training. To adequately cover the required material, the Coast Guard reckons, the course must last 16 hours. Successful completion of a course approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'', will satisfy the requirements for §§ 13.207, 13.407, and 13.507, as well as for § 13.307.

*19. Other Comments*

Several comments suggested changes of an editorial nature. Because these are not of a substantive nature, the Coast Guard has not discussed them in this preamble; but it has incorporated them throughout this interim rule.

**Regulatory Evaluation**

This interim rule 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 not been reviewed by the Office of Management and Budget (OMB) under that Order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11040 (February 26, 1979)). In early 1980, the Coast Guard performed a Regulatory Evaluation (with an Environmental Impact Statement) on the proposed rule concerning qualifications of persons in charge of transfers of oil and hazardous material and concerning tankerman requirements and placed it in the rulemaking docket, where a full Regulatory Evaluation later joined it. They may be inspected or copied at the office of the Marine Safety Council (G–LRA) (CGD 79–116), Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, from 8 a.m. to 3 p.m., weekdays except Federal holidays.

Although the Regulatory Evaluation was begun over 15 years ago, and was finished in August 1989, the conclusions (given some updating of the discount rates) remain valid. The costs associated with this rule arise primarily from the training of tankermen. This rule requires people serving as tankermen to obtain from the Coast Guard U.S. Merchant Mariners' Documents endorsed as ''Tankerman-PIC'', ''Tankerman-PIC (Barge)'', restricted ''Tankerman-PIC'', restricted ''Tankerman-PIC (Barge)'', ''Tankerman-Assistant'', or ''Tankerman-Engineer''. People serving as tankerman will have

to meet standards for amounts of experience, for completion of training courses, and for physical fitness.

Almost all of the costs resulting from this rule would arise from the training of tankermen in firefighting and in transfers of liquid cargoes. Firefighting training became a requirement for a license from the Coast Guard in December 1988. For 92% of the licensed personnel affected by this rule, the cost of this training is a cost of holding a license, not of becoming a qualified tankerman. This training will mainly increase the cost for unlicensed personnel applying for tankerman endorsements. These personnel applying for these endorsements will have to complete a liquid-cargo course. An applicant restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like need only take the firefighting course. Expenses to complete the firefighting and liquid-cargo courses will vary, depending on their sources; in-house courses should cost less than courses offered by independent schools. Unless their employers offer the courses, tankermen likely will bear the expense for the training, and complete it on their own time. Tuition might cost $100.00 a day, with courses lasting up to five days. Miscellaneous expenses for travel, meals, and lodging will sometimes accrue, too, at $20.00 to $100.00 a day. Since the endorsement is valid for five years, the expense should spread over five years as well. If the average for tankerman is five days of training, the expense will be about $800.00 for the first five years, or about $160.00 a year. For subsequent five-year intervals the applicant need only show two transfers, not attend any other courses. So, for a tankerman serving 30 years, the expense will come to about $27.00 a year. Training 10,000 people at $27.00 a year costs $270,000.00 a year. Since about 800 new tankermen enter the calling each year (at $800.00 a head), $640,000.00 must also be added each year to arrive at the total expense for the industry—$910,000.00 a year. The public has recognized that there is a tremendous need for improving the qualification and training of personnel in transfer and in pollution prevention, to prevent accidents and pollution. This rule will go toward reducing the risks of accidents and pollution affecting the United States. Statistical research has shown that American society is willing to pay $2.6 million to save just one life. Hence, even if this rule saves only one life each year, the benefit outweighs the expense by about $1.7 million a year.

This rule will not increase manning, but will require personnel already in the calling to receive training and documentation related to their service. Most tank-vessel companies already require high standards of experience and training for people serving as tankermen. Since this rule does not require any large expenditures by the maritime industry, consumers, or Federal, State, or local governments, the Coast Guard does not expect it to have significant economic impact.

**Small Entities**

The Coast Guard certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule applies to U.S. Merchant Mariners' Documents endorsed as ''Tankerman'' issued to individuals only. The effect on training schools would be to formalize the requirements to attend such industry-specific training; now, such training is optional for individuals serving as tankermen at the discretion of the owner or operator. Therefore, the Coast Guard certifies under subsection 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], OMB reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This interim rule contains collection-of-information requirements in the following sections: 13.107, 13.109, 13.111, 13.113, 13.115, 13.117, 13.123, 13.201, 13.301, 13.401, 13.501. The following particulars apply:

*DOT No.:* 2115.

*OMB Control No.:* 2115–0514 and 2115–0111.

*Administration:* U.S. Coast Guard.

*Title:* Qualifications for Tankermen, and for Persons in Charge of Transfers of Dangerous Liquids and Liquefied Gases.

*Need for Information:* The Port and Tanker Safety Act (PTSA) [codified as 46 U.S.C., Chapter 37] required the Secretary of Transportation to prescribe regulations on, among other things, personnel qualifications and manning standards for tank vessels of the United States.

*Proposed use of Information:* This information is used by the Coast Guard licensing officer at an REC. It is used to determine the applicant's qualification to receive or continue to hold a tankerman's endorsement to an MMD.

*Frequency of Response:* Every five years.

*Burden Estimate:* The Coast Guard estimates the total annual burden on merchant mariners will be 8,900 hours.

*Respondents:* The regulatory impact will bear upon about 10,700 respondents.

*Form(s):* Application for Original, Supplemental, or Duplicate Merchant Mariner's Document, CG–719B.

*Average Burden-Hours for Each Respondent:* The average burden hours for each respondent is 0.83 hours (50 minutes).

The Coast Guard has submitted the requirements to OMB for review under subsection 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

**Federalism**

The Coast Guard has analyzed this interim rule in accordance with the principles and criteria contained in Executive Order 12612. It has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Environment**

The overall effect of this interim rule will be to reduce the amount of oil entering the navigable waters of the United States. The adverse environmental effect of this rule will be nil. As far as the Coast Guard can determine, this rule neither accomplishes short-term environmental gains at the cost of long-term losses or the converse, nor forecloses any future options, nor entails any significant irreversible or irretrievable commitments of resources.

What little environmental impact this rule entails is positive. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR Part 154*

Environmental protection, Oil pollution, Facilities, Water pollution control, Vapor control.

*33 CFR Part 155*

Environmental protection, Oil pollution, Vessels, Water pollution control.

*46 CFR Part 7*

Boundary lines.

*46 CFR Part 12*

Seamen.

*46 CFR Part 13*

Seamen, Tank vessels, Barges.

*46 CFR Part 15*

Seamen, Vessels.

*46 CFR Part 30*

Administrative practice and procedure, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels, Barges.

*46 CFR Part 31*

Marine safety, Tank vessels, Barges, Law enforcement, Flammable materials.

*46 CFR Part 35*

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seamen.

*46 CFR Part 78*

Passenger vessels, Marine safety, Foreign trade, Treaties.

*46 CFR Part 90*

Cargo vessels, Marine safety, Administrative practice and procedure, Authority delegation.

*46 CFR Part 97*

Cargo vessels, Marine safety, Reporting requirements.

*46 CFR Part 98*

Cargo vessels, Hazardous materials transportation, Marine safety.

*46 CFR Part 105*

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum.

*46 CFR Part 151*

Hazardous materials transportation, Marine safety, Flammable material, Tank vessels, Barges.

*46 CFR Part 153*

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

*46 CFR Part 154*

Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 154 and 155, and 46 CFR parts 7, 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154, as set forth below:

## Title 33—Navigation and Navigable Waters

### SUBCHAPTER O—POLLUTION

### PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); Sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Section 154.105 is amended by adding definitions as follows:

**§ 154.105 Definitions.**

*Boundary Line* means the lines described in 46 CFR Part 7.

* * * * *

*STCW* means the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978.

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*Tankship* means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

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### PART 155—PREVENTION OF POLLUTION BY OIL OR HAZARDOUS MATERIAL FROM VESSELS

3. The authority citation for Part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; Sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, 155.470, and 155.1010 through 155.1070, are also issued under 33 U.S.C. 1903(b); and sections 155.1110 and 155.1150 are also issued under 33 U.S.C. 2735.

4. Section 155.700 is revised to read as follows:

**§ 155.700 Designation of person in charge.**

The operator or agent of each vessel with a capacity for 250 or more barrels of fuel oil, cargo oil, or hazardous material shall designate, either by name or by position in the crew, the person in charge (PIC) or PICs of each transfer to or from the vessel and of each tank-cleaning.

5. Section 155.710 is revised to read as follows:

**§ 155.710 Qualifications of person in charge.**

(a) On each tankship required to be documented under the laws of the United States, the operator or agent of the vessel, or the person who arranges and hires a person to be in charge either of a transfer of liquid cargo in bulk or of cargo-tank cleaning, shall verify to his or her satisfaction that each person designated as a PIC—

(1) Of a transfer of liquid cargo in bulk—

(i) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer;

(ii) Holds a license issued under 46 CFR part 10 authorizing service aboard a vessel certified for voyages beyond the Boundary Line, as described by 46 CFR part 7, except on tankships not certified for voyages beyond the Boundary Line; and

(iii) Holds a ''Tankerman-PIC'' endorsement issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of the particular cargo involved; and

(2) Of cargo-tank cleaning meets paragraph (a)(1) of this section, except-

(i) A Coast Guard license is not required; and

(ii) If the tankship is at a tank-cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a ''Tankerman-PIC'' endorsement.

(b) On each tank barge required to be inspected under 46 U.S.C. 3703, the operator or agent of the vessel, or the person who arranges and hires a person to be in charge of a transfer of liquid cargo in bulk, shall verify to his or her satisfaction that each PIC—

(1) Of a transfer of liquid cargo in bulk—

(i) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer; and

(ii) Holds a ''Tankerman-PIC'' or ''Tankerman-PIC (Barge)'' endorsement

issued under 46 CFR part 13 that authorizes the holder to supervise the transfer of the particular cargo involved; and

(2) Of cargo-tank cleaning meets paragraph (b)(1) of this section, except that, if the tank barge is at a tank-cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a ''Tankerman-PIC'' or ''Tankerman-PIC (Barge)'' endorsement.

(c) On each foreign tankship, the operator or agent of the vessel shall verify to his or her satisfaction that each PIC either of a transfer of liquid cargo in bulk or of cargo-tank cleaning—

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which he or she is engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct either a transfer of liquid cargo in bulk or cargo-tank cleaning;

(2) Holds a license or other document issued by the flag state or its authorized agent authorizing service as master, mate, pilot, engineer, or operator on that vessel;

(3) Holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC either of the transfer of oil, chemical, or liquefied gas or of cargo-tank cleaning, as appropriate to the cargo;

(4) Is capable of reading, speaking, and understanding in English, or a language mutually-agreed-upon with the shoreside PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of cargo, except that the use of an interpreter meets this requirement if the interpreter—

(i) Fluently speaks the language spoken by each PIC;

(ii) Is immediately available to the PIC on the tankship at all times during the transfer; and

(iii) Is knowledgeable about, and conversant with terminology of, ships and transfers; and

(5) Is capable of effectively communicating with all crew-members involved in the transfer, with or without an interpreter.

(d) On each foreign tank barge, the operator or agent of the vessel shall verify to his or her satisfaction that each PIC either of the transfer of liquid cargo in bulk or of cargo-tank cleaning—

(1) Has sufficient training and experience with the relevant characteristics of the vessel on which engaged, including the cargo for transfer, the cargo-containment system, the cargo system (including transfer procedures, and shipboard-emergency equipment and procedures), the control and monitoring systems, the procedures for reporting pollution incidents, and, if installed, the systems for crude-oil washing, inert gas, and vapor control, to safely conduct a transfer;

(2) Holds a Dangerous-Cargo Endorsement or Certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the PIC's meeting the requirements of Chapter V of STCW as a PIC either of the transfer of oil, chemical, or liquefied gas or of cargo-tank cleaning, as appropriate to the cargo;

(3) Is capable of reading, speaking, and understanding, in English or a mutually-agreed-upon language with the PIC of the transfer, all instructions needed to commence, conduct, and complete a transfer of cargo, except that the use of an interpreter meets this requirement if the interpreter—

(i) Fluently speaks the language spoken by each PIC;

(ii) Is immediately available to the PIC on the tank barge at all times during the cargo transfer; and

(iii) Is knowledgeable about, and conversant with terminology of, ships and transfers; and

(4) Is capable of effectively communicating with all crew-members involved in the transfer, with or without an interpreter.

(e) The operator or agent of each vessel to which this section applies shall verify to his or her satisfaction that the PIC of the transfer of fuel oil—

(1) On each vessel required by 46 CFR chapter I to have a licensed person aboard, holds a valid license issued under 46 CFR part 10 authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel.

(2) On each uninspected vessel of 100 or more gross tons, has been instructed by the operator or agent of the vessel both in his or her duties and in the Federal statutes and regulations on water pollution that apply to the vessel.

(3) On each tank barge, for the vessel's own engine-driven pumps has been instructed both in his or her duties and in the Federal statutes and regulations on water pollution.

(4) On each foreign vessel, holds a license or certificate issued by a flag state party to STCW, or other form of evidence acceptable to the Coast Guard, attesting the qualifications of the PIC to act as master, mate, pilot, operator, engineer, or tankerman aboard that vessel.

(f) The operator or agent of each vessel carrying oil or hazardous material in bulk other than a tank vessel shall verify to his or her satisfaction that the PIC either of the transfer of oil or hazardous material in bulk to or from a vessel or of cargo-tank cleaning—

(1) For cargo of grade D or E, holds a valid license or certificate authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel; and

(2) For either cargo of grade C or above, regulated under 46 CFR part 153, or liquefied gas, holds a valid license or certificate authorizing service as a master, mate, pilot, engineer, or operator aboard that vessel and a ''Tankerman-PIC'' endorsement, or other documents acceptable to the Coast Guard attesting the holder's qualifications to act as the PIC for the cargo carried.

(g) The PIC of cargo-tank cleaning on a vessel at a tank-cleaning facility or shipyard need not hold any of the documents required in paragraphs (a) through (f) of this section, if he or she holds a marine chemist's certificate issued by the National Fire Protection Association.

## Title 46—Shipping

## PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7701; 49 CFR 1.46.

### § 12.01–5 [Amended]

9. Paragraph (d) of § 12.01–5 is removed.

### §§ 12.20–1, 12.20–3, and 12.20–5 (Subpart 12.20) [Removed]

10. Subpart 12.20, consisting of §§ 12.20–1, 12.20–3, and 12.20–5, is removed.

11. Part 13 is added to read as follows:

## PART 13—CERTIFICATION OF TANKERMEN

### Subpart A—General

Sec.

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13.103 Definitions.
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13.109 Tankerman endorsement: Authorized cargoes.

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**Subpart B—Requirements for ''Tankerman-PIC'' Endorsement**

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13.203 Eligibility requirements: Experience.
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**Supart C—Requirements for ''Tankerman-PIC (Barge)'' Endorsement**

13.301 Original application for ''Tankerman-PIC (Barge)'' endorsement.
13.303 Eligibility requirements: Experience.
13.305 Proof of service for ''Tankerman-PIC (Barge)'' endorsement.
13.307 Eligibility requirements: Firefighting course.
13.309 Eligibility requirements: Cargo course.

**Subpart D—Requirements for ''Tankerman-Assistant'' Endorsement**

13.401 Original application for ''Tankerman-Assistant'' endorsement.
13.403 Eligibility requirements: Experience.
13.405 Proof of service for ''Tankerman-Assistant'' endorsement.
13.407 Eligibility requirements: Firefighting course.
13.409 Eligibility requirements: Cargo course.

**Subpart E—Requirements for ''Tankerman-Engineer'' Endorsement**

13.501 Original application for ''Tankerman-Engineer'' endorsement.
13.503 Eligibility requirements: Experience.
13.505 Proof of service for ''Tankerman-Engineer'' endorsement.
13.507 Eligibility requirements: Firefighting course.
13.509 Eligibility requirements: Cargo course.

**Authority:** 46 U.S.C. 3703, 7317, 8105, 8703, 9102; 49 CFR 1.46.

## Subpart A—General

### § 13.101 Purpose.

This part describes the various tankerman endorsements issued by the Coast Guard and prescribes the requirements for obtaining an endorsement as a ''Tankerman-PIC,'' ''Tankerman-PIC (Barge),'' ''Tankerman-Assistant,'' or ''Tankerman-Engineer'' to a merchant mariner's document.

### § 13.103 Definitions.

As used in this part:

*Cargo Engineer* means a licensed person on a dangerous-liquid tankship or a liquefied-gas tankship whose primary responsibility is maintaining the cargo system and cargo-handling equipment.

*Competent person* means a person designated as such in accordance with 29 CFR 1915.7.

*Dangerous liquid* means a liquid listed in 46 CFR 153.40 that is not a liquefied gas as defined in this part. Liquid cargoes in bulk listed in 46 CFR Part 153, Table 2, are not dangerous-liquid cargoes when carried by non-oceangoing barges.

*DL* means dangerous liquid.

*IMO* means the International Maritime Organization.

*Liquefied gas* means a cargo that has a vapor pressure of 172 kPa (25 psia) or more at 37.8 C (100 F).

*LG* means liquefied gas.

*Liquid cargo in bulk* means a liquid or liquefied gas listed in 46 CFR 153.40 and carried as a liquid cargo or liquid-cargo residue in integral, fixed, or portable tanks.

*Marine chemist* means a person certificated by the National Fire Protection Association.

*MMD* means a merchant mariner's document issued by the Coast Guard.

*Participation,* when used with regard to the service on transfers required for tankerman by § 13.120, 13.203, or 13.303, means either actual participation in the transfers or close observation of how the transfers are conducted and supervised.

*PIC* means a person in charge.

*Restricted Tankerman endorsement* means a valid tankerman endorsement to an MMD restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like.

*Simulated transfer* means a transfer practiced in a course meeting the requirements of § 13.121 that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303.

*Tank barge* means a non-self-propelled tank vessel.

*Tank vessel* means a vessel constructed or adapted to carry, or a vessel that carries, oil or hazardous material in bulk as cargo or cargo residue.

*Tankerman-Assistant* means a person holding a valid ''Tankerman-Assistant'' endorsement to his or her MMD.

*Tankerman-Engineer* means a person holding a valid ''Tankerman-Engineer'' endorsement to his or her MMD.

*Tankerman-PIC* means a person holding a valid ''Tankerman-PIC'' endorsement to his or her MMD.

*Tankerman-PIC (Barge)* means a person holding a valid ''Tankerman-PIC (Barge)'' endorsement to his or her MMD.

*Tankship* means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue and propelled by power or sail.

*Transfer* means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 describes what qualifies as participation in a creditable transfer.

### § 13.105 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 [Pub. L. 96–511] for the reporting and recordkeeping requirements in this part.

(b) OMB has assigned the following control numbers to the sections indicated:

(1) OMB 2115–0514—46 CFR 13.113, 13.115, 13.117, 13.201, 13.203, 13.205, 13.301, 13.303, 13.305, 13.401, 13.403, 13.405, 13.501, 13.503, 13.505.

(2) OMB 2115–0111—46 CFR 13.121, 13.207, 13.209, 13.307, 13.309, 13.407, 13.409, 13.507, 13.509.

### § 13.107 Tankerman endorsement: General.

(a) If an applicant meets the requirements of subpart B of this part, the Officer in Charge, Marine Inspection (OCMI), at a Regional Examination Center (REC) may endorse his or her MMD as ''Tankerman-PIC'' with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(a) may act as a PIC of transfers of liquid cargo in bulk on either tankships or tank barges.

(b) If an applicant meets the requirements of Subpart C of this part, the OCMI may endorse his or her MMD as ''Tankerman-PIC (Barge)'' with the appropriate cargo classification or classifications. A person holding this endorsement and meeting the other requirements of 33 CFR 155.710(b) may act as a PIC of transfers of liquid cargo in bulk only on tank barges.

(c) If an applicant meets the requirements of subpart D of this part, the OCMI may endorse his or her MMD

as ''Tankerman-Assistant'' with the appropriate cargo classification or classifications. No person holding this endorsement may act as a PIC of any transfer of liquid cargo in bulk unless he or she also holds an endorsement authorizing service as PIC. He or she may, however, perform duties relative to cargo and cargo-handling equipment assigned by the PIC of transfers of liquid cargo in bulk without being under the direct supervision of the PIC. When performing these duties, he or she shall maintain continuous two-way voice communications with the PIC.

(d) If an applicant meets the requirements of subpart E of this part, the OCMI may endorse his or her MMD as ''Tankerman-Engineer.'' No person holding this endorsement may act as a PIC or ''Tankerman-Assistant'' of any transfer of liquid cargo in bulk unless he or she also holds an endorsement authorizing such service. A person holding this endorsement and acting in this capacity has the primary responsibility on tank vessels carrying dangerous liquids and liquefied gases for maintaining the cargo systems and equipment for transfer of liquids in bulk aboard and for bunkering. No person licensed under part 10 of this chapter may serve as a chief engineer, first assistant engineer, or cargo engineer aboard an inspected tankship when liquid cargo in bulk or cargo residue is carried unless he or she holds this endorsement.

(e) If an applicant meets the requirements of § 13.111 of this part, the OCMI may endorse his or her MMD as a ''Tankerman-PIC'' with a specific restriction or restrictions. A person holding this endorsement may act as Tankerman-PIC or Tankerman-PIC (Barge) for specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like.

(f) A tankerman wishing to obtain an endorsement that he or she does not hold shall apply at an REC listed in § 10.105 of this chapter. If he or she meets all requirements for the new endorsement, the REC may issue a new MMD including the endorsement.

**§ 13.109 Tankerman endorsement: Authorized cargoes.**

(a) Each tankerman endorsement described in § 13.107 will expressly limit the holder's service under it to transfers involving one or both of the following cargo classifications:

(1) Dangerous liquid (DL).

(2) Liquefied gas (LG).

(b) No tankerman endorsement is necessary to transfer the liquid cargoes in bulk listed in Table 2 of Part 153 of this chapter when those cargoes are carried on barges not certified for ocean service.

(c) A tankerman having qualified in one cargo classification and wishing to qualify in another shall apply at an REC listed in § 10.105 of this chapter. If he or she meets all requirements for the other, the REC may issue a new MMD including the endorsement.

**§ 13.111 Restricted endorsement.**

(a) An applicant may apply at an REC listed in 46 CFR 10.105 for a tankerman endorsement restricted to specific cargoes or groups of cargoes, specific vessels, specific facilities, specific employers, or the like. The OCMI will evaluate each application and may modify the applicable requirements for the endorsement, making allowance for special circumstances and for whichever restrictions the endorsement will state.

(b) To qualify for a restricted ''Tankerman-PIC'' endorsement, an applicant shall meet § 13.201, excluding paragraph (f).

(c) To qualify for a restricted ''Tankerman-PIC (Barge)'' endorsement, an applicant shall meet § 13.301, excluding paragraph (f).

(d) To qualify for a restricted ''Tankerman-PIC (Barge)'' endorsement restricted to a tank-cleaning and gas-freeing facility, an applicant shall—

(1) Be at least 18 years old;

(2) Apply on a Coast Guard form;

(3) Present evidence of passing a physical examination in accordance with § 13.125;

(4) Present evidence in the form of a letter on company letterhead from the operator of the facility stating that OSHA considers the applicant a ''competent person'' for the facility and that the applicant has the knowledge necessary to supervise tank-cleaning and gas-freeing; and

(5) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

(e) The restricted ''Tankerman-PIC (Barge)'' endorsement restricted to a tank-cleaning and gas-freeing facility is valid only while the applicant is employed by the operator of the facility that provided the letter of service required by paragraph (d)(4) of this section, and this and any other appropriate restrictions will appear in the endorsement.

**§ 13.113 Tankerman certified under prior regulations.**

(a) A person who holds a license issued under part 10 of this chapter, and who as a PIC transferred liquid cargoes in bulk before March 31, 1996, may continue to serve as a ''Tankerman-PIC'' under the license until the first renewal of his or her MMD under 12.02–27 of this chapter that occurs after March 31, 1997, as follows:

(1) A person holding a current license issued under part 10 of this chapter may act as a ''Tankerman-PIC'' if he or she can produce a letter on company letterhead from the owner, operator, master, or chief engineer of the vessel that proves his or her qualifying service as required by paragraph (d)(1)(iii) of this section.

(2) A person that cannot produce a letter to prove his or her qualifying service may submit relevant evidence to an REC for evaluation. If the OCMI determines that the person does qualify under paragraph (a) of this section, the OCMI will issue a letter of acknowledgment as a substitute for a letter of service.

(b) A person who holds a current ''Tankerman'' endorsement issued before March 31, 1996, may continue to serve as a Tankerman-PIC (Barge) until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997. If a person with such an endorsement qualifies for a non-tankerman endorsement that requires a new MMD, he or she may bring the tankerman endorsement forward onto the new MMD.

(c) A person who served as PIC for the transfer of liquid cargoes in bulk listed in subchapter O but who did not require a tankerman endorsement, because they were non-flammable or non-combustible liquids, may act as a ''Tankerman-PIC (Barge)'' for those liquid cargoes until March 31, 2001, if he or she produces a letter—on company letterhead, from the owner or operator of a terminal or of a tank barge or from the owner, operator, or master of a tankship that proves his or her qualifying service as required by paragraph (e)(1)(iii) of this section.

(d) A person that qualifies under paragraph (a) of this section by holding a current license may apply for a ''Tankerman-PIC'' endorsement under this subpart.

(1) To qualify for a ''Tankerman-PIC'' endorsement, a licensed officer shall present—

(i) A certificate of completion from a course in shipboard firefighting approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI),

''Training of Crews in Fire Fighting'', or a certificate of completion from a firefighting course before March 31, 1996, that the OCMI finds in substantial compliance with that section;

(ii) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, or a certificate of completion from a liquid-cargo course in DL or LG up to ten years before March 31, 1996, that the OCMI finds acceptable under §§ 13.121(e) (1) and (2), appropriate to the endorsement applied for; and

(iii) Evidence of service as follows:

(A) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant—

(*1*) Acted as the PIC of the transfer of DL or LG, appropriate to the endorsement applied for, on tankships before March 31, 1996, and has so acted within five years of the date of application; or

(*2*) Served at least 30 days as a master or mate on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so acted within five years of the date of application; or

(B) Certificates of Discharge proving at least 30 days of service as master or mate on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

(2) To qualify for a restricted ''Tankerman-PIC'' endorsement, based on his or her cargo-handling experience for the grades handled, an applicant shall meet paragraphs (d)(1) (i) and (iii) of this section.

(e) A person who qualifies under paragraph (b) of this section by holding a current ''Tankerman'' endorsement or under paragraph (c) of this section by having served as PIC for the transfer of liquid cargoes in bulk that are listed in subchapter O but that did not require a tankerman endorsement may apply for a ''Tankerman-PIC (Barge)'' endorsement under this subpart.

(1) To qualify for a ''Tankerman-PIC (Barge)'' endorsement, an applicant shall present—

(i) Evidence of training in firefighting in the form of—

(A) A certificate of completion from a course in shipboard firefighting approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'', or a certificate of completion from such a course before March 31, 1996, that the OCMI finds in substantial compliance with that section;

(B) A certificate of completion from a training course meeting § 13.121 in tank-barge firefighting or a certificate of completion from a course in tank-barge firefighting before March 31, 1996, that the OCMI finds in substantial compliance with § 13.121; or

(C) A letter on company letterhead from the owner, operator, master, or chief engineer attesting that before March 31, 1996, the applicant received training in awareness of flammability hazards and in firefighting through a program, lecture, or seminar that included hands-on firefighting that the OCMI finds in substantial compliance with § 13.121;

(ii) A certificate of completion from a liquid-cargo course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, or a certificate of completion from a liquid-cargo course in DL or LG up to ten years before March 31, 1996, that the OCMI determines substantially covers the material required by Table 13.121(f); and

(iii) Evidence of service on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant acted as the PIC of the transfer for DL or LG, appropriate to the endorsement applied for on tank vessels, before March 31, 1996, and has so acted within five years of the date of application.

(2) To qualify for a restricted ''Tankerman-PIC (Barge)'' endorsement, based on his or her cargo-handling experience for the grades handled, an applicant shall meet all the requirements of paragraphs (e)(1) (i) and (iii) of this section.

(f) Each person qualifying under this section shall obtain a tankerman endorsement at the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997.

(g) The following table relates the experience and training to the endorsement for tankerman certified under prior regulations. The section numbers on the table refer to the specific requirements applicable.

TABLE 13.113.—TANKERMAN CERTIFIED UNDER PRIOR REGULATIONS

| Before effective date served as— | Service after effective date but before permanent endorsement: | Requirements for permanent endorsement to an MMD: | Requirements for RESTRICTED endorsement to an MMD: |
|---|---|---|---|
| Licensed Officer ..... | May serve as: § 13.113(a) Tankerman-PIC. | Tankerman-PIC § 13.113(d)(1) ..... | Tankerman-PIC § 13.113(d)(2). |
| | Limitations: None ..... | Service: Service letter from company rep as PIC of DL or LG cargo transfer, or 30 days' service as master or mate on tankships carrying DL or LG.. | Service: Service letter from company rep as PIC of DL or LG cargo transfer, or 30 days' service as master or mate on tankships carrying DL or LG. |
| | Allowed until: First renewal of MMD ..... | | |
| | Service documentation: Service letter from company rep. | Courses: Liquid-cargo course in the appropriate cargo grade, & Firefighting. | Course: Firefighting course. |
| MMD with a Tankerman's endorsement. | May serve as: § 13.113(b) Tankerman-PIC (Barge). | Tankerman-PIC (Barge) § 13.113(e)(1) | Tankerman-PIC (Barge) § 13.113(e)(2). |
| | Limitations: Grade of cargo on existing MMD. | Service: Service letter from company rep as Service letter PIC of DL or LG cargo transfer. | Service: Service letter from company rep as PIC of DL or LG cargo transfer. |
| | Until: First renewal of MMD ..... | | |
| | Documentation: None ..... | Courses: Liquid-cargo course in the appropriate cargo grade, & Tank-barge firefighting. | Course: Tank-barge firefighting. |
| PIC-Subchapter O Non-flammable and Non-combustible. | May serve as: § 13.113(c) Tankerman-PIC (Barge). | Tankerman-PIC (Barge) § 13.113(e)(1) | Tankerman-PIC (Barge) § 13.113(e)(2). |

TABLE 13.113.—TANKERMAN CERTIFIED UNDER PRIOR REGULATIONS—Continued

| Before effective date served as— | Service after effective date but before permanent endorsement: | Requirements for permanent endorsement to an MMD: | Requirements for RESTRICTED endorsement to an MMD: |
|---|---|---|---|
| | Limited to: Subchapter-O products previously transferred.<br>Until: 5 years after effective date<br>Documentation: Service letter from company rep as PIC. | Service: Service letter from company rep as PIC of DL or LG cargo transfer.<br>Courses: Liquid-cargo course in the appropriate cargo Tank-barge firefighting. | Service: Service letter from company rep as PIC of DL or LG cargo transfer<br>Course: Tank-barge firefighting. |

**§ 13.115 Licensed engineer: Endorsement as Tankerman-Engineer based on service on tankships before March 31, 1996.**

A licensed person with service as chief, first assistant, or cargo engineer on at least one tankship before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a ''Tankerman-Engineer'' endorsement under this subpart if he or she presents either—

(a) A letter on company letterhead from the owner, operator, master, or chief engineer of the vessel attesting that the applicant served at least 30 days as chief, first assistant, or cargo engineer on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so served within five years of the date of application; or

(b) Certificates of Discharge proving at least 30 days of service as chief, first assistant, or cargo engineer on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

**§ 13.117 Any person: Endorsement as Tankerman-Assistant based on unlicensed deck service before March 31, 1996.**

A person with unlicensed deck service on tankships before March 31, 1996, may, at any time until the first renewal of his or her MMD under § 12.02–27 of this chapter that occurs after March 31, 1997, apply for a ''Tankerman-Assistant'' endorsement under this subpart if the applicant presents either—

(a) A letter on company letterhead from the owner, operator, or master of the vessel attesting that the applicant served at least 30 days of deck service on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, and has so served within five years of the date of application; or

(b) Certificates of Discharge proving at least 30 days of deck service on tankships certified to carry DL or LG, appropriate to the endorsement applied for before March 31, 1996, with a discharge date within five years of the date of application.

**§ 13.119 Expiration of endorsement.**

An endorsement as tankerman is valid for the duration of the MMD.

**§ 13.120 Renewal of endorsement.**

An applicant wishing to renew a tankerman's endorsement shall meet the requirements of § 12.02–27 of this chapter for renewing an MMD and provide evidence of participation in at least two transfers during the past five years in accordance with § 13.127(b) or of completion of an approved course.

**§ 13.121 Courses for training tankerman.**

(a) This section prescribes the requirements, beyond those in §§ 10.203 and 10.303 of this chapter, applicable to schools offering courses required for a tankerman endorsement and courses that are a substitute for experience with transfers of liquid cargo in bulk required for the endorsement.

(b) Upon satisfactory completion of an approved course, each student shall receive a certificate, signed by the head of the school offering the course or by a designated representative, indicating the title of the course, the duration, and, if appropriate, credit allowed towards meeting the transfer requirements of this part.

(c) A course that uses simulated transfers to train students in loading and discharging tank vessels may replace a specific number of the transfers required for a ''Tankerman-PIC'' or ''Tankerman-PIC (Barge)'' endorsement. The letter from the Coast Guard approving the course will state the number and kind of transfers the course replaces.

(d) The course in liquid cargo required for an endorsement as—

(1) ''Tankerman-PIC DL'' is Tankship: Dangerous Liquids;

(2) ''Tankerman-PIC (Barge) DL'' is Tank Barge: Dangerous Liquids;

(3) ''Tankerman-PIC LG'' is Tankship: Liquefied Gases; and

(4) ''Tankerman-PIC (Barge) LG'' is Tank Barge: Liquefied Gases.

(e) The course in firefighting required for an endorsement as—

(1) ''Tankerman-PIC (Barge)'' is Tank Barge: Firefighting; and

(2) ''Tankerman-PIC'', ''Tankerman-Assistant'', and ''Tankerman-Engineer'' is a firefighting course that meets the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting''.

(f) No school may issue a certificate unless the student has successfully completed an approved course with the appropriate curriculum outlined in Table 13.121(f).

(g) An organization with a course in DL or LG or a course in tank-barge firefighting taught before March 31, 1996, that substantially covered the material required by Table 13.121(f) for liquid cargoes and by Table 13.121(g) for firefighting may seek approval under § 10.302 of this chapter from the Coast Guard for any course taught up to ten years before March 31, 1996.

TABLE 13.121(F)

| Course topics | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| General characteristics, compatibility, reaction, firefighting procedures, and safety precautions for the cargoes of: | | | | |
| Bulk liquids defined as Dangerous Liquids in 46 CFR Part 13 | x | x | ..... | |
| Bulk liquefied gases & their vapors defined as Liquefied Gases in 46 CFR Part 13 | ..... | ..... | x | x |
| Physical phenomena of liquefied gas, including: | | | | |
| Basic concept | ..... | ..... | x | x |

TABLE 13.121(F)—Continued

| Course topics | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| Compression & expansion | | | x | x |
| Mechanism of heat transfer | | | x | x |
| Potential hazards of liquefied gas, including: | | | | |
| Chemical & physical properties | | | x | x |
| Combustion characteristics | | | x | x |
| Results of gas release to the atmosphere | | | x | x |
| Health hazards (skin contact, inhalation, & ingestion) | | | x | x |
| Control of flammability range with inert gas | | | x | x |
| Thermal stress in structure & piping of vessel | | | x | x |
| Cargo systems, including: | | | | |
| Principles of containment systems | x | x | x | x |
| Construction, materials, coatings, & insulation of cargo tanks | x | x | x | x |
| General arrangement of cargo tanks | x | x | x | x |
| Venting & vapor-control systems | x | x | x | x |
| Cargo-handling systems, including: | | | | |
| Piping systems, valves, pumps, & expansion systems | x | x | x | x |
| Operating characteristics | x | x | x | x |
| Instrumentation systems, including: | | | | |
| Cargo-level indicators | x | x | x | x |
| Gas-detecting systems | x | x | x | x |
| Temperature-monitoring systems, cargo | x | x | x | x |
| Temperature-monitoring systems, hull | x | x | x | x |
| Automatic-shutdown systems | x | x | x | x |
| Auxiliary systems, including: | | | | |
| Ventilation, inerting | x | x | x | x |
| Valves, including: | | | | |
| Quick-closing | x | x | x | x |
| Remote-control | x | x | x | x |
| Pneumatic | x | x | x | x |
| Excess-flow | x | x | x | x |
| Safety-relief | x | x | x | x |
| Pressure-vacuum | x | x | x | x |
| Heating-systems: cofferdams & ballast tanks | | | x | x |
| Operations connected with loading & discharging of cargo, including: | | | | |
| Lining up of cargo system and vapor-control system | x | x | x | x |
| Pre-transfer inspections | x | x | x | x |
| Pre-transfer conference and completion of the Declaration of Inspection | x | x | x | x |
| Hooking up of cargo hose, loading arms, and grounding-strap | x | x | x | x |
| Starting of liquid flow | x | x | x | x |
| Calculation of loading rates | x | x | x | x |
| Monitoring of loading rates | x | x | x | x |
| Discussion of loading | x | x | x | x |
| Ballasting & deballasting | x | x | x | x |
| Topping off of cargo tanks | x | x | x | x |
| Discussion of discharging | x | x | x | x |
| Stripping of cargo tanks | x | x | x | x |
| Monitoring of transfers | x | x | x | x |
| Gauging of cargo tanks | x | x | x | x |
| Disconnecting of cargo hoses or loading arms | x | x | x | x |
| Operating procedures & sequence for: | | | | |
| Inerting of cargo tanks & void spaces | x | x | x | x |
| Cooldown & warmup of cargo tanks | | | x | x |
| Gas-freeing | x | x | x | x |
| Loaded or ballasted voyages | x | x | x | x |
| Testing of cargo-tank atmospheres for oxygen & cargo vapor | x | x | x | x |
| Load plan, stability, & stress connected with: | | | | |
| Loading of cargo | x | x | x | x |
| Discharging of cargo | x | x | x | x |
| Ballasting & deballasting | x | | x | |
| Loadline, draft, & trim | x | x | x | x |
| Disposal of boil-off, including: | | | | |
| System design | | | x | x |
| Safety features | | | x | x |
| Stability-letter requirements | x | x | x | x |
| Rules (for tank barge & tankship, both international & Federal) pertaining to operational procedures & pollution prevention. | x | x | x | x |
| Pollution prevention, including: | | | | |
| Procedures to prevent air & water pollution | x | x | x | x |
| Measures to take in event of spillage | x | x | x | x |
| Danger from drift of vapor cloud | x | x | x | x |
| Emergency procedures for the following, including notice to appropriate authorities: | | | | |
| Fire | x | x | x | x |

TABLE 13.121(F)—Continued

| Course topics | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| Collision | x | x | x | x |
| Grounding | x | x | x | x |
| Equipment failure | x | x | x | x |
| Leaks & spills | x | x | x | x |
| Structural failure | x | x | x | x |
| Emergency discharge of cargo | x | x | x | x |
| Entering of cargo tanks | x | x | x | x |
| Emergency shutdown of cargo-handling | x | x | x | x |
| Emergency systems for closing cargo tanks | x | x | x | x |
| Safety precautions relative to: | | | | |
| Dangers of skin contact | x | x | ..... | |
| Inhalation of vapors | x | x | ..... | |
| Electricity & static electricity: hazards & precautions | x | x | ..... | |
| Terminology of tankships for oil & chemicals | x | | ..... | |
| Terminology of tank barges for oil & chemicals | x | x | ..... | |
| Terminology of tankships for liquefied gases | ..... | ..... | x | |
| Terminology of tank barges for liquefied gases | ..... | ..... | x | |
| Principles & procedures of Crude-Oil-Washing (COW) systems, including: | | | | |
| Purpose | x | x | ..... | |
| Equipment & design | x | x | ..... | |
| Operations | x | x | | |
| Safety precautions | x | x | ..... | |
| Maintenance of plant & equipment | x | x | ..... | |
| Principles & procedures of Inert-Gas Systems (IGS), including: | | | | |
| Purpose | x | x | x | |
| Equipment & design | x | x | x | |
| Operations | x | x | x | |
| Safety precautions | x | x | x | |
| Maintenance of plant & equipment | x | x | x | |
| Cargo-tank cleaning: procuredures & precautions. | x | x | ..... | |
| Principles & procedures of vapor-control recovery systems, including: | | | | |
| Purpose | x | x | x | x |
| Principles | x | x | x | x |
| Components | x | x | x | x |
| Hazards | x | x | x | x |
| Coast Guard regulations | x | x | x | x |
| Operating procedures, including: | | | | |
| Testing & inspection requirements | x | x | x | x |
| Pre-transfer procedures | x | x | x | x |
| Connecting sequence | x | x | x | x |
| Start-up procedures | x | x | x | x |
| Normal operations | x | x | x | x |
| Emergency procedures, including notice of release | x | x | x | x |
| Information systems on hazards of cargo | x | x | x | x |
| Safe entry into confined spaces, including: | | | | |
| Definitions & hazards of confined spaces | x | x | x | x |
| Evaluation & assessment of risks & hazards | x | x | x | x |
| Safety precautions & procedures | x | x | x | x |
| Personal protective equipment (PPE) | x | x | x | x |
| Maintenance of PPE | x | x | x | x |
| Emergency procedures | x | x | x | x |
| Federal regulations, national standards, & industry guidelines | x | x | x | x |
| Inspections by marine chemists & competent persons, including hot-work permits & procedures. | x | x | x | x |
| Vessel Response Plans: | | | | |
| Purpose, content, & location of information | x | x | x | x |
| Procedures for notice & mitigation of spills | x | x | x | x |
| Geographic-specific appendices | x | x | x | x |
| Vessel-specific appendices | x | x | x | x |
| Emergency-action checklist | x | x | x | x |

(1) Tankerman-PIC DL.
(2) Tankerman-PIC (Barge) DL.
(3) Tankerman-PIC LG.
(4) Tankerman-PIC (Barge) LG.

TABLE 13.121(g)

| Course topics | 1 | 2 |
|---|---|---|
| Elements of fire (Fire triangle): | | |
| Fuel | X | X |

TABLE 13.121(g)—Continued

| Course topics | 1 | 2 |
|---|---|---|
| Source of ignition | X | X |
| Oxygen | X | X |
| Ignition sources (general): | | |
| Chemical | | X |
| Biological | | X |
| Physical | | X |
| Ignition sources applicable to barges | X | |
| Definitions of flammability and combustibility: | | |
| Flammability | | X |
| Ignition point | X | X |
| Burning temperature | X | X |
| Burning speed | | X |
| Thermal value | | X |
| Lower flammable limit | X | X |
| Upper flammable limit | X | X |
| Flammable range | X | X |
| Inerting | X | X |
| Static electricity | X | X |
| Flash point | X | X |
| Auto-ignition | X | X |
| Spread of fire: | | |
| By radiation | X | X |
| By convection | X | X |
| By conduction | X | X |
| Reactivity | X | X |
| Fire classifications and applicable extinguishing agents | X | X |
| Main causes of fires: | | |
| Oil leakage | X | X |
| Smoking | X | X |
| Overheating pumps | X | X |
| Galley appliances | | X |
| Spontaneous ignition | X | X |
| Hot work | X | X |
| Electrical apparatus | | X |
| Reaction, self-heating, and auto-ignition | | X |
| Fire prevention: | | |
| General | X | X |
| Fire hazards of DL and LG | X | |
| Fire detection: | | |
| Fire- and smoke-detection systems | | X |
| Automatic fire alarms | | X |
| Firefighting equipment: | | |
| Fire mains, hydrants | | X |
| International shore-connection | | X |
| Smothering-installations, carbon dioxide ($CO_2$), foam... | | X |
| Halogenated hydrocarbons | | X |
| Pressure-water spray system in special-category spaces | | X |
| Automatic sprinkler system | | X |
| Emergency fire pump, emergency generator | | X |
| Chemical-powder applicants | | X |
| General outline of required and mobile apparatus | | X |
| Fireman's outfit, personal equipment | | X |
| Breathing apparatus | | X |
| Resuscitation apparatus | | X |
| Smoke helmet or mask | | X |
| Fireproof life-line and harness | | X |
| Fire hose, nozzles, connections, and fire axes | | X |
| Fire blankets | | X |
| Portable fire extinguishers | X | X |
| Limitations of portable and semiportable extinguishers | X | |
| Emergency procedures: | | |
| Arrangements: | | |
| Escape routes | X | X |
| Means of gas-freeing tanks | X | X |
| Class A, B, and C divisions | | X |
| Inert-gas system | | X |
| Ship firefighting organization: | | |
| General alarms | | X |
| Fire-control plans, muster stations, and duties | | X |
| Communications | | X |
| Periodic shipboard drills | | X |
| Patrol system | | X |

TABLE 13.121(g)—Continued

| Course topics | 1 | 2 |
|---|---|---|
| Basic firefighting techniques: | | |
| Sounding alarm | X | X |
| Locating and isolating fires | X | X |
| Stopping leakage of cargo | X | |
| Jettisoning | | X |
| Inhibiting | | X |
| Cooling | | X |
| Smothering | | X |
| Sizing up situation | X | |
| Locating information on cargo | X | |
| Extinguishing | | X |
| Extinguishing with portable units | X | |
| Setting reflash watch | X | X |
| Using additional personnel | X | |
| Firefighting extinguishing-agents: | | |
| Water (solid jet, spray, fog, and flooding) | | X |
| Foam (high, medium and low expansion) | | X |
| Carbon dioxide ($CO_2$) | X | X |
| Halon | | X |
| Aqueous-film-forming foam (AFFF) | | X |
| Dry chemicals | X | X |
| Use of extinguisher on: | | |
| Flammable and combustible liquids | X | |
| Manifold-flange fire | X | |
| Drip-pan fire | X | |
| Pump fire | X | |
| Drills for typical fires on barges | X | |
| Field exercises: | | |
| Extinguish small fires using portable extinguishers: | | |
| Electrical | X | X |
| Manifold-flange | X | X |
| Drip-pan | X | X |
| Pump | X | X |
| Use self-contained breathing apparatus | | X |
| Extinguish extensive fires with water | | X |
| Extinguish fires with foam, or chemical | | X |
| Fight fire in smoke-filled enclosed space wearing SCBA | | X |
| Extinguish fire with water fog in an enclosed space with heavy smoke | | X |
| Extinguish oil fire with fog applicator and spray nozzles, dry-chemical, or foam applicators | | X |
| Effect a rescue in a smoke-filled space while wearing breathing apparatus | | X |

(1) Course in tank-barge firefighting.
(2) From the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting''.

**§ 13.123 Recency of service or experience for original tankerman endorsement.**

An applicant for an original tankerman endorsement in subpart B, C, D, or E of this part shall have obtained at least 25% of the qualifying service and, if the endorsement requires transfers, at least two of the qualifying transfers, within five years of the date of application.

**§ 13.125 Physical requirements.**

Each applicant for an original tankerman endorsement shall meet the physical requirements of § 10.205(d) of this chapter, excluding paragraph (d)(2) of that section.

**§ 13.127 Service requirements: general.**

(a) A service letter must specify—

(1) The classification of cargo (DL, LG, or, for a restricted endorsement, a specific product) handled while the applicant accumulated the service;

(2) The dates, the number and kinds of transfers the applicant has participated in, and the number of transfers that involved commencement or completion; and

(3) That the applicant has demonstrated to the satisfaction of the signer that he or she is fully capable of supervising transfers of liquid cargo, including

(i) Pre-transfer inspection;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading-arms;

(iv) Line-up of the cargo system for loading and discharge;

(v) Start of liquid flow during loading;

(vi) Start of cargo pump and increase of pressure to normal discharge pressure;

(vii) Calculation of loading-rates;

(viii) Monitoring;

(ix) Topping-off of cargo tanks during loading;

(x) Stripping of cargo tanks;

(xi) Ballasting and deballasting, if appropriate;

(xii) Disconnection of the cargo hoses or loading-arms; and

(xiii) Securing of cargo systems.

(b) In determining the numbers and kinds of transfers that the applicant has participated in under paragraph (a)(2) of this section, the following rules apply:

(1) A transfer must involve the loading or discharge from at least one of the vessel's cargo tanks to or from a shore facility or another vessel. A shift of cargo from one tank to another tank is not a transfer for this purpose.

(2) Regardless of how long the transfer lasts beyond four hours, it counts as only one transfer.

(3) A transfer must include both a commencement and a completion.

(4) Regardless of how many tanks or products are being loaded or discharged

at the same time, a person may receive credit for only one transfer, one loading, and one discharge a watch.

(5) Credit for a transfer during a watch of less than four hours accrues only if the watch includes either the connection and the commencement of transfer or the completion of transfer and the disconnection.

(6) Credit for a commencement of loading accrues only if the applicant participates in the pre-transfer inspection, the pre-transfer conference including execution of the Declaration of Inspection, the connection of cargo hoses or loading-arms, the line-up of the cargo system for the loading, the start of liquid flow, and the calculation of loading-rates.

(7) Credit for a commencement of discharge accrues only if the applicant participates in the pre-transfer inspection, the pre-transfer conference including execution of the Declaration of Inspection, the connection of cargo hoses or loading-arms, the line-up of the cargo system for the discharge, the start of the cargo pump or pumps and increase of pressure to normal pressure for discharge, and the monitoring of discharge rates.

(8) Credit for a completion of transfer, whether loading or discharge, accrues only if the applicant participates in the topping-off at the loading port, or in the stripping of cargo tanks and the commencement of ballasting, if required by the vessel's transfer procedures, at the discharge port.

**§ 13.129 Quick-reference table for tankerman.**

Table 13.129 provides a guide to the requirements for various tankerman endorsements. Provisions in the reference sections are controlling.

TABLE 13.129

| Category | Minimum age | Physical required | Service | Recency of service | Proof of service | Firefighting certificate | Course | English language |
|---|---|---|---|---|---|---|---|---|
| Tankerman PIC Subpart B. | 18: 13.201(a) ... | Yes: 13.125 ..... | Yes: 13.203, 30 days licensed or 60 days unlicensed and 10 cargo transfers. | Yes: 13.123, 25% of service, 2 transfers within 5 yrs. | Yes: 13.205, Letter. | Yes: 13.207, Basic F/F*. | Yes: 13.209, DL or LG. | Yes: 13.201(g). |
| Tankerman PIC (Barge) Subpart C. | 18: 13.301(a) ... | Yes: 13.125 ..... | Yes: 13.303, 60 days on T/Vs or 6 months on T/Bs and 10 cargo transfers. | Yes: 13.123, 25% of service, 2 transfers within 5 yrs. | Yes: 13.305, Letter. | Yes: 13.307, Basic F/F* or Tank-barge F/F. | Yes: 13.309, DL or LG. | Yes: 13.301(g). |
| Tankerman Assistant Subpart D. | 18: 13.401(a) ... | Yes: 13.125 ..... | Yes: 13.403, 90 days on tankships or attend a cargo course. | Yes: 13.123, 25% of service, within 5 yrs. | Yes: 13.405, Letter. | Yes: 13.407, Basic F/F*. | Yes: 13.409, Cargo course or 90 days service. | Yes: 13.401(f). |
| Tankerman Engineer Subpart E. | 18: 13.501(a) ... | Yes: 13.125 ..... | Yes: 13.503, 90 days licensed or 30 days licensed and completion of a DL or LG course or 60 days unlicensed and completion of a DL or LG course. | Yes: 13.123, 25% of service, within 5 yrs. | Yes: 13.505, Letter. | Yes: 13.507, Basic F/F*. | Yes: 13.509, Cargo course or service requirements. | Yes: 13.501(g). |
| Restricted Tankerman PIC. | 18: 13.111(b) ... | Yes: 13.111(b) ... | Yes: 13.111(b), 30 days licensed or 60 days unlicensed and 10 cargo transfers. | Yes: 13.111(b), 25% of service, 2 transfers within 5 yrs. | Yes: 3.111(b), Letter. | Yes: 13.111(b), Basic F/F*. | No ..... | Yes: 13.111(b). |
| Restricted Tankerman PIC (Barge). | 18: 13.111(c) ... | Yes: 13.111(c) ... | Yes: 13.111(c), 60 days on T/Vs or 6 months on T/Bs and 10 cargo transfers. | Yes: 13.111(c), 25% of service, 2 transfers within 5 yrs. | Yes: 13.111(c), Letter. | Yes: 13.111(c), Basic F/F* or Tank-barge F/F. | No ..... | Yes: 13.111(c). |
| Restricted Tankerman PIC (Barge) facility. | 18: 13.111(d) ... | Yes: 13.111(d) ... | Yes: 13.111(d)(4), ''Competent Person'' and knowledge of tank-cleaning, gas-freeing. | No ..... | Yes: 13.111(d), Letter. | No ..... | No ..... | Yes: 13.111(d). |

*From the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting''.

## Subpart B—Requirements for ''Tankerman-PIC'' Endorsement.

**§ 13.201 Original application for ''Tankerman-PIC'' endorsement.**

Each applicant for an original ''Tankerman-PIC'' endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.203;

(e) Meet the requirement of a course on firefighting in § 13.207;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.209; and

(g) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and be capable of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

**§ 13.203 Eligibility requirements: Experience.**

Each applicant for a ''Tankerman-PIC'' endorsement for DL or LG shall meet the requirements of either paragraphs (a) and (b) or paragraph (c) of this section.

(a) Each applicant shall present evidence of—

(1) At least 30 days of service as a licensed deck officer or a licensed engineering officer on one or more tankships certified to carry DL or LG appropriate to the endorsement applied for;

(2) At least 60 days of unlicensed service on deck or in the engine department on one or more tankships certified to carry DL or LG appropriate to the endorsement applied for; or

(3) A mixture of licensed and unlicensed service on deck or in the engine department on tankships certified to carry DL or LG appropriate to the endorsement applied for equivalent to 30 days of licensed service, every 2 days of unlicensed service counting as 1 day of licensed service.

(b) Each applicant shall present evidence of participation, under the supervision of a ''Tankerman-PIC,'' in at least ten transfers of liquid cargo in bulk of the classification desired on tankships, including at least—

(1) Five loadings and five discharges;

(2) Two commencements of loading and two completions of loading; and

(3) Two commencements of discharge and two completions of discharge.

(c) Each applicant already holding an MMD endorsed ''Tankerman-PIC'' for DL and seeking an endorsement for LG, or the converse, shall—

(1) Provide evidence of at least half the service required by paragraph (a) of this section; and

(2) Comply with paragraph (b) of this section, except that he or she need provide evidence of only three loadings and three discharges along with evidence of compliance with paragraphs (b)(2) and (3) of this section.

**§ 13.205 Proof of service for ''Tankerman-PIC'' endorsement.**

Service must be proved by a letter on company letterhead from the owner, operator, or master of the vessel on which the applicant obtained the service. The letter must contain the information described in § 13.127(a).

**§ 13.207 Eligibility requirements: Firefighting course.**

Each applicant for an original ''Tankerman-PIC'' endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'', completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or a tankerman endorsement.

**§ 13.209 Eligibility requirements: Cargo course.**

Each applicant for an original ''Tankerman-PIC'' endorsement shall present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

## Subpart C—Requirements for ''Tankerman-PIC (Barge)'' Endorsement

**§ 13.301 Original application for ''Tankerman-PIC (Barge)'' endorsement.**

Each applicant for a ''Tankerman-PIC (Barge)'' endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tank vessels in accordance with § 13.303;

(e) Meet the requirement of a firefighting course in § 13.307;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.309; and

(g) Be capable of speaking, and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo, and be capable of reading the English found in the Declaration of Inspection, vessel response plans, and Cargo Information Cards.

**§ 13.303 Eligibility requirements: Experience.**

Each applicant for a ''Tankerman-PIC (Barge)'' endorsement for DL or LG shall meet the requirements of either paragraphs (a) and (b) or paragraph (c) of this section.

(a) Each applicant shall present evidence of—

(1) At least 60 days of service on one or more tank vessels certified to carry DL or LG appropriate to the endorsement applied for; or

(2) At least 6 months of closely related service directly involved with tank barges appropriate to the endorsement applied for; and

(b) Participation, under the supervision of a ''Tankerman-PIC'' or ''Tankerman-PIC (Barge),'' in at least ten transfers of liquid cargo in bulk of the classification desired on tankships or tank barges, including at least—

(1) Five loadings and five discharges;

(2) Two commencements of loading and two completions of loading; and

(3) Two commencements of discharge and two completions of discharge.

(c) Each applicant already holding an MMD endorsed ''Tankerman-PIC (Barge)'' for DL and seeking an endorsement for LG, or the converse, shall—

(1) Provide evidence of at least half the service required by paragraph (a) of this section; and

(2) Comply with paragraph (b) of this section, except that he or she need provide evidence of only three loadings and three discharges along with evidence of compliance with paragraphs (b)(2) and (3) of this section.

**§ 13.305 Proof of service for ''Tankerman-PIC (Barge)'' endorsement.**

Service must be proved by a letter on company letterhead from a terminal owner or operator; a tank barge owner or operator; or the owner, operator, or master of a tankship. The letter must contain the information required by § 13.127(a), excluding paragraph (a)(3)(vii).

**§ 13.307 Eligibility requirements: Firefighting course.**

Each applicant for a ''Tankerman-PIC (Barge)'' endorsement shall present a certificate of successful completion from—

(a) A course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'', completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or a tankerman endorsement;

(b) A course in tank-barge firefighting, approved by the Commandant and meeting § 13.121, completed within five years of the date of application for the endorsement.

**§ 13.309 Eligibility requirements: Cargo course.**

Each applicant for an original ''Tankerman-PIC (Barge)'' endorsement shall present a certificate of completion from a course in DL or LG approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

## Subpart D—Requirements for ''Tankerman-Assistant'' Endorsement

### § 13.401 Original application for ''Tankerman-Assistant'' endorsement.

Each applicant for a ''Tankerman-Assistant'' endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Meet the requirement of a firefighting course in § 13.407;

(e) (1) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.409; or

(2) Present evidence of service on tankships in accordance with § 13.403; and

(f) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo.

### § 13.403 Eligibility requirements: Experience.

(a) Each applicant for a ''Tankerman-Assistant'' endorsement shall present—

(1) Evidence of at least 90 days of deck service on tankships certified to carry DL or LG appropriate to the endorsement applied for; or

(2) A certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed in § 13.409.

(b) Each applicant already holding an MMD endorsed ''Tankerman-Assistant'' for DL and seeking one for LG, or the converse, shall—

(1) Provide evidence of at least half the service required in paragraph (a)(1) of this section; or

(2) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for as prescribed in § 13.409.

### § 13.405 Proof of service for ''Tankerman-Assistant'' endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, or master of a tankship. The letter must specify—

(1) The classification of cargo (DL or LG) carried while the applicant accumulated the service;

(2) The number of days of deck service the applicant accumulated on the tankship; and

(3) That the applicant has demonstrated an understanding of cargo transfer and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out duties respecting cargo transfer and transfer equipment assigned by the PIC of the transfer without direct supervision by the PIC; or

(b) Service must be proved by—

(1) Certificates of Discharge from tankships with the appropriate classification of cargo (DL, LG, or both); and

(2) A letter on company letterhead from the owner, operator, or master of one of the tankships stating that he or she has demonstrated—

(i) An understanding of cargo transfer; and

(ii) A sense of responsibility that, in the opinion of the signer, will allow him or her to safely carry out duties respecting cargo and its equipment assigned by the PIC of the transfer without direct supervision by the PIC.

### § 13.407 Eligibility requirements: Firefighting course.

Each applicant for a ''Tankerman-Assistant'' endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'', completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate from one of these courses for a license or endorsement.

### § 13.409 Eligibility requirements: Cargo course.

Each applicant for an original ''Tankerman-Assistant'' endorsement that has not presented the required service on tankships must present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

## Subpart E—Requirements for ''Tankerman-Engineer'' Endorsement

### § 13.501 Original application for ''Tankerman-Engineer'' endorsement.

Each applicant for a ''Tankerman-Engineer'' endorsement shall—

(a) Be at least 18 years old;

(b) Apply on a Coast Guard form;

(c) Present evidence of passing a physical examination in accordance with § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.503;

(e) Meet the requirement of a firefighting course in § 13.507;

(f) Meet the requirement of a course in DL or LG appropriate for the endorsement applied for in § 13.509; and

(g) Be capable of speaking and understanding, in English, all instructions needed to commence, conduct, and complete a transfer of cargo.

### § 13.503 Eligibility requirements: Experience.

(a) Each applicant for a ''Tankerman-Engineer'' endorsement shall present evidence of at least—

(1) 90 days of service as a licensed engineering officer on tankships certified to carry DL or LG appropriate to the endorsement applied for;

(2) 30 days of service as a licensed engineering officer on tankships certified to carry DL or LG appropriate to the endorsement applied for, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a); or

(3) 60 days of unlicensed service in the engine department on tankships certified to carry DL or LG appropriate to the endorsement applied for, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a).

(b) Each applicant already holding an MMD endorsed ''Tankerman-Engineer'' for DL and seeking one for LG, or the converse, shall provide evidence of at least half the service required by—

(1) Paragraph (a)(1) of this section; or

(2) Paragraph (a)(2) or (3) of this section, and a certificate of completion from a course in DL or LG appropriate for the endorsement applied for as prescribed by § 13.509(a).

### § 13.505 Proof of service for ''Tankerman-Engineer'' endorsement.

(a) Service must be proved by a letter on company letterhead from the owner, operator, or master or chief engineer of a tankship. The letter must specify—

(1) The classification of cargo (DL, LG, or both) carried while the applicant accumulated the service; and

(2) The number of days of licensed and unlicensed service in the engine department on tankships; or

(b) Service must be proved by certificates of discharge from tankships with the appropriate classification of cargo (DL, LG, or both).

### § 13.507 Eligibility requirements: Firefighting course.

Each applicant for a ''Tankerman-Engineer'' endorsement shall present a certificate of successful completion from a course in shipboard firefighting, approved by the Commandant and meeting the basic firefighting section of the IMO's Resolution A.437 (XI), ''Training of Crews in Fire Fighting'',

completed within five years of the date of application for the endorsement, unless he or she has previously submitted such a certificate for a license or tankerman endorsement.

**§ 13.509 Eligibility requirements: Cargo course.**

Each applicant for an original ''Tankerman-Engineer'' endorsement that has not presented service prescribed by § 13.503(a)(1) must present a certificate of completion from a course in DL or LG, appropriate for tankships, approved by the Commandant, appropriate to the endorsement applied for, within two years of the date of application.

## PART 15—MANNING REQUIREMENTS

12. The authority citation for part 15 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

13. Section 15.301 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d), to read as follows:

**§ 15.301 Definitions of terms in this part.**

(a) * * *

*Tank barge* means a non-self-propelled tank vessel.

*Tank vessel* means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

*Tankship* means any tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue and propelled by power or sail.

*Transfer* means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement. Section 13.127 of this chapter describes what qualifies as participation in a creditable transfer.

* * * * *

(c) The following ratings are established in part 12 of this chapter. When used in this part, terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(1) Able seaman.

(2) Ordinary seaman.

(3) Qualified member of the engine department.

(4) Lifeboatman.

(5) Wiper.

(6) Steward's department (F.H.).

(d) The following ratings are established in part 13 of this chapter. When used in this part, the terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(1) Tankerman-PIC.

(2) Tankerman-PIC (Barge).

(3) Restricted Tankerman-PIC.

(4) Restricted Tankerman-PIC (Barge).

(5) Tankerman-Assistant.

(6) Tankerman-Engineer.

14. Section 15.860 is added to subpart G, to read as follows:

**§ 15.860 Tankerman.**

(a) The Officer in Charge, Marine Inspection, enters on the Certificate of Inspection issued to each manned tank vessel subject to the regulations in this chapter the number of crewmembers required to hold valid merchant mariners' documents with the proper tankerman endorsement. Table 15.860(a)(1) provides the minimal requirements for tankermen aboard manned tank vessels; Table 15.860(a)(2) provides the tankerman endorsements required for personnel aboard tankships.

(b) For each tankship of more than 5,000 gross tons certified for voyages beyond the Boundary Line:

(1) The number of ''Tankerman-PICs'' or restricted ''Tankerman-PICs'' carried must be not fewer than two.

(2) The number of ''Tankerman-Assistants'' carried must be not fewer than three.

(3) The number of ''Tankerman-Engineers'' carried must be not fewer than two.

(c) For each tankship of 5,000 gross tons or less certified for voyages beyond the Boundary Line:

(1) The number of ''Tankerman-PICs'' or restricted ''Tankerman-PICs'' carried must be not fewer than two.

(2) The number of ''Tankerman-Engineers'' carried must be not fewer than two, unless only one engineer is required, in which case the number of ''Tankerman-Engineers'' carried may be just one.

(d) For each tankship not certified for voyages beyond the Boundary Line, if the total crew complement is:

(1) One or two, the number of ''Tankerman-PICs'' or restricted ''Tankerman-PICs'' carried may be just one.

(2) More than two, the number of ''Tankerman-PICs'' or restricted ''Tankerman-PICs'' carried must be not fewer than two.

(e) For each tank barge manned under § 31.15–5 of this chapter, if the total crew complement is:

(1) One or two, the number of ''Tankerman-PICs'', restricted ''Tankerman-PICs'', ''Tankerman-PICs (Barge)'', or restricted ''Tankerman-PICs (Barge)'' carried may be just one.

(2) More than two, the number of ''Tankerman-PICs'', restricted ''Tankerman-PICs'', ''Tankerman-PICs (Barge)'', or restricted ''Tankerman-PICs (Barge)'' carried must be not fewer than two.

(f) The following personnel aboard each tankship certified for voyages beyond the Boundary Line shall hold valid merchant mariners' documents, endorsed as follows:

(1) The master and chief mate shall each hold a ''Tankerman-PIC'' or restricted ''Tankerman-PIC'' endorsement.

(2) The chief, first assistant, and cargo engineers shall each hold a ''Tankerman-Engineer'' or ''Tankerman (PIC)'' endorsement.

(3) Each licensed person acting as the PIC of a transfer of liquid cargo in bulk shall hold a ''Tankerman-PIC'' or restricted ''Tankerman-PIC'' endorsement.

(4) Each licensed or unlicensed person, who is assigned by the PIC duties and responsibilities related to the cargo or cargo-handling equipment during a transfer of liquid cargo in bulk but is not directly supervised by the PIC, shall hold a ''Tankerman-Assistant'' endorsement.

(g) The endorsements required by this section must be for the classification of the liquid cargo in bulk or of the cargo residue being carried.

TABLE 15.860(a)(1).—MINIMAL REQUIREMENTS FOR TANKERMEN ABOARD MANNED TANK VESSELS

| Tank vessels | Tankerman PIC | Tankerman assistant | Tankerman engineer | Tankerman PIC or tankerman PIC (barge) |
|---|---|---|---|---|
| Tankship Certified for Voyages Beyond Boundary Line: | | | | |
| Over 5000 GT | 2 | 3 | 2 | ..... |
| 5000 GT or less | 2 | ..... | *2 | ..... |

TABLE 15.860(a)(1).—MINIMAL REQUIREMENTS FOR TANKERMEN ABOARD MANNED TANK VESSELS—Continued

| Tank vessels | Tankerman PIC | Tankerman assistant | Tankerman engineer | Tankerman PIC or tankerman PIC (barge) |
|---|---|---|---|---|
| Tankship Not Certified for Voyages Beyond Boundary Line | **2 | ..... | ..... | ..... |
| Tank Barge Certified for Voyages Beyond Boundary Line | ..... | ..... | ..... | ***2 |

* If only one engineer is required, then only one Tankerman Engineer is required.
** If the total crew complement is one or two persons, then only one Tankerman PIC is required.
*** If the total crew complement is one or two persons, then only one Tankerman PIC or Tankerman PIC (Barge) is required.

TABLE 15.860(a)(2).—TANKERMEN ENDORSEMENTS REQUIRED FOR PERSONNEL ABOARD TANKSHIPS

[Endorsement for the Classification of the Bulk Liquid Cargo or Residues Carried]

| Tankship certified for voyages beyond boundary line | Tankerman PIC | | Tankerman engineer | Tankerman assistant |
|---|---|---|---|---|
| Master | ✔ | | | |
| Chief Mate | ✔ | | | |
| Chief Engineer | ✔ | or | ✔ | |
| First Assistant Engineer | ✔ | or | ✔ | |
| Cargo Engineer | ✔ | or | ✔ | |
| Licensed Person Acting as PIC of Transfer of Liquid Cargo in Bulk | ✔ | | | |
| Licensed or Unlicensed Person Not Directly Supervised by PIC | ..... | ..... | ..... | ✔ |

**SUBCHAPTER D—TANK VESSELS**

## PART 30—GENERAL PROVISIONS

15. The authority citation for part 30 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

16. Section 30.10–71 is revised to read as follows:

### § 30.10–71 Tankerman—TB/ALL.

The following ratings are established in part 13 of this chapter. The terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.

(b) Tankerman-PIC (Barge).

(c) Restricted Tankerman-PIC.

(d) Restricted Tankerman-PIC (Barge).

(e) Tankerman-Assistant.

(f) Tankerman-Engineer.

## PART 31—INSPECTION AND CERTIFICATION

17. The authority citation for part 31 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105, 9101, 9102; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

18. Section 31.15–1 is revised to read as follows:

### § 31.15–1 Licensed officers and crews—TB/ALL.

The Officer in Charge, Marine Inspection (OCMI), that inspects the vessel enters on the Certificate of Inspection (COI) for each tank vessel the complement of officers and crew that are required by statute and regulation and that in the judgment of the OCMI are necessary for its safe operation. The OCMI may change the complement from time to time by endorsement to the COI for changes in conditions of employment.

## PART 35—OPERATIONS

19. The authority citation for part 35 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101, 9101, 9102; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 CFR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

20. Section 35.05–15 is amended by revising the section heading and paragraph (b)(1) to read as follows:

### § 35.05–15 Tank vessel security—TB/ALL.

* * * * *

(b) * * *

(1) The owner, managing operator, master, and person in charge of a vessel towing a tank barge that need not be manned, and each of them, shall be responsible for monitoring the security and integrity of the tank barge and for ensuring adherence to proper safety precautions. These responsibilities include, but are not limited to—

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing-ports and scuppers, if any, unobstructed; meets any loadline or freeboard requirements; and neither leaks cargo into the water, voids, or cofferdams nor leaks water into the tanks, voids, or cofferdams;

(ii) Ensuring that every tank barge in the tow is properly secured within the tow;

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage of cargo into the water, voids, or cofferdams and for leakage of water into the tanks, voids, or cofferdams;

(iv) Knowing the cargo of every tank barge in the tow, any hazards associated with the cargo, and what to do on discovery of a leak;

(v) Ensuring that the crew of the vessel know the cargo of every tank barge in the tow, any hazards associated with the cargo, and what to do on discovery of a leak;

(vi) Reporting to the Coast Guard any leaks from a tank barge in the tow into the water, as required by 33 CFR 151.15; and

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the proper safety precautions for tank vessels, and that no activity takes place in the vicinity of the barges that could create a hazard.

* * * * *

21. Section 35.35–1 is revised to read as follows:

### § 35.35–1 Persons on duty—TB/ALL.

(a) On each tankship required to be documented under the laws of the

United States, the owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that—

(1) Enough ''Tankerman-PICs'' or restricted ''Tankerman-PICs'', and ''Tankerman-Assistants'', authorized for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a person qualified to be the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(b) On each United States tank barge subject to inspection—

(1) The owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155; and

(2) The person designated as the person in charge of the transfer shall ensure that—

(i) Enough qualified personnel are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(ii) The approved portable extinguishers required by Table 34.50–10(a) of this chapter are aboard and readily available before any transfer of liquid cargo in bulk or any operation of barge machinery or boilers.

(c) On each foreign tankship, the owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that—

(1) Enough personnel, qualified for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks; and

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a qualified person designated as a person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(d) On each foreign tank barge—

(1) The owner, managing operator, master, and person in charge of the vessel, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under subpart C of 33 CFR part 155.

(2) The person designated as the person in charge of the transfer shall ensure that enough qualified personnel are on duty to safely transfer liquid cargo in bulk or safely clean cargo tanks.

(e) The person in charge of the transfer of liquid cargo in bulk on the tank vessel shall be responsible for the safe loading and discharge of the liquid cargo in bulk.

(f) The person in charge of the transfer of liquid cargo in bulk on each United States tank vessel, when lightering to or from a foreign tank vessel, shall ensure that the person in charge on the foreign tank vessel, or his or her interpreter, is capable of reading, speaking, and understanding the English language well enough to allow a safe transfer.

22. Section 35.35–10 is revised to read as follows:

**§ 35.35–10 Closing of freeing-ports, scuppers, and sea valves—TB/ALL.**

The person in charge of each transfer of liquid cargo in bulk shall ensure that all freeing-ports and scuppers are properly plugged during the transfer except on tank vessels using water for cooling decks. Although under no circumstances may sea valves be secured by locks, the valves must be closed, and lashed or sealed, to indicate that they should not be opened during the transfer.

23. Section 35.35–15 is amended by revising paragraph (b) to read as follows:

**§ 35.35–15 Connecting for cargo transfer—TB/ALL.**

* * * * *

(b) When cargo connections are supported by ship's tackle, the person in charge of the transfer of liquid cargo in bulk shall determine the weights involved to ensure that adequate tackle is used.

* * * * *

24. The heading and introductory text of § 35.35–20 are revised to read as follows:

**§ 35.35–20 Inspection before transfer of cargo—TB/ALL.**

Before the transfer of liquid cargo in bulk, the person in charge of the transfer shall inspect the vessel to ensure the following:

* * * * *

25. Section 35.35–25 is revised to read as follows:

**§ 35.35–25 Approval to start transfer of cargo—TB/ALL.**

When the person in charge of the transfer of liquid cargo in bulk has ensured that the requirements of §§ 35.35–20 and 35.35–30 have been met, he or she may give approval to start the transfer.

26. Section 35.35–30 is amended by revising the first sentence of paragraph (a), the title and introductory text of the ''Declaration of Inspection before Transfer of Liquid Cargo in Bulk'' of paragraph (b), and by adding a new paragraph (13) to the ''Declaration of Inspection '' in paragraph (b) to read as follows:

**§ 35.35–30 ''Declaration of Inspection'' for tank vessel—TB/ALL.**

(a) After an inspection under § 35.35–20 but before a transfer of cargo, the person in charge of the transfer shall prepare, in duplicate, a Declaration of Inspection. * * *

(b) * * *

Declaration of Inspection Before Transfer of Liquid Cargo in Bulk

Date _____

Vessel _____

Port of _____

Product[s] being transferred—
(Classification[s] and Kind[s])

_____

_____

I, _____, the person in charge of the transfer of liquid cargo in bulk about to begin, do certify that I have personally inspected this vessel with reference to the following requirements set forth in 46 CFR 35.35–20, and that opposite each of the applicable items listed below I have indicated whether the vessel complies with all pertinent regulations.

* * *

(13) Have the applicable sections of the vessel response plan been reviewed before commencing transfer, and arrangements or contingencies made for implementation of the Plan should the need arise?

* * * * *

27. Section 35.35–35 is revised to read as follows:

**§ 35.35–35 Duties of person in charge of transfer—TB/ALL.**

The person in charge of the transfer of liquid cargo in bulk shall control the transfer as follows:

(a) Supervise the operations of cargo-system valves.

(b) Commence transfer of cargo at slow rate of cargo flow.

(c) Observe cargo connections for leakage.

(d) Observe pressure on cargo system.

(e) If transfer is loading (rather than discharging), observe rate of loading to avoid overflow of tanks.

28. Section 35.35–42 is revised to read as follows:

**§ 35.35–42 Restrictions on vessels alongside a tank vessel loading or unloading cargo of Grade A, B, or C—TB/ALL.**

(a) No vessel may come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading or unloading cargo of Grade A, B, or C

without permission of the person in charge of the transfer on the tank vessel.

(b) No vessel may come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading or unloading cargo of Grade A, B, or C unless the conditions then prevailing are acceptable to the persons in charge of cargo-handling on both vessels.

29. Section 35.35–55 is amended by revising paragraph (a) to read as follows:

**§ 35.35–55 Transfer of other cargo or stores on tank vessels—TB/ALL.**

(a) No packaged goods, freight, or ship's stores may be loaded or unloaded during the loading or unloading of cargo of Grade A, B, or C except by permission of the person in charge of the transfer of liquid cargo in bulk. No explosives may be loaded, unloaded, or carried as cargo on any tank vessel containing cargo of Grade A, B, or C.

* * * * *

## SUBCHAPTER H—PASSENGER VESSELS

## PART 78—OPERATIONS

30. The authority citation for part 78 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Subpart 78.95 consisting of § 78.95–1 is added to read as follows:

### Subpart 78.95—Person in Charge of Transfer of Liquid Cargo in Bulk

**§ 78.95–1 General.**

A qualified person in charge of a transfer of liquid cargo in bulk shall be designated in accordance with subpart C of 33 CFR part 155.

## SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

## PART 90—GENERAL PROVISIONS

32. The authority citation for part 90 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

33. Section 90.10–42 is added to read as follows:

**§ 90.10–42 Tankerman.**

The following ratings are established in part 13 of this chapter. The terms for the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.

(b) Tankerman-PIC (Barge).

(c) Restricted Tankerman-PIC.

(d) Restricted Tankerman-PIC (Barge)

(e) Tankerman-Assistant.

(f) Tankerman-Engineer.

## PART 97—OPERATIONS

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

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

35. Subpart 97.95 consisting of § 97.95–1 is added to read as follows:

### Subpart 97.95—Person in Charge of Transfer of Liquid Cargo in Bulk

**§ 97.95–1 General.**

A qualified person in charge of a transfer of liquid cargo in bulk shall be designated in accordance with subpart C of 33 CFR part 155.

## PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

36. The authority citation for part 98 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37. Section 98.30–17 is revised to read as follows:

**§ 98.30–17 Qualifications of person in charge.**

(a) The operator or agent of each vessel shall designate the person in charge of a transfer of liquid cargo in bulk to or from a portable tank.

(b) Each person designated as person in charge of a transfer of liquid cargo in bulk to or from a portable tank shall—

(1) On a tank barge, hold a ''Tankerman-PIC'', restricted ''Tankerman-PIC'', ''Tankerman-PIC (Barge)'', or restricted ''Tankerman-PIC (Barge)'' merchant mariner's document authorizing transfer of the classification of cargo involved;

(2) On a self-propelled tank vessel, hold—

(i) A license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel; and

(ii) A ''Tankerman-PIC'' or restricted ''Tankerman-PIC'' merchant mariner's document authorizing transfer of the classification of cargo involved; and

(3) On a vessel other than a tank vessel required by this chapter to have a licensed individual aboard, hold—

(i) If the liquid cargo in bulk is of Grade D or E and is carried in limited amounts, a license authorizing service as a master, mate, pilot, operator, or engineer aboard that vessel; and

(ii) If the liquid cargo in bulk is of Grade C or above or is regulated under part 153 of this chapter, a ''Tankerman-PIC'' or restricted ''Tankerman-PIC'' merchant mariner's document authorizing transfer of the classification of cargo involved.

## PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

38. The authority citation for part 105 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

39. Section 105.45–1 is revised to read as follows:

**§ 105.45–1 Loading or dispensing petroleum products.**

(a) A commercial fishing vessel must have aboard a letter of compliance valid under subpart 105.15 of this part and must be in compliance with the requirements in the letter while dispensing petroleum products. This letter of compliance issued to a vessel will state—

(1) The number of crewmembers required to hold documents endorsed as tankermen under part 13 of this chapter; and

(2) For each vessel of 200 gross tons or over, the complement of officers under Title 46 U.S.C. 8304.

(b) Each person in charge of a transfer of liquid cargo in bulk to or from a cargo tank shall hold—

(1) A valid merchant mariner's document endorsed as ''Tankerman-PIC'' or restricted ''Tankerman-PIC'' authorizing transfer of the classification of cargo involved; or

(2) A valid license authorizing service as master, mate, pilot, or engineer.

40. Subparts 105.50 consisting of §§ 105.50–1 and 105.50–5 and 105.60 consisting of §§ 105.60–1, 105.60–5, and 105.60–10 are removed.

## PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

41. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

42. Section 151.03–53 is revised to read as follows:

**§ 151.03–53 Tankerman.**

The following ratings are established in part 13 of this chapter. The terms for

the ratings identify persons holding valid merchant mariners' documents for service in the ratings issued under that part:

(a) Tankerman-PIC.

(b) Tankerman-PIC (Barge).

(c) Restricted Tankerman-PIC.

(d) Restricted Tankerman-PIC (Barge).

(e) Tankerman-Assistant.

(f) Tankerman-Engineer.

43. Paragraph (f)(1) of § 151.45–2 is revised to read as follows:

**§ 151.45–2 Special operating requirements.**

* * * * *

(f) * * *

(1) The licensed operator, person in command, and mate of a vessel towing a tank barge that need not be manned, and each of them, shall be responsible for monitoring the security and integrity of the tank barge and for ensuring adherence to proper safety precautions. These responsibilities include, but are not limited to—

(i) Ensuring that every tank barge added to the tow has all tank openings properly secured; has its freeing-ports and scuppers, if any, unobstructed; meets any loadline or freeboard requirements; and neither leaks cargo into the water, voids, or cofferdams nor leaks water into the tanks, voids, or cofferdams;

(ii) Ensuring that every tank barge in the tow is properly secured within the tow;

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage of cargo into the water, voids, or cofferdams and for leakage of water into the tanks, voids, or cofferdams;

(iv) Knowing the cargo of every tank barge in the tow, all hazards associated with the cargo, and what to do on discovery of a leak;

(v) Ensuring that the crew of the vessel know the cargo of every tank barge in the tow, all hazards associated with the cargo, and what to do on discovery of a leak;

(vi) Reporting to the Coast Guard any leaks from a tank barge in the tow into the water, as required by 33 CFR 151.15; and

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the proper safety precautions for tank vessels, and that no activity takes place in the vicinity of the barges that could create a hazard.

* * * * *

44. Section 151.45–4 is amended by revising its heading and paragraph (a) to read as follows:

**§ 151.45–4 Cargo-handling.**

(a) On a United States tank barge subject to inspection—

(1) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that no transfer of liquid cargo in bulk or cleaning of a cargo tank takes place unless under the supervision of a qualified person designated as the person in charge of the transfer or the cleaning under Subpart C of 33 CFR part 155.

(2) The person in charge of the transfer shall ensure that enough qualified personnel are on duty to safely transfer liquid cargo in bulk or to safely clean cargo tanks.

* * * * *

## PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

45. The authority citation for part 153 is revised to read as follows:

**Authority:** 46 U.S.C. 3703, 9101; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

46. Section 153.957 is revised to read as follows:

**§ 153.957 Persons in charge of transferring liquid cargo in bulk or cleaning cargo tanks.**

(a) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that—

(1) Enough ''Tankerman-PICs'' or restricted ''Tankerman-PICs'', and ''Tankerman-Assistants'', authorized for the classification of cargo carried, are on duty to safely transfer liquid cargo in bulk or to safely clean cargo tanks;

(2) Each transfer of liquid cargo in bulk and each cleaning of a cargo tank is supervised by a qualified person designated as a person in charge of the transfer or the cleaning under Subpart C of 33 CFR part 155;

(3) When cargo regulated under this part is due for transfer, the person in charge of the transfer has received special training in the particular hazards associated with the cargo and in all special procedures for its handling; and

(4) On each foreign vessel, the person in charge understands his or her responsibilities as described in this subchapter.

(b) Upon request by the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, the owner and operator of the vessel, and his or her agent, and each of them, shall provide documentary evidence that the person in charge has received the training specified by paragraph (a)(3) of this section and is capable of competently performing the procedures necessary for the cargo.

## PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

47. The authority citation for part 154 is revised to read as follows:

**Authority:** 46 U.S.C. 3703, 9101; 49 CFR 1.46.

48. Section 154.1831 and is revised to read as follows:

**§ 154.1831 Persons in charge of transferring liquid cargo in bulk or preparing cargo tanks.**

(a) The owner and operator of the vessel, and his or her agent, and each of them, shall ensure that—

(1) Enough ''Tankerman-PICs'' or restricted ''Tankerman-PICs'', and ''Tankerman-Assistants'', authorized for the classification of cargo carried, are on duty to safely conduct a transfer of liquid cargo in bulk or a cool-down, warm-up, gas-free, or air-out of each cargo tank;

(2) Each transfer of liquid cargo in bulk, and each cool-down, warm-up, gas-free, or air-out of a cargo tank, is supervised by a person designated as a person in charge of the transfer that possesses the qualifications required by 33 CFR 155.710;

(3) On each foreign tankship, the person in charge of either a transfer of liquid cargo in bulk or a cool-down, warm-up, gas-free, or air-out of a cargo tank possesses the qualifications required by 33 CFR 155.710;

(4) When cargo regulated under this part is being transferred, the person in charge of the transfer has received special training in the particular hazards associated with the cargo and in all special procedures for its handling; and

(5) On each foreign vessel, the person in charge understands his or her responsibilities as described in this subchapter.

(b) Upon request by the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, the owner and operator of the vessel, and his or her agent, and each of them, shall provide documentary evidence that the person in charge has received the training specified by paragraph (a)(4) of this section and is capable of competently performing the procedures necessary for the cargo.

Dated: March 24, 1995.

**J.C. Card,**

*Rear Admiral, Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 95–8123; Filed 4–3–95; 8:45 am]

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# Part IV

# Environmental Protection Agency

## 40 CFR Part 136

## Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Technical Amendments; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 136

**[FRL–5162–7]**

## Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Technical Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule: Technical amendments.

**SUMMARY:** This action under the Clean Water Act (CWA) section 304(h) amends 40 CFR Part 136 to add clarifying footnotes to the lists of approved test procedures, to update method citations in Tables IA, IB, IC, and ID, to amend the incorporation by reference section of the regulation accordingly, and to correct certain typographical errors and omissions in the Technical Amendments appearing in the **Federal Register** of January 31, 1994.

**EFFECTIVE DATE:** This amendment becomes effective on May 4, 1995. The incorporation by reference of the publications listed in this document are approved by the Director of Federal Register as of May 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** James E. Longbottom, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Telephone Number: (513) 569–7308.

**SUPPLEMENTARY INFORMATION:**

### I

These technical amendments update and/or correct errors and inadvertent omissions in the references to analytical methods already approved under section 304(h) to the current editions published by EPA, U.S. Geological Survey, Standard Methods for the Examination of Water and Wastewater (Standard Methods), the American Society for Testing and Materials (ASTM), and the Association of Official Analytical Chemists (AOAC) International. No new methods are introduced. EPA has carefully reviewed each approved method for substantive changes between the current editions and the previously approved editions. Methods cited in this amendment that were not previously cited are substantively the same as the approved EPA method and/or were derived from the EPA method.

### II

References in Table IB, to the American Society for Testing and Materials (ASTM), have also been updated and corrected where appropriate to the 1994 edition. Several ASTM methods are no longer cited because they have been discontinued by ASTM and are not included in the 1994 Standards book.

### III

The remaining amendments in this notice are very minor and are typographical or editorial in nature. The parts of Tables IA, IC and ID, and certain notes to Tables IB, IC, and ID where reference updates, corrections, and clarifications have been made are reprinted in this notice for the information and use of the regulated community. Table IB has been reprinted in its entirety for the convenience of the user.

Unless otherwise indicated in this notice, the methods contained in the Standard Methods 18th edition and the ASTM Standards 1994 edition are previously approved methods that were reballoted without technical change or were not reballoted. Any changes are editorial, typographical, or grammatical.

### IV Regulatory Requirements

*A. Executive Order 12866*

Under Executive Order 12866, EPA must determine whether a regulation is ''major'' and, therefore, requires a regulatory impact analysis. EPA has determined that these technical amendments are not major as they will not result in an effect on the economy of $100 million or more, a significant increase in cost or prices, or any of the effects described in the Executive Order. These amendments simply specify analytical techniques which may be used by laboratories in measuring concentrations of certain analytes and, therefore, have no adverse economic impacts.

*B. Administrative Procedure Act*

The Administrative Procedure Act, 5 U.S.C. 553 (b)(B), authorizes an agency to forego notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. EPA believes that public comment on the foregoing technical amendments is unnecessary because the updates to method references do not change the methods contained therein. In publishing the new editions of their test protocols, ASTM and Standard Methods have balloted these methods for reapproval without technical change or the methods were republished as unballoted. Additionally, the typographical errors corrected in the CFR do not amend substantive requirements. Therefore, notice and public procedure is unnecessary and does not apply to this Technical Amendment Notice.

*C. Regulatory Flexibility Act*

This amendment is consistent with the objectives of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) because it will not have a significant economic impact on a substantial number of small entities. The procedures cited in this rule give all laboratories the flexibility to use these procedures or already approved alternative procedures.

*D. Paperwork Reduction Act*

This rule contains no request for information activities and, therefore, no information collection request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: February 15, 1995.

**Joseph K. Alexander,**

*Acting Assistant Administrator for Research and Development, U.S. Environmental Protection Agency.*

40 CFR part 136 is amended as follows:

## PART 136—[AMENDED]

1. The authority citation for part 136 continues to read as follows:

**Authority:** Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended as follows:

a. In paragraph (a) by revising entries 1 and 2 of Table IA, Table IB, entries 33 and 37 and Notes 3 and 5[a] of Table IC, entries 8, 9, 10, and 22 and Note 5 of Table ID;

b. In paragraph (b) by revising Reference 10; and

c. In paragraph (e), in table II, under ''Table IB-Inorganic Tests:'' by revising entry 10 and under ''Metals:'' by revising entries ''3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals,

except boron, chromium VI and mercury'', 42 and 61, to read as follows:

**§ 136.3 Identification of test procedures.**

(a) * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL TEST PROCEDURES

| Parameter, units and method | Method [1] | Reference (method No. or page) | | | |
|---|---|---|---|---|---|
| | | EPA [2] | Standard methods 18th ed. | ASTM | USGS [3] |
| Bacteria: | | | | | |
| 1. Coliform (fecal), number per 100 mL | Most Probable Number (MPN), 5 tube, 3 dilution. | p. 132 | 9221C and E. | | |
| | Membrane filter (MF)[4], single step. | p. 124 | 9222D | | B–0050–85 |
| 2. Coliform (fecal) in presence of chlorine, number per 100 mL. | MPN, 5 tube, 3 dilution | p. 132 | 9221C and E . | | |
| | MF[4], single step [5] | p. 124 | 9222D | | |
| * * * | * | * | * | * | * |

Table IA Notes:

[1] The method used must be specified when results are reported.

[2] Bordner, R.H., and J.A. Winter, eds. 1978. ''Microbiological Methods for Monitoring the Environment, Water and Waste''. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency. EPA–600/8–78–017.

[3] Britton, L.J., and P.E. Greeson, P.E., eds., 1989. ''Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples,'' Techniques of Water Resources Investigations of the U.S. Geological Survey, Techniques of Water Resources Investigations, Book 5, Chapter A4, Laboratory Analysis, U.S. Geological Survey, U.S. Department of Interior, Reston, Virginia.

[4] A 0.45 µm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated, and to be free of extractables which could interfere with their growth.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| 1. Acidity, as $CaCO_3$, mg/L: | | | | | |
| Electrometric endpoint or phenolphthalein endpoint. | 305.1 | 2310 B(4a) | D1067–92 | | |
| 2. Alkalinity, as $CaCO_3$, mg/L: | | | | | |
| Electrometric or Colorimetric titration to pH 4.5, manual or automated. | 310.1 | 2320 B | D1067–92 | I–1030–85 | 973.43.[3] |
| | 310.2 | | | I–2030–85 | |
| 3. Aluminum—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 202.1 | 3111 D | | I–3051–85 | |
| AA furnace | 202.2 | 3113 B | | | |
| Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES) [36]. | [5] 200.7 | 3120 B | | | |
| Direct Current Plasma (DCP) [36] | | | D4190–82(88) | | Note 34. |
| Colorimetric (Eriochrome cyanine R). | | 3500–Al D | | | |
| 4. Ammonia (as N), mg/L: | | | | | |
| Manual, distillation (at pH 9.5),[6] followed by. | 350.2 | 4500–$NH_3$ B | | | 973.49.[3] |
| Nesslerization | 350.2 | 4500–$NH_3$ C | D1426–93(A) | I–3520–85 | 973.49.[3] |
| Titration | 350.2 | 4500–$NH_3$ E | | | |
| Electrode | 350.3 | 4500–$NH_3$ F or G | D1426–93(B) | | |
| Automated phenate, or | 350.1 | 4500–$NH_3$ H | | I–4523–85 | |
| Automated electrode | | | | | Note 7. |
| 5. Antimony-Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 204.1 | 3111 B | | | |
| AA furnace | 204.2 | 3113 B | | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| 6. Arsenic-Total,[4] mg/L: | | | | | |
| Digestion [4] followed by | 206.5 | | | | |
| AA gaseous hydride | 206.3 | 3114 B 4.d | D2972–93(B) | I–3062–85 | |
| AA furnace | 206.2 | 3113 B | D2972–93(C) | | |

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| ICP/AES,[36] or | [5] 200.7 | 3120 B | | | |
| Colorimetric (SDDC) | 206.4 | 3500–As C | D2972–93(A) | I–3060–85 | |
| 7. Barium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 208.1 | 3111 D | | I–3084–85 | |
| AA furnace | 208.2 | 3113 B | D4382–91 | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36] | | | | | Note 34. |
| 8. Beryllium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 210.1 | 3111 D | D3645–93(88)(A) | I–3095–85 | |
| AA furnace | 210.2 | 3113 B | D3645–93(88)(B) | | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP, or | | | D4190–82(88) | | Note 34. |
| Colorimetric (aluminon) | | 3500–Be D | | | |
| 9. Biochemical oxygen demand ($BOD_5$), mg/L: | | | | | |
| Dissolved Oxygen Depletion | 405.1 | 5210 B | | I–1578–78 [8] | 973.44,[3] p. 17.[9] |
| 10. Boron [37]—Total, mg/L: | | | | | |
| Colorimetric (curcumin) | 212.3 | 4500–B B | | I–3112–85 | |
| ICP/AES, or | [5] 200.7 | 3120 B | | | |
| DCP | | | D4190–82(88) | | Note 3.[4] |
| 11. Bromide, mg/L: | | | | | |
| Titrimetric | 320.1 | | D1246–82(88)(C) | I–1125–85 | p. S44.[10] |
| 12. Cadmium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 213.1 | 3111 B or C | D3557–90(A or B) | I–3135–85 or I–3136–85. | 974.27,[3] p. 37.[9] |
| AA furnace | 213.2 | 3113 B | D3557–90(D) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | I–1472–85 | |
| DCP [36] | | | D4190–82(88) | | Note 34. |
| Voltametry,[11] or | | | D3557–90(C) | | |
| Colorimetric (Dithizone) | | 3500–Cd D | | | |
| 13. Calcium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 215.1 | 3111 B | D511–93(B) | I–3152–85 | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP, or | | | | | Note 34. |
| Titrimetric (EDTA) | 215.2 | 3500–Ca D | D511–93(A) | | |
| 14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L [12]: | | | | | |
| Dissolved Oxygen Depletion with nitrification inhibitor. | | 5210 B | | | |
| 15. Chemical oxygen demand (COD), mg/L; Titrimetric, or. | 410.1<br>410.2<br>410.3 | 5220 C | D1252–88(A) | I–3560–85<br>I–3562–85 | 973.46,[3] p. 17.[9] |
| Spectrophotometric, manual or automated. | 410.4 | 5220 D | D1252–88(B) | I–3561–85 | Notes 13 or 14. |
| 16. Chloride, mg/L: | | | | | |
| Titrimetric (silver nitrate) or | | 4500–$Cl^-$ B | D512–89(B) | I–1183–85 | |
| (Mercuric nitrate) | 325.3 | 4500–$Cl^-$ C | D512–89(A) | I–1184–85 | 973.51.[3] |
| Colorimetric, manual or | | | | I–1187–85 | |
| Automated (Ferricyanide) | 325.1 or 325.2 | 4500–$Cl^-$ E | | I–2187–85 | |
| 17. Chlorine—Total residual, mg/L; Titrimetric: | | | | | |
| Amperometric direct | 330.1 | 4500–Cl D | D1253–86(92) | | |
| Iodometric direct | 330.3 | 4500–Cl B | | | |
| Back titration ether end- point [15] or | 330.2 | 4500–Cl C | | | |
| DPD–FAS | 330.4 | 4500–Cl F | | | |
| Spectrophotometric, DPD | 330.5 | 4500–Cl G | | | |
| Or Electrode | | | | | Note 16. |
| 18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by: | | | | | |
| AA chelation-extraction or | 218.4 | 3111 C | | I–1232–85 | |
| Colorimetric (Diphenylcarbazide) | | 3500–Cr D | D1687–92(A) | I–1230–85 | |
| 19. Chromium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 218.1 | 3111 B | D1687–92(B) | I–3236–85 | 974.27.[3] |

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| AA chelation-extraction | 218.3 | 3111 C | | | |
| AA furnace | 218.2 | 3113 B | D1687–92(C) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP,[36] or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Diphenylcarbazide) | | 3500–Cr D | | | |
| 20. Cobalt—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 219.1 | 3111 B or C | D3558–90(A or B) | I–3239–85 | p. 37.[9] |
| AA furnace | 219.2 | 3113 B | D3558–90(C) | | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP | | | D4190–82(88) | | Note 34. |
| 21. Color platinum cobalt units or dominant wavelength, hue, luminance purity: | | | | | |
| Colorimetric (ADMI), or | 110.1 | 2120 E | | | Note 18. |
| (Platinum cobalt), or | 110.2 | 2120 B | | I–1250–85 | |
| Spectrophotometric | 110.3 | 2120 C | | | |
| 22. Copper—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 220.1 | 3111 B or C | D1688–90(A or B) | I–3270–85 or I3271–85. | 974.27 [3] p. 37.[9] |
| AA furnace | 220.2 | 3113 B | D1688–90(C) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36] or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Neocuproine) or | | 3500–Cu D | | | |
| (Bicinchoninate) | | Or E | | | Note 19. |
| 23. Cyanide—Total, mg/L: | | | | | |
| Manual distillation with $MgCl_2$ followed by. | | 4500–CN C | D2036–91(A) | | |
| Titrimetric, or | | 4500–CN D | | | p. 22.[9] |
| Spectrophotometric, manual or | [31] 335.2 | 4500–CN E | D2036–91(A) | I–3300–85 | |
| Automated [20] | [31] 335.3 | | | | |
| 24. Cyanide amenable to chlorination,mg/L: | | | | | |
| Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric. | 335.1 | 4500–CN G | D2036–91(B) | | |
| 25. Fluoride—Total, mg/L: | | | | | |
| Manual distillation [6] followed by | | 4500–F B | | | |
| Electrode, manual or | 340.2 | 4500–F C | D1179–93(B) | | |
| Automated | | | | I–4327–85 | |
| Colorimetric (SPADNS) | 340.1 | 4500–F D | D1179–93(A) | | |
| Or Automated complexone | 340.3 | 4500–F E | | | |
| 26. Gold—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 231.1 | 3111 B | | | |
| AA furnace, or | 231.2 | | | | |
| DCP | | | | | Note 34. |
| 27. Hardness—Total, as $CaCO_3$, mg/L | | | | | |
| Automated colorimetric, | 130.1 | | | | |
| Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33). | 130.2 | 2340 B or C | D1126–86(92) | I–1338–85 | 973.52B.[3] |
| 28. Hydrogen ion (pH), pH units | | | | | |
| Electrometric measurement, or | 150.1 | 4500–$H^+$ B | D1293–84(90)(A or B) | I–1586–85 | 973.41.[3] |
| Automated electrode | | | | | Note 21. |
| 29. Iridium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration or | 235.1 | 3111 B | | | |
| AA furnace | 235.2 | | | | |
| 30. Iron—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 236.1 | 3111 B or C | D1068–90(A or B) | I–3381–85 | 974.27.[3] |
| AA furnace | 236.2 | 3113 B | D1068–90(C) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36] or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Phenanthroline) | | 3500–Fe D | D1068–90(D) | | Note 22. |

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| 31. Kjeldahl Nitrogen—Total, (as N), mg/L | | | | | |
| Digestion and distillation followed by. | 351.3 | 4500–$NH_3$ B or C | D3590–89(A) | | |
| Titration | 351.3 | 4500–$NH_3$ E | D3590–89(A) | | 973.48.[3] |
| Nesslerization | 351.3 | 4500–$NH_3$ C | D3590–89(A) | | |
| Electrode | 351.3 | 4500–$NH_3$ F or G | | | |
| Automated phenate colorimetric | 351.1 | | | I–4551–78 [8] | |
| Semi-automated block digestor colorimetric, or. | 351.2 | | D3590–89(B) | | |
| Manual or block digestor Potentiometric. | 351.4 | | D3590–89(A) | | |
| 32. Lead—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 239.1 | 3111 B or C | D3559–90(A or B) | I–3399–85 | 974.27.[3] |
| AA furnace | 239.2 | 3113 B | D3559–90(D) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36] | | | D4190–82(88) | | Note 34. |
| Voltametry [11] or | | | D3559–90(C) | | |
| Colorimetric (Dithizone) | | 3500–Pb D | | | |
| 33. Magnesium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 242.1 | 3111 B | D511–93(B) | I–3447–85 | 974.27.[3] |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP, or | | | | | Note 34. |
| Gravimetric | | 3500–Mg D | | | |
| 34. Manganese—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 243.1 | 3111 B | D858–90(A or B) | I–3454–85 | 974.27.[3] |
| AA furnace | 243.2 | 3113 B | D858–90(C) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36] or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Persulfate), or | | 3500–Mn D | | | 920.203.[3] |
| (Periodate) | | | | | Note 23. |
| 35. Mercury—Total,[4] mg/L: | | | | | |
| Cold vapor, manual or | 245.1 | 3112 B | D3223–91 | I–3462–85 | 977.22.[3] |
| Automated | 245.2 | | | | |
| 36. Molybdenum—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 246.1 | 3111 D | | I–3490–85 | |
| AA furnace | 246.2 | 3113 B | | | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP | | | | | Note 34. |
| 37. Nickel—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 249.1 | 3111 B or C | D1886–90(A or B) | I–3499–85 | |
| AA furnace | 249.2 | 3113 B | D1886–90(C) | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP [36], or | | | D4190–82(88) | | Note 34. |
| Colorimetric (heptoxime) | | 3500–Ni D | | | |
| 38. Nitrate (as N), mg/L: | | | | | |
| Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40). | 352.1 | | | | 973.50,[3] 419 D,[17] p. 28.[9] |
| 39. Nitrate-nitrite (as N), mg/L: | | | | | |
| Cadmium reduction, Manual or | 353.3 | 4500–$NO_3^-$ E | D3867–90(B) | | |
| Automated, or | 353.2 | 4500–$NO_3^-$ F | D3867–90(A) | I–4545–85 | |
| Automated hydrazine | 353.1 | 4500–$NO_3^-$ H | | | |
| 40. Nitrite (as N), mg/L; Spectrophotometric: | | | | | |
| Manual or | 354.1 | 4500–$NO_2^-$ B | | | Note 25. |
| Automated (Diazotization) | | | | I–4540–85 | |
| 41. Oil and grease—Total recoverable, mg/L: | | | | | |
| Gravimetric (extraction) | 413.1 | 5520 B [38] | | | |
| 42. Organic carbon—Total (TOC), mg/L: | | | | | |
| Combustion or oxidation | 415.1 | 5310 B, C, or D | D2579–93 (A or B) | | 973.47,[3] p. 14.[24] |
| 43. Organic nitrogen (as N), mg/L: | | | | | |

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4) | | | | | |
| 44. Orthophosphate (as P), mg/L; Ascorbic acid method: | | | | | |
| Automated, or | 365.1 | 4500–P F | | I–4601–85 | 973.56.[3] |
| Manual single reagent | 365.2 | 4500–P E | D515–88(A) | | 973.55[3]. |
| Manual two reagent | 365.3 | | | | |
| 45. Osmium—Total [4], mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration, or | 252.1 | 3111 D | | | |
| AA furnace | 252.2 | | | | |
| 46. Oxygen, dissolved, mg/L: | | | | | |
| Winkler (Azide modification), or | 360.2 | 4500–O C | D888–92(A) | I–1575–78 [8] | 973.45B.[3] |
| Electrode | 360.1 | 4500–O G | D888–92(B) | I–1576–78 [8] | |
| 47. Palladium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration, or | 253.1 | 3111 B | | | p. S27.[10] |
| AA furnace | 253.2 | | | | p. S28.[10] |
| DCP | | | | | Note 34. |
| 48. Phenols, mg/L: | | | | | |
| Manual distillation [26] | 420.1 | | | | Note 27. |
| Followed by: | | | | | |
| Colorimetric (4AAP) manual, or | 420.1 | | | | Note 27. |
| Automated [19] | 420.2 | | | | |
| 49. Phosphorus (elemental), mg/L: | | | | | |
| Gas-liquid chromatography | | | | | Note 28. |
| 50. Phosphorus—Total, mg/L: | | | | | |
| Persulfate digestion followed by | 365.2 | 4500–P B,5 | | | 973.55.[3] |
| Manual or | 365.2 or 365.3 | 4500–P E | D515–88(A) | | |
| Automated ascorbic acid reduction | 365.1 | 4500–P F | | I–4600–85 | 973.56.[3] |
| Semi-automated block digestor | 365.4 | | D515–88(B) | | |
| 51. Platinum—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 255.1 | 3111 B | | | |
| AA furnace | 255.2 | | | | |
| DCP | | | | | Note 34. |
| 52. Potassium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 258.1 | 3111 B | | I–3630–85 | 973.53.[3] |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| Flame photometric, or | | 3500–K D | | | |
| Colorimetric | | | | | 317 B.[17] |
| 53. Residue—Total, mg/L: | | | | | |
| Gravimetric, 103–105° | 160.3 | 2540 B | | I–3750–85 | |
| 54. Residue—filterable, mg/L: | | | | | |
| Gravimetric, 180° | 160.1 | 2540 C | | I–1750–85 | |
| 55. Residue—nonfilterable (TSS), mg/L: | | | | | |
| Gravimetric, 103–105° post washing of residue. | 160.2 | 2540 D | | I–3765–85 | |
| 56. Residue—settleable, mg/L: | | | | | |
| Volumetric, (Imhoff cone), or gravimetric. | 160.5 | 2540 F | | | |
| 57. Residue—Volatile, mg/L: | | | | | |
| Gravimetric, 550° | 160.4 | | | I–3753–85 | |
| 58. Rhodium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration, or | 265.1 | 3111 B | | | |
| AA furnace | 265.2 | | | | |
| 59. Ruthenium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration, or | 267.1 | 3111 B | | | |
| AA furnace | 267.2 | | | | |
| 60. Selenium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA furnace | 270.2 | 3113 B | D3859–93(B) | | |

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

| Parameter, units and method | Reference (method number or page) | | | | |
|---|---|---|---|---|---|
| | EPA [1,35] | STD methods 18th ed. | ASTM | USGS [2] | Other |
| ICP/AES,[36] or | [5] 200.7 | 3120 B | | | |
| AA gaseous hydride | | 3114 B | D3859–93(A) | I–3667–85 | |
| 61. Silica [37]—Dissolved, mg/L; 0.45 micron filtration followed by: | | | | | |
| Colorimetric, Manual or | 370.1 | 4500–Si D | D859–88 | I–1700–85 | |
| Automated (Molybdosilicate), or | | | | I–2700–85 | |
| ICP | [5] 200.7 | 3120 B | | | |
| 62. Silver—Total,[4] mg/L; Digestion [4,29] followed by: | | | | | |
| AA direct aspiration | 272.1 | 3111 B or C | | I–3720–85 | 974.27,[3] p. 37.[9] |
| AA furnace | 272.2 | 3113 B | | | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP | | | | | Note 34. |
| 63. Sodium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 273.1 | 3111 B | | I–3735–85 | 973.54.[3] |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP, or | | | | | Note 34. |
| Flame photometric | | 3500 Na D | | | |
| 64. Specific conductance, micromhos/cm at 25 °C: | | | | | |
| Wheatstone bridge | 120.1 | 2510 B | D1125–91(A) | I–1780–85 | 973.40.[3] |
| 65. Sulfate (as $SO_4$), mg/L: | | | | | |
| Automated colorimetric (barium chloranilate). | 375.1 | | | | |
| Gravimetric | 375.3 | 4500–$SO_4^{-2}$ C or D | | | 925.54.[3] |
| Turbidimetric, or | 375.4 | | D516–90 | | 426C.[30] |
| 66. Sulfide (as S), mg/L: | | | | | |
| Titrimetric (iodine), or | 376.1 | 4500–$S^{-2}$ E | | I–3840–85 | |
| Colorimetric (methylene blue) | 376.2 | 4500–$S^{-2}$ D | | | |
| 67. Sulfite (as $SO_3$), mg/L: | | | | | |
| Titrimetric (iodine-iodate) | 377.1 | 4500–$SO_3^{-2}$ B | | | |
| 68. Surfactants, mg/L: | | | | | |
| Colorimetric (methylene blue) | 425.1 | 5540 C | D2330–88 | | |
| 69. Temperature, °C: | | | | | |
| Thermometric | 170.1 | 2550 B | | | Note 32. |
| 70. Thallium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 279.1 | 3111 B | | | |
| AA furnace | 279.2 | | | | |
| ICP/AES, or | [5] 200.7 | 3120 B | | | |
| 71. Tin—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 282.1 | 3111 B | | I–3850–78 [8] | |
| AA furnace, or | 282.2 | 3113 B | | | |
| ICP/AES | [5] 200.7 | | | | |
| 72. Titanium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 283.1 | 3111 D | | | |
| AA furnace | 283.2 | | | | |
| DCP | | | | | Note 34. |
| 73. Turbidity, NTU: | | | | | |
| Nephelometric | 180.1 | 2130 B | D1889–88(A) | I–3860–85 | |
| 74. Vanadium—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration | 286.1 | 3111 D | | | |
| AA furnace | 286.2 | | D3373–93 | | |
| ICP/AES | [5] 200.7 | 3120 B | | | |
| DCP, or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Gallic acid) | | 3500–V D | | | |
| 75. Zinc—Total,[4] mg/L; Digestion [4] followed by: | | | | | |
| AA direct aspiration [36] | 289.1 | 3111 B or C | D1691–90 (A or B) | I–3900–85 | 974.27,[3] p. 37.[9] |
| AA furnace | 289.2 | | | | |
| ICP/AES [36] | [5] 200.7 | 3120 B | | | |
| DCP,[36] or | | | D4190–82(88) | | Note 34. |
| Colorimetric (Dithizone) or | | 3500–Zn E | | | |
| (Zincon) | | 3500–Zn F | | | Note 33. |

Table IB Notes:

[1] ''Methods for Chemical Analysis of Water and Wastes'', Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL-CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al, ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments,'' U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in ''Methods for Chemical Analysis of Water and Wastes, 1979 and 1983''. One (section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE TO TABLE IB NOTE 4: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)
b. is visibly transparent with a turbidity measurement of 1 NTU or less
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, ''Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes,'' is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, (Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[8] The approved method is that cited in ''Methods for Determination of Inorganic Substances in Water and Fluvial Sediments'', USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency'', Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional $BOD_5$ test which measures ''total BOD''. The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional $BOD_5$ may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using the nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 ml 0.00281 N potassium iodate/100 ml solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, (Inc.) Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the mainfold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., et al, ''Methods for Analysis of Organic Substances in Water,'' Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectophotometric procedure.

[28] R. F. Addison and R.G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography,'' Journal of Chromatography, vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation'', Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029,'' 1986—Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals''.

[36] ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals'', CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.
[37] When determining boron and silica, only plastic, PTFE, or quartz laboratory ware may be used from start until completion of analysis.
[38] Only the trichlorofluoromethane extraction solvent is approved.

TABLE IC.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

| Parameter [1] | EPA method number [2, 7] | | | Standard methods 18th ed. | ASTM | Other |
|---|---|---|---|---|---|---|
| | GC | GC/MS | HPLC | | | |
| * * | * | * | | * | * | * |
| 33. Dibenzo(a,h)anthracene | 610 | 625, 1625 | 610 | 6410 B, 6440 B | D4657–92. | |
| * * | * | * | | * | * | * |
| 37. 1,4-Dichlorobenzene | 601, 602, 612 | 624, 625, 1625 | | 6410 B, 6220 B, 6230 B. | | |
| * * | * | * | | * | * | * |

Table IC Notes:
[1] All parameters are expressed in micrograms per liter (μg/L).
[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit'' of this Part 136.
[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978.
* * * * * * *
[5a] 625, Screening only.
* * * * * * *
[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]

| Parameter | Method | EPA[2, 7] | Standard methods 18th ed. | ASTM | Other |
|---|---|---|---|---|---|
| * * | * | | * | * | * |
| 8.α-BHC | GC | 608 | 6630 B & C | D3086–90 | Note 3, p. 7. |
| | GC/MS | [5] 625 | 6410 B | | |
| 9. β-BHC | GC | 608 | 6630 | D3086–90 | |
| | GC/MS | [5] 625 | 6410 B | | |
| 10. δ-BHC | GC | 608 | 6630 B & C | D3086–90 | |
| | GC/MS | [5] 625 | 6410 B | | |
| * * | * | | * | * | * |
| 22. Demeton-S | GC | | | | Note 3, p. 25: Note 6, p. S51. |
| * * | * | | * | * | * |

Table ID Notes:
[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.
[2] The full text of Methods 608 and 625 are given at Appendix A. ''Test Procedures for Analysis of Organic Pollutants,'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B. ''Definition and Procedure for the Determination of the Method Detection Limit'', of this Part 136.
[3] ''Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater,'' U.S. Environmental Protection Agency, September, 1978. This EPA publication includes thin-layer chromatography (TLC) methods.
* * * * * * *
[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.
[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency.'' Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).
[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

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(b) * * *

References, Sources, Costs, and Table Citations

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(10) Annual Book of ASTM Standards, Water and Environmental Technology, Section 11, Volumes 11.01 and 11.02, 1994 in 40 CFR 136.3, Tables IB, IC, ID and IE.

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(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

| Parameter | Container [1] | Preservation [2 3] | Maximum holding time [4] |
|---|---|---|---|
| * * * | * | * * | * |
| Table IB—Inorganic Tests: | | | |
| * * * | * | * * | * |
| 10. Boron | P, PFTE, or Quartz | $HNO_3$ to pH<2 | 6 months. |
| * * * | * | * * | * |
| Metals [7] | | | |
| * * * | * | * * | * |
| 3, 5–8, 12, 13, 19, 20, 22, 26, 29, 30, 32–34, 36, 37, 45, 47, 51, 52, 58–60, 62, 63, 70–72, 74, 75. Metals, except boron, chromium VI and mercury. | P, G | $HNO_3$ to pH<2 | 6 months. |
| * * * | * | * * | * |
| 42. Organic Carbon | P, G | Cool to 4°C, HCl or $H_2$2SO4 or $H_3$PO4, to pH<2 | 28 days. |
| * * * | * | * * | * |
| 61. Silica | P, PFTE, or Quartz | Cool, 4°C | 28 days. |
| * * * | * | * * | * |

Table II—Notes:

[1] Polyethylene (P) or Glass (G).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid ($HNO_3$) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid ($H_2SO_4$) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and sodium-hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details. The term ''analyze immediately'' usually means within 15 minutes or less of sample collection.

* * * * * * *

[7] Samples should be filtered immediately on-site before adding preservative for dissolved metals.

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federal register

Tuesday
April 4, 1995

# Part V

# Securities and Exchange Commission

**17 CFR Part 239 et al.**

**Improving Descriptions of Risk by Mutual Funds and Other Investment Companies; Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 239, 270, and 274

**[Release Nos. 33–7153; 34–35546; IC–20974; File No. S7–10–95]**

**RIN 3235–AG43**

## Improving Descriptions of Risk by Mutual Funds and Other Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Concept release; request for comments.

**SUMMARY:** The Securities and Exchange Commission (the ''SEC'' or ''Commission'') is seeking comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies (''funds'' or ''investment companies''). In order to encourage individual investor comments and suggestions, the SEC is including in the Release an appendix directed to investors, which the SEC intends to reprint separately and distribute to investors.

**DATES:** The SEC requests comments on or before July 7, 1995.

**ADDRESSES:** Three copies of your comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comment letters should refer to File No. S7–10–95. All comments received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. If you are an individual investor and do not have access to a copier machine, you may send in one copy of your comments.

**FOR FURTHER INFORMATION CONTACT:** Susan Nash, Senior Special Counsel, (202) 942–0697, Paul B. Goldman, Chief Financial Analyst, (202) 942–0510, Roseanne Harford, Senior Counsel, (202) 942–0689, Martha H. Platt, Senior Counsel, (202) 942–0725, in the Division of Investment Management, or Craig McCann, Professional Fellow, (202) 942–8032, Office of Economic Analysis.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

Today the SEC is continuing its efforts to enhance the information that investors in funds receive to assist them in making an informed investment decision. In recent years, the SEC has taken significant steps designed to improve the understandability and comparability of fund disclosure of performance and expenses.[1] The SEC is now requesting comment on how to improve risk disclosure for investment companies, including ways to increase the comparability of disclosure about funds' risk levels through quantitative measures or other means.[2]

Under existing SEC rules, a fund is required to discuss in its prospectus the principal risk factors associated with investing in the fund.[3] Funds typically describe the risks of investing in the fund by describing the risks of particular investment policies that the fund may use and investments that the fund may make.[4] Lengthy and highly technical descriptions of permissible policies and investments that are often used in meeting existing requirements may make it difficult for investors to understand the total risk level of a fund. The SEC staff has found that funds typically provide only the most general information on the risk level of the fund taken as a whole and has encouraged funds to modify their existing disclosure to enhance investor understanding of risks.[5] The SEC believes that it is now appropriate to explore whether SEC disclosure requirements should be revised in order to improve the communication of fund risks to investors and increase the likelihood that investors will readily grasp the risks of investing in a particular fund before they invest.

Several factors make it important that the SEC explore better ways of explaining fund risks to investors. First, average Americans are placing increasing reliance on funds to meet important financial needs, such as retirement and college expenses.[6] Understanding the risks of various investment products is one of the most important ingredients in creating an overall investment strategy or portfolio to meet these financial needs.[7] Second,

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[1] See, *e.g.*, Disclosure of Mutual Fund Performance and Portfolio Managers, Investment Company Act of 1940 (''Investment Company Act'') Rel. No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] (requiring mutual fund prospectuses or annual reports to discuss performance and provide line graph comparing fund performance to that of an appropriate market index over the last ten fiscal years; financial highlights table of prospectus revised to include total return information and generally to provide investors with information showing the performance of funds on a per share basis); Registration Form for Closed-End Management Investment Companies, Investment Company Act Rel. No. 19115 (Nov. 20, 1992) [57 FR 56826, 56829 (Dec. 1, 1992)] (improvements to financial highlights table for closed-end funds; fee table providing standard format for expense information required in closed-end fund prospectuses); Advertising by Investment Companies, Investment Company Act Rel. No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)] [hereinafter ''Rel. 16245''] (mutual fund advertisements and sales literature containing performance data required to include uniformly computed performance data); Consolidated Disclosure of Mutual Fund Expenses, Investment Company Act Rel. No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)] (fee table required in mutual fund prospectuses).

[2] The SEC requested comment on methods for disclosing risk in 1993 when it proposed rule amendments that would have given investors the option of purchasing mutual fund shares based on a short form prospectus. Off-the-Page Prospectuses for Open-End Management Investment Companies, Investment Company Act Rel. No. 19342 (Mar. 19, 1993) [58 FR 16141, 16145 (Mar. 25, 1993)] [hereinafter ''Rel. 19342'']. In particular, the SEC asked whether the short form prospectus should be required to contain a standardized presentation of the degree and kind of risk presented by a mutual fund relative to other mutual funds. A limited number of comments were received on this topic, with the comments being almost evenly divided whether standardized risk disclosure should be required. See Summary of Comment Letters Relating to Proposed Rule 482(g) Made in Response to Investment Company Act Release No. 19342, File No. S7–11–93, Jan. 27, 1994, at 17–18 [hereinafter ''Summary of Comments: Rel. 19342'']. 

[3] Risk factors include those peculiar to the fund and those that apply generally to funds with similar investment policies and objectives or, in the case of closed-end funds, similar capital structures or trading markets. Item 4(c), Form N–1A, & Guide 21, Disclosure of Risk Factors, Guidelines for Form N–1A [17 CFR 239.15A & 274.11A] (mutual funds); Item 8.3.a., Form N–2 [17 CFR 239.14 & 274.11a-1] (closed-end funds).

[4] See Form N–1A, Item 4(a)(ii) (requires concise description of mutual fund investment objectives and policies and brief discussion of how the fund proposes to achieve such objectives, including description of the securities in which the fund will invest and special investment practices or techniques that will be employed); Form N–1A, Item 4(b) (requires discussion of types of investments, policies, and practices that will not constitute the ''principal portfolio emphasis'' of a mutual fund, but which place more than 5% of the fund's net assets at risk); Form N–2, Item 8.2. & 8.4. (similar requirements for closed-end funds).

[5] See Memorandum dated Sept. 26, 1994, from Division of Investment Management to Chairman Levitt regarding Mutual Funds and Derivative Instruments 11 [hereinafter ''Derivatives Report'']; Letter to Registrants from Carolyn B. Lewis, Assistant Director, Division of Investment Management 7 (Feb. 25, 1994) (both documents on file with the SEC's Public Reference Room).

[6] According to a June 1994 survey sponsored by the Investment Company Institute, 31% of United States households owned shares in a mutual fund, up from 6% of households in 1980. Investment Company Institute, Fundamentals (Sept. 1994); Investment Company Institute, 1994 Mutual Fund Fact Book 85 (34th ed. 1994) [hereinafter ''1994 ICI Fact Book'']. Mutual funds held 14.9% of all household discretionary assets as of June 30, 1994, up from 7.0% at the end of 1982. Source: Investment Company Institute. Total mutual fund assets have grown from $292.9 billion at the end of 1983 to $2.16 trillion at the end of December 1994. 1994 ICI Fact Book, *supra*, at 26; Investment Company Institute Press Release, ''December Mutual Fund Sales Total $39.9 Billion,'' Jan. 26, 1995, at 4.

By the end of 1993, retirement assets accounted for 23% of mutual fund assets (excluding variable annuities), and mutual funds held almost $284 billion of the approximately $857 billion invested in individual retirement accounts (''IRAs'')—about 33% of total IRA assets. 1994 ICI Fact Book, *supra*, at 69.

[7] See, e.g., Burton G. Malkiel, A Random Walk Down Wall Street ch. 13 (1990) [hereinafter

new ways of describing risks may improve investor understanding of the risks associated with the use by some funds of increasingly complex instruments, such as derivatives.[8] Third, the number and types of funds have proliferated, increasing fund investors' need for information that will help them to compare and contrast alternatives.[9]

The importance of risk disclosure was underscored last year when some short-term government bond funds experienced losses as interest rates increased sharply.[10] Shareholders in these funds expressed surprise at the losses, and several shareholder lawsuits were filed.[11] Whatever the legal merits of the shareholder complaints may be, the SEC believes that these events highlight the importance of clear, concise disclosure of risks.

In this Release, the SEC requests that those submitting comments discuss the specific goals of, and various alternatives for, improving risk disclosure. Comments are requested on the relative merits of written and other presentations of risk, including quantitative or numerical measures, graphs, tables, and other pictorial representations.

The Release describes and requests comment on several specific quantitative measures of risk and risk-adjusted performance, including standard deviation, semi-variance, beta, duration, the Sharpe Ratio, the Treynor Ratio, and Jensen's Alpha. These measures of risk are potentially useful because they may give investors a tool for balancing the potential returns of a fund against the risks of the fund. For instance, if a fund has historical annual returns which are 2% above a market index, historical risk measures may provide some indication of the risks that were taken to produce the increased returns. Quantitative risk measurements may provide investors with tools to measure how funds have fared historically in the relationship between risk and return.

The Release also asks for comments addressing a number of general topics related to quantitative risk measures. These include:

- The benefits to be derived from quantitative measures versus the costs and burdens to the fund that must produce such information;
- Quantitative measures currently used by fund managers to assess risk, and whether such internally used measures should be disclosed to investors;
- Investor understanding of quantitative measures, and means to increase that understanding;
- Standardizing the ways in which funds calculate quantitative measures to assure comparability and the validity of any underlying assumptions; and
- Availability of quantitative risk information from third party providers (e.g., the financial press and rating services).

Comments are also requested on whether funds should be required to disclose a self-assessment of their risk level, using an SEC-created standard scale or some other method. In addition, comments are requested on whether funds should describe to investors the ways or strategies that fund managers use to manage, understand, and monitor the risks of their funds.

The SEC requests comments that address the specific questions posed in this Release as well as alternative risk disclosure methods and related matters. Where possible, please provide actual rule language that you believe would best express your recommendation.

To encourage individual investor comments and suggestions on this Release, the SEC for the first time has prepared a short summary specifically directed to individual investors. The summary, which appears as an appendix to the Release, will be reprinted in a format that leaves space for individual investors to tell the SEC about their concerns and ideas and distributed through investor groups and other means designed to reach individual investors.

## I. The Goals of Risk Disclosure

The SEC's goal is to improve disclosure of fund risks so that investors will have the information they need to understand the risk of any particular fund investment. The best means for achieving this aim may depend, in part, on the specific goals of risk disclosure. The SEC therefore requests comment on the specific goals of risk disclosure, including the matters raised below.

The SEC asks persons submitting comments to define, as precisely as possible, what ''risks'' should be disclosed to investors. To what extent are investors concerned with the likelihood that they will lose principal, that their return will not exceed a specified benchmark (such as the Standard & Poor's (''S&P'') 500), or with the variability of their returns (or the volatility of the value of their investment) over time? How should the relationship between risk and an investor's time horizon shape the disclosure that is provided to investors? For example, is the same risk information useful to an investor with an investment time horizon of less than one year and to an investor with an investment time horizon of twenty years?[12] How can the disclosure of risk help investors answer the fundamental questions—Is this investment suitable for me? If I have diversified my investments, how does this particular fund fit into my diversification strategy?

Comments are requested on the nature of risk comparisons that are useful to investors. For example, should risk disclosure facilitate comparison among a broad range of investment options, such as between funds and other investment products? Or is it sufficient to facilitate comparisons among all funds and fund types, both equity and fixed income? Or among all equity funds, on the one hand, and all fixed income funds, on the other? Or only within groups of funds with similar investment objectives and policies, such as short-term government bond funds?

Is improved disclosure of risks equally important for equity, fixed income, and balanced or asset allocation funds? Do recent derivatives-related losses by some fixed income funds, and the apparently greater use of derivatives by fixed income funds, suggest that the need for improved disclosure of risks is greater for fixed income funds?[13] In

''Random Walk'']; Susan E. Kuhn, ''What it Takes to Retire Today,'' Fortune, Dec. 26, 1994, at 113; Joshua Shapiro, ''The Discipline of Saving for College,'' New York Times, Sept. 10, 1994, at 34.

[8] See Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Issues Affecting the Mutual Fund Industry, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives 18–19 (Sept. 27, 1994); Derivatives Report, supra note 5, at 11–12.

[9] See, e.g., 1994 ICI Fact Book, *supra* note 6, at 30–31 (increase from 564 mutual funds at the end of 1980 to 4,558 at the end of 1993; mutual funds classified according to 21 investment objectives).

[10] See, e.g., Leslie Eaton, ''Paine Webber to Bail Out Fund Battered by Complex Investments,'' New York Times, July 23, 1994, at A1; Robert McGough, ''Piper Jaffray Acts to Boost Battered Fund,'' Wall Street Journal, May 23, 1994, at C1.

[11] See, e.g., Karen Donovan, ''Derivatives Slump; Losers Go to Court,'' National Law Journal, Nov. 7, 1994, at A1; G. Bruce Knecht, ''Minneapolis Investors Are Hurt By Local Firm They Knew As Cautious,'' Wall Street Journal, Aug. 26, 1994, at A1; John Waggoner, ''Mutual Fund Losses Anger Novice Investors,'' USA Today, June 16, 1994, at 1B.

[12] See Letter to Barry P. Barbash, Director, Division of Investment Management, from Paul Schott Stevens, General Counsel, Investment Company Institute 3–4 (Jan. 19, 1995) [hereinafter ''ICI Letter''] (on file with the SEC's Public Reference Room) (discussing different concepts of risk); Paul A. Samuelson, ''The Long-Term Case for Equities and How it Can be Oversold,'' Journal of Portfolio Management 15–24 (Fall 1994) (raising questions about common wisdom that, for long-term investor, stocks will outperform bonds or cash).

[13] See *supra* notes 10 and 11 and accompanying text. A recent industry survey of non-money market funds indicated that the level of derivatives use varied by fund type, with fixed income funds

Continued

light of the substantive limits on permitted money market fund investments,[14] should risk disclosure requirements for money market funds be different from those applicable to other funds? [15]

Comments are also requested on the degree of detail regarding fund risk that ideally would be communicated to investors. In meeting existing disclosure requirements, funds often describe the purposes of using particular types of instruments and the risks associated with each type, but typically provide only the most general information on the risk level of the fund taken as a whole.[16] Should disclosure convey the risks of each particular type of instrument held by a fund, the risks of broader classes of instruments (for instance, derivatives as a group), the risks of the fund's portfolio as a whole, or some combination of the foregoing? Should the focus of disclosure be shifted from the characteristics of particular securities to the nature of the investment management services offered, including the objectives of a fund manager and the associated risks and rewards? Do investors need to understand separately the different types of risk, such as market, credit, legal, and operational risks, or is it the aggregate effect of different types of risk that is important to an investment decision?

## II. Narrative and Non-Narrative Risk Disclosure Options

The SEC currently requires fund prospectuses to include narrative descriptions of risk,[17] and the SEC is interested in the potential for improving risk disclosure through changes to the narrative disclosure requirements and the use of non-narrative forms of disclosure. The SEC therefore asks persons submitting comments to discuss the contributions that both narrative and non-narrative forms of disclosure can make to investor understanding of risk and to provide the SEC with the findings of any relevant market research on the effective communication of risk.

At present, a number of funds voluntarily supplement narrative descriptions of risk through means such as quantitative measures, graphs, tables, and other pictorial representations. For example, some funds provide quantitative risk measures like those described in section III.A. of this Release. Another method used is a line graph that shows relative risk and return levels for the fund and some benchmark, such as Treasury bills or a market index such as the S&P 500. Another method is a bar graph that shows consistency of returns for the fund and a market index (as measured by monthly rates of return over the life of the fund). Finally, some fund families use pictures to show the relative risks of the various funds within the family.

The SEC believes that quantitative measures, graphs, tables, and other pictorial representations may assist investors in understanding and comparing funds. The SEC currently requires disclosure of quantitative information in tabular form in the areas of fund performance and expenses.[18] Recently, the SEC adopted rules that require graphic depictions of information to facilitate investor understanding of fund performance.[19] The SEC now requests comment on the relative merits and usefulness of various formats for investment company risk disclosure, including quantitative measures, graphs, tables, and other pictorial representations. To what extent should these methods be used to supplement, or replace, current narrative risk disclosure?

## III. Quantitative Measures of Risk

### *A. Specific Historical Quantitative Measures of Risk and Risk-Adjusted Performance*

This section of the Release discusses several historical quantitative measures of risk and risk-adjusted performance that could be used for fund disclosure, and the following section raises a number of general questions about quantitative measures. Comments are requested regarding whether the SEC should require fund disclosure of any one or a combination of the enumerated measures or any other measures. Persons submitting comments are also asked to consider each of the enumerated quantitative measures, and any other measures they may wish to suggest, in the context of the general questions raised in the following section.

Historical measures of risk and risk-adjusted performance are generally calculated from past portfolio returns and, in some cases, past market returns. There are two broad classes of historical risk measures, referred to in this Release as total risk measures and market risk measures. In addition, there is a third class of measures, risk-adjusted measures of performance. (Unless the context indicates otherwise, risk-adjusted measures of performance are included in ''quantitative risk measures'' and similar terms and phrases used in this Release.) These three classes of measures are described below, and examples of each are provided. Comments are requested on the relative advantages and disadvantages of the three classes of measures and of specific measures within each class.

#### 1. Measures of Total Risk

Total risk measures, including standard deviation and semi-variance, quantify the total variability of a portfolio's returns around, or below, its average return.

• *Standard Deviation of Total Return*. The risk associated with a portfolio can be viewed as the volatility of its returns, measured by the standard deviation of those returns.[20] For example, a fund's

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accounting for 84% of the total market value of all derivatives held by reporting funds and 62% of the total national amount. Investment Company Institute, Derivative Securities Survey 6 (Feb. 1994). Survey respondents included 52 fund complexes with 1,728 non-money market funds holding aggregate net assets of $958 billion (76% of industry assets in non-money market funds). *Id.* at 4.

[14] Mutual funds are prohibited from calling themselves money market funds unless they comply with the risk-limiting provisions of rule 2a–7 under the Investment Company Act. These provisions are designed to limit a fund's exposure to credit, interest rate, and currency risks. 17 CFR 270.2a–7(b), (c)(2)–(4), & (d).

[15] Losses in the value of certain adjustable rate notes held by some money market funds recently resulted in the funds' advisers electing to take actions designed to prevent the funds' per share net asset values from falling below $1.00; and one small, institutional money market fund liquidated and redeemed its shares at less than $1.00 as a result of such losses. See, e.g., ''A History of Stepping up to the Plate,'' Fund Action, Sept. 12, 1994, at 9; Brett D. Fromson, ''Losses on Derivatives Lead Money Fund to Liquidate,'' Washington Post, Sept. 28, 1994, at F1. These losses, however, raise concerns about the appropriateness of the funds' investments in some types of adjustable rate securities and not merely risk disclosure concerns. See Revisions to Rules Regulating Money Market Funds, Investment Company Act Rel. No. 19959, § II.D.2.d. (Dec. 17, 1993) [58 FR 68585, 68601–02 (Dec. 28, 1993)] [hereinafter ''Rel. 19959''] (certain types of adjustable rate notes not appropriate investments for money market funds). See also Letter from Barry P. Barbash, Director, Division of Investment Management, to Paul Schott Stevens, General Counsel, Investment Company Institute (June 30, 1994) (on file with the SEC's Public Reference Room).

[16] See Derivatives Report, *supra* note 5, at 11.

[17] See *supra* notes 3 and 4 and accompanying text.

[18] For mutual funds, see Form N–1A, Items 2 (Synopsis), 3 (Condensed Financial Information), and 5A (Management's Discussion of Fund Performance). For closed-end funds, see Form N–2, Items 3 (Fee Table and Synopsis) and 4 (Financial Highlights). See also *supra* note 1 and accompanying text. A closed-end fund is also required to include in its prospectus a table quantifying the effects of leverage on returns to investors. Form N–2, Item 8.3.b.(3) (General Description of the Registrant, Risk Factors, Effects of Leverage).

[19] See *supra* note 1. The SEC also recently adopted rules requiring graphic depictions of issuer performance by public companies that are not investment companies. Executive Compensation Disclosure, Securities Exchange Act Rel. No. 31327 (Oct. 16, 1992) [57 FR 48126 (Oct. 21, 1992)].

[20] William F. Sharpe, Gordon J. Alexander, and Jeffery V. Bailey, Investments 178 (5th ed. 1995)

historical risk could be measured by computing the standard deviation of its monthly total returns over some prior period, such as the past three years. The larger the standard deviation of monthly total returns, the more volatile, *i.e.*, spread out around the fund's average monthly total return, the fund's monthly total returns have been over the prior period. Standard deviation of total return can be calculated for funds with different objectives, ranging from equity funds to fixed income funds to balanced funds, and can be measured over different time frames. For example, a fund could calculate standard deviation of monthly returns over the prior three years or yearly returns over the prior ten years.

• *Semi-variance*. Standard deviation measures both ''good'' and ''bad'' outcomes, *i.e.*, the variability of returns both above and below the average return. To the individual investor, however, risk may be synonymous with ''bad'' outcomes.[21] Semi-variance, which can be used to measure the variability of returns below the average return, reflects this view of risk.[22] A fund with a larger semi-variance has returns that are more spread out below the average return.

2. Measures of Market Risk

Individual securities, and portfolios of securities, are generally subject to two sources of risk: (i) Risk attributable to firm-specific factors, including research and development, marketing, and quality of management; and (ii) risk attributable to general economic conditions, including the inflation rate, interest rates, and exchange rates.[23] According to academic literature in Finance, firm-specific risk can be reduced or eliminated through portfolio diversification, but the risk attributable to general economic conditions, so-called ''market risk,'' cannot be eliminated through diversification.[24] Unlike standard deviation and variance, which measure portfolio risk from both sources, the measures described in this section are measures of market risk. The SEC requests comment on whether, given that most fund portfolios are diversified, it is appropriate to focus on market risk when measuring fund risks.

• *Beta*. Beta measures the sensitivity of a security's, or portfolio's, return to the market's return. The market's beta is by definition equal to 1. Portfolios with betas greater than 1 are more volatile than the market, and portfolios with betas less than 1 are less volatile than the market. For example, if a portfolio has a beta of 2, a 10% market return would result in a 20% portfolio return, and a 10% market loss would result in a 20% portfolio loss (excluding the effects of any firm-specific risk that has not been eliminated through diversification).[25]

The calculation of a fund's historical beta requires the selection of a benchmark market index, and persons supporting the use of beta are asked to address how the benchmark should be selected and whether a single benchmark should be used for all funds. If a single benchmark should be selected, what should it be? If a single benchmark is not used, how should the lack of comparability of betas for funds using different benchmarks be addressed? Beta is generally used in connection with equity securities, and persons submitting comments are asked to address whether or not the use of beta should be limited to equity funds.

• *Duration*.[26] Duration is a measure of the price sensitivity of a bond, or bond portfolio, to interest rate changes.[27] There are different types of duration,[28] and persons supporting the use of duration are asked to be specific regarding the duration measure that they support. Would so-called ''modified duration,'' which can be interpreted as the percentage change in the price of a bond, or bond portfolio, for a 100 basis point change in yield, be particularly useful?[29]

The use of duration has several limitations, and persons submitting comments are asked to address each of these. First, duration is only meaningful for bonds and portfolios of bonds and therefore cannot be used to measure the risk of equity funds and has limited applicability to balanced funds. Second, duration measures interest rate risk only and not other risks to which bonds are subject, *e.g.*, credit risks and, in the case of non-dollar denominated bonds, currency risks. Third, duration is difficult to calculate precisely for bonds with prepayment options, *e.g.*, mortgage-backed securities, because the calculation requires assumptions about prepayment rates.[30] Fourth, bond value changes resulting from interest rate changes are sometimes poorly predicted by duration.[31]

The SEC staff takes the position that, for a fund with a name or investment objective that refers to the maturity of the fund's portfolio, such as ''short-term'' or ''long-term,'' the dollar-weighted average portfolio maturity of the portfolio must reflect that characterization.[32] The SEC requests

[hereinafter ''Sharpe, Alexander, & Bailey'']. If the returns earned by a portfolio are ''normally'' distributed, that is, in the shape of a bell curve, approximately 95% of the actual returns will fall within two standard deviations of the average return. Random Walk, *supra* note 7, at 219. For example, for a fund with an average monthly return of 1% and a standard deviation of 4%, 95% of the fund's monthly returns would fall between −7% (1%−(2×4%)) and 9% (1%+(2×4%)) if the returns were ''normally'' distributed. See Sharpe, Alexander, & Bailey, *supra*, at 177.

[21] See Sharpe, Alexander, & Bailey, *supra* note 20, at 178; Allan Flader, ''Deviating from the Standard,'' Financial Planning, June 1994, at 148.

[22] Funds' risk levels would be ranked in the same order using semi-variance and standard deviation if the distribution of fund returns were symmetric. Sharpe, Alexander, & Bailey, *supra* note 20, at 178.

[23] Zvi Bodie, Alex Kane, and Alan J. Marcus, Investments 197 (2d ed. 1993) [hereinafter ''Bodie, Kane, & Marcus'']. [24] Bodie, Kane, & Marcus, *supra* note 23, at 197–99; Sharpe, Alexander, & Bailey, *supra* note 20, at 212–17.

[25] Sharpe, Alexander, & Bailey, *supra* note 20, at 211; Frank J. Fabozzi and Franco Modigliani, Capital Markets: Institutions and Instruments 136–40 (1992) [hereinafter ''Fabozzi & Modigliani'']. [26] The SEC previously requested comment on duration as a measure of interest rate risk for securities held by money market funds. See Rel. 19959, *supra* note 15, § II.D.2.d., 58 FR at 68602. In response to that request, several persons submitting comments expressed support for the use of duration or other price volatility tests; one person specifically opposed a duration requirement on the grounds that the costs funds would incur would outweigh benefits to investors. See Summary of Comment Letters on Proposed Amendments to Rules Regulating Money Market Funds Made in Response to Investment Company Act Rel. 19959, File No. S7–34–93, Nov. 10, 1994, at 63–64.

[27] Bodie, Kane, & Marcus, *supra* note 23, at 473–74. Duration measures the weighted average maturity of a bond's, or bond portfolio's, cash flows, *i.e.*, principal and interest payments. A zero-coupon bond's duration, for example, is the same as its maturity because its sole cash flow is the payment made at maturity. By contrast, a bond bearing interest payable periodically has a duration that is shorter than its maturity because the periodic interest payments reduce the weighted average maturity of the bond's cash flows below the final maturity of the bond. *Id*.

[28] For a discussion of the computation and interpretation of so-called ''Macaulay duration'' and ''modified duration,'' see Bodie, Kane, & Marcus, *supra* note 23, at 473–75, and Fabozzi & Modigliani, *supra* note 25, at 393–98.

[29] Fabozzi & Modigliani, *supra* note 25, at 397. For example, if a bond portfolio has a modified duration of 7 and yield increases by 100 basis points, the estimated decrease in the value of the portfolio would be 7%.

[30] See James Hom and Gary Arne, Standard & Poor's, ''Prepayments and Model Error in Fund Risk Ratings,'' CreditReview, Jan. 16, 1995, at 17–18; John Rekenthaler, Commentary: ''Duration Arrives,'' Morningstar Mutual Funds, Jan. 21, 1994, at 1–2.

[31] Duration is less useful as a measure of interest rate risk when the following conditions are not met: (1) the yield curve is flat (*i.e.*, interest rates for all maturities of bonds are the same), (2) changes in yield are small, and (3) yield shifts are parallel (*i.e.*, the Treasury yields of all maturities change by equal numbers of basis points). See Fabozzi & Modigliani, *supra* note 25, at 396–401.

[32] See, *e.g.*, Form N–7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Rel. No. 15612 (Mar. 9, 1987) [52 FR 8268, 8301 (Mar. 17, 1987)] (guide to proposed registration form for unit investment trusts publishing staff position on portfolio maturity).

comment on whether, separate and apart from duration's potential use as a quantitative risk measure, a fund's name or investment objective that refers to the maturity of its portfolio should be required to be consistent with the fund's duration.

3. Risk-Adjusted Measures of Performance [33]

Risk-adjusted measures of performance were developed in the 1960s to compare the quality of investment management. Three widely-used risk-adjusted measures are:

• *Sharpe Ratio.*[34] Also known as the Reward-to-Variability Ratio, this is the ratio of a fund's average return in excess of the risk-free rate of return (''average excess return'') [35] to the standard deviation of the fund's excess returns. It measures the returns earned in excess of those that could have been earned on a riskless investment per unit of total risk assumed.

• *Treynor Ratio.*[36] Also known as the Reward-to-Volatility Ratio, this is the ratio of a fund's average excess return to the fund's beta. It measures the returns earned in excess of those that could have been earned on a riskless investment per unit of market risk assumed. Unlike the Sharpe Ratio, the Treynor Ratio uses market risk (beta), rather than total risk (standard deviation), as the measure of risk.

• *Jensen's Alpha.*[37] This is the difference between a fund's actual returns and those that could have been earned on a benchmark portfolio with the same amount of market risk, *i.e.*, the same beta, as the portfolio.[38] Jensen's Alpha measures the ability of active management to increase returns above those that are purely a reward for bearing market risk.

*B. General Issues*

This section of the Release raises a number of general questions about quantitative risk measures. Persons submitting comments are asked to address these questions, particularly in the context of specific quantitative measures.

1. Benefits of Quantitative Risk Measures

The SEC asks for comments on the potential benefits that could be derived from fund disclosure of quantitative risk measures. Comments are also requested on associated costs and burdens.

Would quantitative risk measures, including risk-adjusted measures of performance, help investors to evaluate historical performance and investment management expertise? The SEC requires that fund prospectuses include standardized return information,[39] even though past returns are not necessarily indicative of future returns. Persons submitting comments are asked to address whether quantitative disclosure of the risk level incurred to produce stated returns may provide investors with a better tool to understand past fund performance and management.[40] Historical data could, for example, help investors distinguish among funds that have achieved comparable rates of return with significantly different levels of risk. Would it be helpful to investors for funds to present one or more risk measures together with fund performance data in the financial highlights table? [41] Would a risk measure that covers the same periods currently required for reporting total returns in the financial highlights table in fund prospectuses or in mutual fund advertisements be useful to investors? [42]

Would quantitative risk measures be useful to investors as indicators or guides to future fund risk levels, enhancing investors' ability to compare risks assumed by investing in different funds? The SEC requests any research related to the degree of correlation between historical measures of a fund's risk and expected future levels of risk.

2. Risk Measures Currently Used by Investment Companies

The SEC requests comment on whether quantitative risk measures that are currently used by investment companies for internal purposes, such as portfolio management, evaluation or compensation of portfolio managers, and reports by management to the board of directors, could be adapted for disclosure purposes. This approach could have two potential advantages: first, the measures currently used by investment companies presumably have been determined to be the most useful by fund managers, who are in the best position to understand and analyze fund risk; and, second, use of these measures for disclosure purposes should impose relatively small additional costs on funds. The SEC therefore requests that persons submitting comments identify which quantitative risk measures funds use internally and for what purposes.

The SEC also asks persons submitting comments to discuss the extent to which quantitative risk measures used by investment companies for internal purposes would be useful to investors. If such measures would not be useful to investors, why not? How might internal measures be adapted to avoid or overcome these problems?

3. Investor Understanding of Quantitative Risk Measures

Persons submitting comments are asked to discuss the difficulties that

[33] The SEC has solicited comment on risk-adjusted measures of performance on two prior occasions. In 1990, the SEC requested comment on whether mutual funds should be required to adjust performance figures to reflect risk for purposes of Item 5A of Form N–1A. See Disclosure and Analysis of Mutual Fund Performance Information; Portfolio Manager Disclosure, Investment Company Act Rel. No. 17294 (Jan. 8, 1990) [55 FR 1460, 1464 (Jan. 16, 1990)]. See also Summary of Comments on Proposed Amendments to Form N–1A, File S7–1–90, at 23–24 (summarizing views of the nine persons submitting comments who addressed risk adjustment of performance, all of whom opposed it).

In 1986, the SEC requested comment on how mutual funds could present risk-adjusted performance information in advertisements prepared in accordance with rule 482 under the Securities Act of 1933 [17 CFR 230.482]. See Advertising by Investment Companies; Proposed Rules and Amendments to Rules, Forms, and Guidelines, Investment Company Act Rel. No. 15315 (Sept. 17, 1986) [51 FR 34384, 34390 (Sept. 26, 1986)]. See also Summary of Comments on Mutual Fund Advertising Proposals, File No. S7–23–86, Mar. 31, 1987, at 69–70 (summarizing views of the thirteen persons submitting comments who addressed the issue, including nine who supported it and one who opposed it).

[34] See William F. Sharpe, ''The Sharpe Ratio,'' 21 Journal of Portfolio Management 49–58 (Fall 1994); William F. Sharpe, ''Mutual Fund Performance,'' 39 Journal of Business 119–38 (Jan. 1966); Sharpe, Alexander, & Bailey, *supra* note 20, at 935–37; Edwin J. Elton & Martin J. Gruber, Modern Portfolio Theory and Investment Analysis 648–52 (4th ed. 1991) [hereinafter ''Elton & Gruber'']. 

[35] The yield on 90-day Treasury bills is often used as a proxy for the risk-free rate of return.

[36] See Jack L. Treynor, ''How to Rate Management of Investment Funds,'' 43 Harvard Business Review 63–75 (Jan.-Feb. 1965); Sharpe, Alexander, & Bailey, *supra* note 20, at 934–35; Elton & Gruber, *supra* note 34, at 657–58.

[37] Michael C. Jensen, ''The Performance of Mutual Funds in the Period 1945–1964,'' 23 Journal of Finance 389–416 (May 1968); Michael C. Jensen, ''Risk, the Pricing of Capital Assets, and the Evaluation of Investment Portfolios,'' Journal of Business (Apr. 1969); Sharpe, Alexander, & Bailey, *supra* note 20, at 927–34.

[38] For an equity fund, the benchmark portfolio could be comprised of a market index, *e.g.*, the S&P 500, and a risk-free asset, *e.g.*, 90-day Treasury bills. Sharpe, Alexander, & Bailey, *supra* note 20, at 798.

[39] Form N–1A, Item 3; Form N–2, Item 4.

[40] For discussions of the importance of risk as a component of performance evaluation, see Sharpe, Alexander, & Bailey, *supra* note 20, at 917–49, and Bodie, Kane, & Marcus, *supra* note 23, at 796–826.

Funds are currently required to disclose historical returns for each of the last ten fiscal years (or, if less, the life of the fund). See Form N–1A, Item 3. This data shows variability of past annual returns and therefore provides some guidance regarding past risk.

[41] See Form N–1A, Item 3; Form N–2, Item 4 (financial highlights table).

[42] See Form N–1A, Item 3 & Form N–2, Item 4 (fund financial highlights tables cover each of last ten fiscal years); rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1] & rule 482(e)(3) under the Securities Act [17 CFR 230.482(e)(3)] (non-money market mutual fund advertisements and sales literature containing performance information required to contain average annual total return for one, five, and ten years).

investors would face in properly interpreting various quantitative risk measures, such as understanding what aspects of risk are measured, the limits on predictive utility of risk measures, and the importance of investment time horizon in determining how much risk to assume. Are the difficulties significantly greater than those associated with the proper interpretation of yield and return figures? Is there a potential problem of investor over-reliance on quantitative risk measures, and, if so, what could be done to protect against such over-reliance?

Comments are also requested regarding which quantitative risk measures would be easiest for investors to use properly and how quantitative measures can be made more understandable to investors. One possibility is to provide some form of interpretation of raw numbers. For example, standard deviations could be divided by the standard deviation for some benchmark such as the S&P 500. Another possibility is to convert raw numbers into a classification scale, such as one to ten or ''very low'' to ''very high'' risk. Another possibility would be to represent the level of fund volatility graphically, rather than through computation of standard deviation. Would it be helpful, for example, if funds were required to include a bar graph showing total returns for each of the last 10 years to provide investors a picture of the extent to which annual returns varied over that period and the frequency with which the returns were negative or below some benchmark? Would a chart like the following be helpful?

Using historical numbers, the following illustrates the fund's estimated variability of quarterly returns over the noted periods (*i.e.*, approximately 95% of the time, the fund's quarterly returns fell within these ranges).

| 10 year | 5-year | 3-year |
|---|---|---|
| −5% to 9% | −4% to 8% | −5% to 8%. |

Are there narrative disclosures that can help investors to understand risk measures? Persons submitting comments are asked to report the results of any experience with, or research on, the relative effectiveness of alternative means of presenting quantitative information.

4. Historical Measures v. Portfolio-Based Measures v. Risk Objectives or Targets

There are three approaches to the use of quantitative risk measures: historical, portfolio-based, and risk objectives or targets. The SEC asks for comments on the relative merits and limitations of these three approaches.

The simple historical approach to quantitative risk measures is outlined in section III.A., above. This method generally uses actual past returns of a fund to compute a measure of risk for the fund. An alternative is a portfolio-based computation, which calculates a portfolio risk measure based on the particular securities in the portfolio as of a specified measurement date.[43] This method, too, is historical in that the computation (i) uses the portfolio composition as of a specified measurement date, and (ii) the computation is based on historical behavior of the securities in the portfolio.

There are at least two important limitations of using portfolio-based measures for fund disclosure: first, a fund may be invested in newly introduced financial instruments that have little or no history, and for which historical behavior must be estimated, and, second, portfolio-based measures, which are derived from portfolio composition on one particular date, may be less representative of the risk of a managed portfolio over time than a simple historical measure derived from fund returns over a period of time.

The SEC seeks comment on whether the SEC should require funds generally to disclose portfolio-based risk measures.[44] The SEC also asks for comments on whether such measures could be useful for new funds that do not have sufficient operating history to make use of a simple historical measure meaningful, funds that change their investment objectives or policies, funds that change investment advisers or portfolio managers, or merged funds comprised of different funds with different operating histories and different past risk levels.[45]

Another approach to risk measures is requiring funds to announce risk objectives or targets. Any of the risk and risk-adjusted performance measures could be used by funds in this manner. For example, a fund could announce its intention to follow a strategy that would yield a standard deviation of 10%–12% per year, a beta of 1.50–1.75 with respect to the S&P 500, or a duration of 7–9 years. Comments are requested regarding the relative merits of this approach as compared to the simple historical and portfolio-based approaches. Persons submitting comments are asked to address specifically the relative merits for funds with significant operating histories, new funds, funds that change their investment objectives or policies, funds that change investment advisers or portfolio managers, or merged funds comprised of different funds with different operating histories and different past risk levels. Persons supporting the use of simple historical measures by relatively new funds, funds that change their investment objectives or policies or their investment advisers or portfolio managers, or merged funds are also asked to address whether narrative disclosure should be required to explain the limits on the usefulness of the disclosure resulting from the funds' circumstances.

5. Computation Issues

Comments are requested on the following issues related to computation of quantitative risk measures and on any other relevant computation issues. What length of fund operating history is required to make particular historical risk measures useful? What requirements should be imposed on funds without this operating history? For example, if 18 months of operations are required to calculate a meaningful standard deviation figure, should funds that have been operating for less than 18 months be required to disclose the standard deviation of an appropriate market index or peer group of funds and explain any differences they expect between the fund's standard deviation and that of the index or peer group?

[43] See, *e.g.*, Comptroller of the Currency, Risk Management of Financial Derivatives 49–53 (Oct. 1994); J.P. Morgan, Introduction to RiskMetrics™ (2d ed.) (Oct. 25, 1994); Group of Thirty, Derivatives: Practices and Principles 10–11 (July 1993).

[44] The Investment Company Institute has suggested that portfolio-based measures would be of limited relevance at best in an actively managed portfolio, would ignore the role of portfolio management, and would be burdensome to compute. *ICI Letter, supra* note 12, at 8 n.10.

[45] Issues have arisen with respect to fund advertisement of performance information in similar circumstances. See IDS Financial Corp. (pub. avail. Dec. 19, 1994) (acquisition of other funds' assets); North American Security Trust (pub. avail. Aug. 5, 1994) (combination of two funds); The Managers Core Trust (pub. avail. Jan. 28, 1993) (newly formed hub fund); Unified Funds (pub. avail. Apr. 23, 1991) (changed investment adviser); John Hancock Asset Allocation Trust (pub. avail. Jan. 3, 1991) (change from money market fund to asset allocation fund); Founders Funds, Inc. (pub. avail. Oct. 15, 1990) (change from unit investment trust to mutual fund); Zweig Series Trust (pub. avail. Jan. 10, 1990) (changed investment adviser); Philadelphia Fund, Inc. (pub. avail. Oct. 17, 1989) (changed investment adviser); Commonwealth Funds (pub. avail. June 14, 1989) (combination of two funds); Investment Trust of Boston Funds (pub. avail. Apr. 13, 1989) (changed investment adviser); The Fairmont Fund Trust (pub. avail. Dec. 9, 1988) (changed investment objective); and Growth Stock Outlook Trust, Inc. (pub. avail. Apr. 15, 1986) (new fund).

For risk measures that require the use of a benchmark market index, what issues, if any, are associated with the selection of an appropriate benchmark? How should the SEC address the need to use assumptions to calculate certain risk measures, such as the prepayment assumptions that may be required to calculate duration? Can various quantitative risk measures be manipulated and how do the various measures differ in their susceptibility to manipulation? How can the potential for such manipulation be reduced or eliminated? For instance, is there some combination of risk measures the SEC could require that would not be susceptible to simultaneous manipulation?

Persons submitting comments are also asked to describe as specifically as possible the computation method they would recommend for any quantitative risk measure they favor. For example, persons favoring standard deviation should specify whether monthly returns, quarterly returns, or returns over some other periods should be used. As another example, persons favoring beta should describe the benchmark or benchmarks that should be used. Persons submitting comments are also asked to discuss the benefits and limitations associated with their recommended method of computation.

6. Effects on Portfolio Management

The SEC recognizes that requiring disclosure of a quantitative risk measure may affect portfolio management, *e.g.*, causing fund managers to adopt more conservative investment strategies. Comments are requested regarding whether, and how, disclosure of a quantitative risk measure might influence portfolio management and evaluating the associated benefits and detriments.

7. Third Party Providers of Quantitative Risk Information

The financial press and other third parties currently disseminate some quantitative information regarding fund risks. The available information includes measures such as those described in section III.A., including standard deviation, beta, and duration.[46] In addition, some organizations disseminate fund performance ratings that take risk into account[47] or fund risk ratings.[48] This data is made available either through reports and other documents published by the organizations that collect and calculate the measures or through periodicals and newspapers covering financial issues.

The SEC asks persons submitting comments to address the SEC's role with respect to disclosure of quantitative risk information in light of the availability of fund risk information from the financial press and other third parties. Is there, for example, helpful risk information that third party providers do not make available? Would SEC-required disclosure be important to ensure that all investors have access to some quantitative risk information and to help educate investors about the importance of such information? Would SEC-required disclosure be important to facilitate comparability among funds by ensuring that standardized quantitative risk information will be available for all funds? Would SEC-required disclosure of a quantitative risk measure be helpful wherever historic returns are reported to indicate to investors the risks incurred to generate those returns?

Persons submitting comments are also asked to address whether the SEC should take any steps to facilitate the provision of fund risk information by the financial press and other third parties. For example, should the SEC require more frequent disclosure of fund portfolio holdings or more detailed descriptions of fund portfolio holdings to facilitate third party risk analyses? If so, what information should the SEC require funds to make available and with what frequency? The SEC is currently authorized to require funds to file with the SEC ''such information * * * as the SEC may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the [funds' Investment Company Act of 1940] registration statement[s] * * *.''[49] Persons submitting comments are asked to address whether statutory amendments would be required to implement any recommendations they make in response to this paragraph.

Last year, the SEC requested comment regarding whether it should encourage or require disclosure of third party fund risk ratings in prospectuses, sales literature, and advertisements.[50] Persons who wish to address that issue in the context of today's broad inquiry into improved risk disclosure are invited to do so.

## IV. Narrative Disclosure Options

The SEC asks for comment on the usefulness to investors of narrative risk disclosure currently found in prospectuses.[51] The SEC also asks persons submitting comments to describe ways of improving narrative risk disclosure that will not increase, and may reduce, technical information that may be of limited utility to investors. For example, should prospectus disclosure focus on the broad investment strategies of a fund rather than the particular investments used to implement the strategy?

Can disclosure of fund risks be improved through increased focus on the policies and investments actually used by a fund as opposed to all permissible policies and investments? For example, should a fund describe the policies and investments that have been used during some prior period, such as the preceding year, or that the fund intends to use during some future period, such as the following year, and simply list the other permitted policies and investments? Or should funds be required to provide a table or grid that indicates whether, and the extent to which, the policies and investments authorized to be used were used during some prior period, such as the preceding year? If a fund intends to alter the mix of policies and investments, should it be required to describe the projected change? In addressing the questions of this paragraph, persons submitting comments should consider the possibilities of placing various information in the prospectus,[52] annual

[46] See, *e.g.*, CDA/Wiesenberger, Mutual Funds Update, Dec. 31, 1994; Morningstar Mutual Funds, Dec. 9, 1994; The Value Line Mutual Fund Survey, Part 2, Ratings & Reports, Feb. 21, 1995. Value Line also ranks mutual funds in five risk categories, based on historical standard deviation. How to Use The Value Line Mutual Fund Survey, A Subscriber's Guide (1994), at 4–5.

[47] See, *e.g.*, Business Week, Feb. 14, 1994, at 78–79; Forbes, Aug. 29, 1994, at 174; CDA/Wiesenberger, Investment Companies Yearbook 1994 441 (1994); Morningstar Mutual Fund Performance Report, Jan. 1995, at 3; How to Use The Value Line Mutual Fund Survey, A Subscriber's Guide (1994), at 4–5.

[48] These ratings are based on an analysis of factors such as currency, interest rate, liquidity, and mortgage prepayment risks; hedging; leverage; and the use of derivatives. *See* ''Bond Fund Risks Revealed,'' Fitch Research Special Report, Oct. 17, 1994, at 1; Gary Arne, Standard & Poor's, CreditReview, Jan. 16, 1995, at 12.

[49] Investment Company Act § 30(b) [15 U.S.C. 80a–29(b)].

[50] Nationally Recognized Statistical Rating Organizations, Securities Act Rel. No. 7085 (Aug. 31, 1994) [59 FR 46314 (Sept. 7, 1994)]. The SEC is currently studying the comment letters received.

[51] See discussion *supra* notes 3–5 and accompanying text.

[52] Mutual funds generally offer their shares on a continuous basis and, as a result, are required to file periodic ''post-effective'' amendments to their registration statements in order to maintain a ''current'' prospectus required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]. Post-effective amendments also satisfy the requirement that mutual funds amend their Investment Company Act registration statements annually [17 CFR 270.8b–16]. Because closed-end funds do not generally offer their shares to the public on a

report, and statement of additional information. For example, should the prospectus focus on the policies and investments the fund has actually made and that it may make in the reasonably foreseeable future, with the complete list of permissible investments and policies to be disclosed in the statement of additional information? As another example, should periodic reports be enhanced to include more information about what policies and investments the fund has, in fact, pursued and what risks were actually taken?

Can risks be accurately depicted through narrative disclosure apart from technical descriptions of particular types of investments? Would investors find it useful for funds to provide in their prospectuses a summary of the risk characteristics of the portfolio as a whole either in lieu of or in addition to disclosure of the characteristics of particular types of permissible investments? If a risk summary would be useful, what risks should it address? For example, should the SEC require a fund that invests a specified level, *e.g.*, 5% or 10% or 25%, of its net assets in a particular manner, *e.g.*, securities of non-U.S. companies, to discuss the related risks, *e.g.*, exchange rate fluctuations?[53]

A mutual fund's Management's Discussion of Fund Performance (''Management's Discussion''), contained in the prospectus or annual report, is currently required to discuss the factors, including the market conditions and the investment techniques and strategies, that materially affected the fund's performance during the previous fiscal year.[54] The SEC requests comments regarding whether narrative risk disclosure can be improved through amendments to the requirements for the Management's Discussion. Should the SEC, for example, explicitly require the Management's Discussion to address the risks assumed during the previous fiscal year and the effects of those risks on fund performance? Should the requirement for the Management's Discussion be extended to money market funds? If the Management's Discussion is a useful vehicle for risk disclosure, how should disclosure be accomplished for closed-end funds, which are not subject to the Management's Discussion requirements?

continuous basis, they generally do not update their prospectuses periodically.

[53] *Cf.* Form N–1A, Item 4(b)(ii) (greater prospectus disclosure required for investment practices that place more than 5% of a fund's net assets at risk).

[54] Form N–1A, Item 5A.

## V. Self-Assessment of Risk

Another alternative upon which the SEC seeks comment is self-assessment by funds of their aggregate risk level. One approach might be to describe where the fund fits on a risk scale from low risk, for instance, a money market fund, to moderate risk, for instance, a growth and income fund investing in S&P 500 stocks and high quality bonds, to high risk, for instance, an emerging market fund.[55] Some fund complexes currently place various funds within the complex on a risk scale, and the SEC requests comment on whether such an approach would be useful for comparing funds from different complexes. If risk self-assessment is used, should the SEC create a standard scale? Persons supporting an SEC-created scale are asked to describe specifically what that scale should be, with particular attention to designing the scale to promote a high degree of uniformity in funds' self-assessments. Persons who favor a self-assessment approach but not an SEC-created scale are asked to address how the approach will foster meaningful investor comparisons among funds.

Comments are also requested on whether funds should be required to provide self-assessments of their exposures to various types of risk, with the results presented in chart or table format. Bond funds, for example, might rate their interest rate risk, credit risk, prepayment risk, and currency risk on a scale of low to medium to high.

## VI. Risk Management Procedures

The disclosure options described in this Release have focused on improved disclosure of the level of risk incurred by a fund. Persons submitting comments are also asked to consider whether disclosure of fund risk management procedures should be required. Such disclosure could be narrative. For example, should funds be required to disclose the extent and nature of involvement by the board of directors in the risk management process? As another example, should funds describe the ''stress-testing'' they do to determine how the portfolio will behave in various market conditions? Alternately, such disclosure could be quantitative in format. For example, if the SEC requires disclosure of a quantitative risk objective or target, funds could be required to disclose the funds' actual risk level in subsequent periods and compare it with the previously-provided objective or target and explain the reasons for divergence.

[55] In Rel. 19342, *supra* note 2, the SEC requested comment on this approach and other formats for disclosing risk, including numerical scales and other visual or symbolic representations. A limited number of persons submitting comments addressed these specific methods for standardizing risk disclosure. Summary of Comments: Rel. 19342, *supra*, note 2, at 17–18.

## VII. Liability Issues

Persons submitting comments are asked to address the appropriate scope of, and limits on, the liability of funds, investment advisers, and others for various risk disclosures. Persons submitting comments should specify any forms of risk disclosure that they believe raise particularly significant liability concerns, explain the concerns, and suggest means for mitigating the concerns.

## VIII. Regulatory Flexibility Act

According to the SEC's rules and unless otherwise defined for a particular rulemaking proceeding, an investment company with net assets of $50 million or less at the end of its most recent fiscal year is a ''small entity'' for purposes of the Regulatory Flexibility Act.[56] The SEC requests persons submitting comments to describe and project fund costs to provide the various disclosures described in this Release, and any other disclosure that persons submitting comments may wish to discuss, and address whether requiring the disclosure would have a significant economic impact on small entities. If so, the SEC asks persons submitting comments to describe that impact specifically. Persons submitting comments also are asked to suggest methods for improving disclosure of fund risks without imposing significant costs on funds, specifically without having a significant economic impact on funds that are small entities.

## IX. Conclusion

The SEC is seeking comments and suggestions on a number of specific issues related to fund disclosure of risks. Persons submitting comments are encouraged, however, to address any other matters that they believe merit examination.

Dated: March 29, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

## Appendix—SEC Request for Investor Suggestions on How To Improve the Descriptions of Risk in Mutual Funds

The U.S. Securities and Exchange Commission (''the SEC''), the federal government agency that oversees mutual funds, wants to hear from investors on

[56] Investment Company Act rule 0–10 [17 CFR 270.0–10].

how the descriptions of risk in mutual funds may be improved. When investors choose a mutual fund, they should understand the risks of the fund before they invest and not be surprised if the value of their investment rises and falls significantly.

The risks and potential rewards of investing in any mutual fund are explained in a written document provided by the mutual fund called a ''prospectus.'' The prospectus contains information that is important to making an informed decision when choosing a mutual fund.

The SEC is concerned that the descriptions of risk in mutual fund prospectuses are not as helpful or as clear as they could be. The SEC is seeking ideas and suggestions on how these descriptions of risk may be improved. Your ideas and suggestions may shape how risks are explained in the future and help investors make better investment choices.

Here are a series of questions and examples on how the descriptions of risk may be improved. We urge you to respond, whether you answer one question or all, or just have general comments. Feel free to use this form or write a separate letter marked ''File No. S7–10–95.''

Please mail your comments to the SEC no later than July 7, 1995. Directions for sending your comments to the SEC are provided at the end of this document. The SEC will make your comments and other comments received by the SEC available to the public.

How do you learn about mutual fund risks? The SEC would like to know how you learn about the risks of a mutual fund before you invest in the fund.

• Do you learn about mutual fund risks from the fund prospectus, a broker or bank representative, an investment adviser, a family member or friend, magazines, newspapers, or other publications? If you use more than one of these sources, please list all of the sources that you use.

• What information do you find most useful in evaluating mutual fund risks? What can the SEC do to provide information about the risks of investing in mutual funds that other sources of information do not do?

How well do mutual fund prospectuses describe the risks of investing? The SEC would like to know if you find the way mutual fund prospectuses describe the risks of investing to be helpful.

• Do mutual fund prospectuses give you a good idea of the risks of investing? What do you like about the way mutual funds describe risk in their prospectuses and what would you like funds to do differently?

• Would you like all mutual fund prospectuses to contain a summary of the risks of investing in the fund? If so, what would you like to see in the summary?

• Provide copies of any mutual fund descriptions of risk that you believe are very helpful or unhelpful. Tell the SEC what you like or don't like about the descriptions.

What do you want to know about risk? Risk means different things to different people. The SEC would like to know how you define risk.

• Do you define risk as:

(1) the chance that you will lose part of your investment;

(2) the chance that your investment will earn less than a certain amount, for example, a fixed percentage, such as 5% per year, or the return on a no-risk investment, such as a bank CD or U.S. treasury bill, or the return on a stock or bond index, such as the Standard & Poor's 500 stock index; or

(3) the variability in your fund's return, that is, the month-to-month or year-to-year ups and downs in your fund's share price or its distributions?

Or do you define risk in some other way?

• In choosing a mutual fund, are you most interested in comparing the risks of investing in the fund to the risks of putting your money in:

(1) investments that are not mutual funds, for example, bank CDs or individual stocks and bonds;

(2) other mutual funds of all types;

(3) mutual funds of the same broad type, for example, stock funds or bond funds; or

(4) mutual funds with the same investment objective, for example, short-term bond funds?

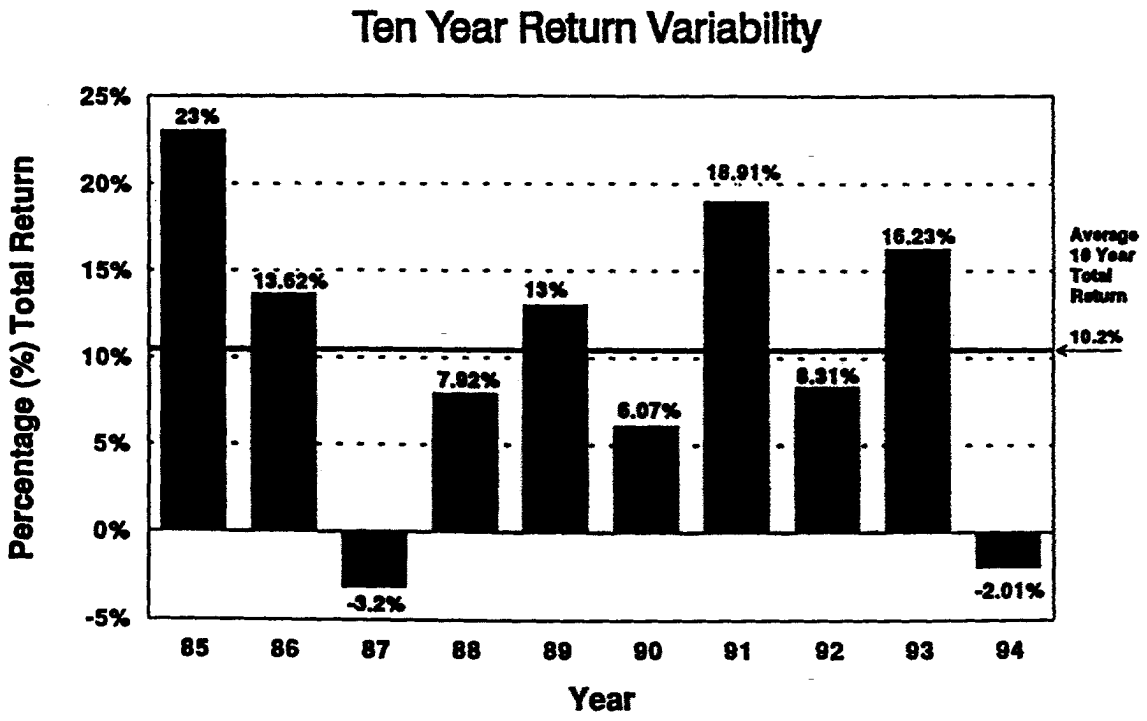
• Is your need for information about the risks of investing in mutual funds greater for stock funds or bond funds, or is your need for information about risk the same in both cases? Explain.

Would you like risk to be described with numbers, graphs, or tables? The SEC is looking at a variety of ways that mutual funds could tell investors about risk in addition to, or instead of, descriptions in words. The SEC would like your ideas and suggestions about which of those ways would be most helpful to you.

• Do you find information most helpful when it is in the form of written descriptions, numbers, graphs, tables, charts, pictures, or some other form?

Mutual funds today are required to provide investors with their annual returns for each of the past 10 years. By looking at these returns, investors can get an idea of how variable a fund's returns have been. This variability could be illustrated with a bar graph like the following.

BILLING CODE 8010–01–M




BILLING CODE 8010–01–C

• Would you find a bar graph like the above helpful in understanding the ups and downs in a mutual fund's annual returns? Would it increase your understanding of a fund's risk if the fund also provided you a bar graph of the returns of a market index, such as the Standard & Poor's 500 stock index?

The SEC is looking at the possibility of requiring mutual funds to use numbers to tell investors about the risks of investing. Examples of the numbers that the SEC is considering as required risk measures are:

• Standard Deviation of Total Return. This number measures how variable a fund's total returns have been, that is, how much they have gone up and down. The larger the standard deviation, the more variable a fund's total returns have been.

• Duration. This number measures how sensitive a bond fund's value is to changes in interest rates.

If you have ideas about what risk measurement numbers the SEC should ask mutual funds to give to investors, the SEC would like to hear those ideas.

• Should the SEC require funds to disclose standard deviation or duration or any other specific risk measures? Why or why not?

Should mutual funds rank their risk levels? The SEC is considering whether it would be useful and practical for mutual funds to rank various aspects of risk. For example, bond funds could be required to tell investors whether their exposures to interest rate changes, default risks, and currency fluctuations are low, medium, or high. This could be done in the form of a chart like the following.

RISK SUMMARY

| Portfolio | Interest rate risk | Default risk | Currency risk |
|---|---|---|---|
| High-Yield Fund. | Medium | High ..... | Low. |
| Global Bond Fund. | Medium | Medium | High. |
| Mortgage-Backed Security Fund. | High ..... | Low ..... | Low. |

• Would it be useful for funds to rank various aspects of risk? Do you find the above chart helpful? Do you understand the types of risk referred to in the chart and the significance of those risks?

How to mail your ideas and suggestions to the SEC:

• This form can be mailed to the SEC by folding it in half, with the return address showing. Please staple or tape this form closed. No postage is necessary.

• If you do not wish to use this form, you can write a letter directly to the SEC. Mark your letter ''File No. S7–10–95,'' and send it to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

• Remember to send your ideas and suggestions by July 7, 1995.

Do you want further information about what the SEC is considering?

• If you would like a copy of the complete SEC release that describes what the SEC is considering, write to Office of Consumer Affairs, Securities and Exchange Commission, Attn: Michael Strupp, Mail Stop 2–6, 450 Fifth Street, N.W., Washington, D.C. 20549.

Thank you for responding.

Your Name _____

Street Address _____

City _____

State _____

Zip _____

[FR Doc. 95–8143 Filed 4–3–95; 8:45 am]

BILLING CODE 8010–10–P

federal register

Tuesday
April 4, 1995

# Part VI

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

**48 CFR Parts 12 and 52**

**Federal Acquisition Regulation, Subcontracts for Commercial Items; Proposed Rule; Correction**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 12 and 52**

**[FAR Case 94–791]**

## Federal Acquisition Regulation; Subcontracts for Commercial Items; Correction

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule correction.

**SUMMARY:** In related actions Federal Acquisition Regulation (FAR) case 94–790 proposed to implement statutory authorities for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors and FAR case 94–791 proposed a complete list of laws determined to be inapplicable to Executive agency contracts and subcontracts for commercial items and clauses applicable to subcontracts for the acquisition of commercial items. Neither of these cases addressed the statutory authority for the Comptroller General to examine the records of contractors. This amendment corrects that omission.

**DATES:** Comments should be submitted on or before May 22, 1995 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 94–791 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Colonel Laurence M. Trowel, Commercial Items Team Leader, at (703) 695–3858 in reference to this correction. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–791 correction.

**SUPPLEMENTARY INFORMATION:**

### A. Background

FAR cases 94–790, Acquisition of Commercial Items, and 94–791, Subcontracts for Commercial Items, were published as proposed rules with request for comment at 60 FR 11198; March 1, 1995 and 60 FR 15220; March 22, 1995, respectively. In addition to these changes, the Federal Acquisition Streamlining Act (FASA) of 1994 also consolidated audit provisions and made other related revisions to the Government's authority to examine records of contractors by amending 10 U.S.C. 2313 (section 2201(a)) and by adding 41 U.S.C. 254d (section 2251(a)). These audit related sections were proposed to be implemented by FAR case 94–740 published at 59 FR 66408; December 23, 1994. The proposed language contained in FAR case 94–740 includes the authority for both the Comptroller General and Agency examination of records in a single clause. However, the clause will only be included in contracts for the acquisition of commercial items, when an exception to the requirement for cost or pricing data under FAR 15.804–1(a) does not apply. As a result, contracts for commercial items that qualify for the exception to the requirements for cost or pricing data will not contain language providing the Comptroller General the authority to examine records as required by 10 U.S.C. 2313(c) and 41 U.S.C. 254d(c). To remedy this oversight, we propose to make the following amendments to FAR case 94–791:

- Revise the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, by adding a new paragraph (d) to address the Comptroller General authority granted in the two statutes. The balance of the clause remains unchanged from that published in the **Federal Register** at 60 FR 11198. This revision will provide the Comptroller General the authority to examine records when:

(1) The contract was awarded by other than sealed bid;

(2) The contract is above the simplified acquisition threshold; and

(3) The clause at 52.215–2, Audit and Records—Negotiation, is not included in the contract. When cost or pricing data is required, the contracting officer will incorporate the appropriate Part 15 clauses, to include the clause proposed at 52.215–2, Audit and Records—Negotiation (see FAR Case 94–740). This clause provides for both the Comptroller General and Agency authority to examine records. The Commercial Items Team has chosen to revise the clause at 52.212–5 to add coverage for the Comptroller General specifically tailored to the acquisition of commercial items rather than cite the applicable portions of the clause at 52.215–2. This approach will clearly and more simply establish the Comptroller General's right to examine records for contracts for commercial items.

- Revise FAR 12.403, Applicability of certain laws to subcontracts for the acquisition of commercial items, to include 10 U.S.C. 2313(c) and 41 U.S.C. 254d(c) in the list of laws not applicable to subcontracts for commercial items. Paragraph (c) of these laws (which relate to the Comptroller General's authority) will not be applicable when the subcontractor is not required to submit cost or pricing data. When cost or pricing data is required, the clause at 52.215–2 will appear in both the prime and subcontract and authority to examine records of subcontractors will apply.

### B. Corrections

1.At 60 FR 15221; March 22, 1995, in the third column section 12.403 is correctly revised to read as follows:

**12.403 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(a) The following laws are not applicable to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see 48 CFR (FAR) part 19, subpart 19.2);

(2) 41 U.S.C. 43, Walsh-Healey Act (see 48 CFR (FAR) part 22, subpart 22.6);

(3) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see 48 CFR (FAR) part 27, subpart 27.4);

(4) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 48 CFR (FAR) part 3, subpart 3.4);

(5) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see (FAR) part 15, subpart 15.1);

(6) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 48 CFR (FAR) part 5, subpart 5.2);

(7) 41 U.S.C. 418a, Rights in Technical Data (see 48 CFR (FAR) part 27, subpart 27.4);

(8) 41 U.S.C. 701 *et seq.*, Drug-Free Workplace Act of 1988 (see 48 CFR (FAR) 23.5);

(9) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see 48 CFR (FAR) part 47, subpart 47.5);

(10) 49 U.S.C. 40118, Fly American provisions (see 48 CFR (FAR) part 47, subpart 47.4);

(11) Pub. L. 90–469, William Langer Jewel Bearing Plant Special Act (see 48 CFR (FAR) part 8, subpart 8.2);

(12) 10 U.S.C. 2301, note, as amended by Section 2091, Pub. L. 103–355, Payment Protections for Subcontractors and Suppliers (see 48 CFR (FAR) parts 28 and 32, subparts 28.1 and 32.1);

(13) 10 U.S.C. 2241, note (Pub. L. 102–396, Section 9005, as amended by Pub. L. 103–139, Section 8005), Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States (See 48 CFR (DFARS) part 225, subpart 225.70);

(14) 10 U.S.C. 2320, Rights in Technical Data (see 48 CFR (DFARS) part 227, subpart 227.4);

(15) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions. (see 48 CFR (DFARS) part 227, subpart 227.4);

(16) 10 U.S.C. 2327, note (Pub. L. 103–160, Section 843), Reporting Requirement Regarding Dealings with Terrorist Countries (see 48 CFR (DFARS) part 209, subpart 209.1);

(17) 10 U.S.C. 2391, note (Pub. L. 101–510, Section 4201(a)(1)(B)), Notification of Substantial Impact on Employment (see 48 CFR (DFARS) part 249, subpart 249.70);

(18) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors (see 48 CFR (DFARS) part 209, subpart 209.4);

(19) 10 U.S.C. 2501, note (Pub. L. 103–160, Section 1372), Notification of Proposed Program Termination (see 48 CFR (DFARS) part 249, subpart 249.70);

(20) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods other than United States Goods (see 48 CFR (DFARS) part 225, subparts 225.7004, 225.7007, 225.7010, and 225.7016);

(21) 10 U.S.C. 2631, Cargo Preference Act (see 48 CFR (DFARS) 247.5); and

(22) National Defense Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Purchases as follows: Pub. L. 100–202, Section 8088, Polyacrylonitrile Based Carbon Fiber; Pub. L. 101–511, Section 8041, Anchor and Mooring Chain; Pub. L. 102–172, Section 8111, Carbon, Alloy and Armor Steel Plates; Pub. L. 102–396, Section 9108, Four Ton Dolly Jacks; Pub. L. 102–484, Section 832, Anti friction Bearings; Pub. L. 103–139, Section 8090, Aircraft Fuel Cells; Pub. L. 103–139, Section 8124, Totally Enclosed Lifeboat Survival Systems; Pub. L. 103–335, Section 8023, Supercomputers; Pub. L. 103–335, Section 8050, Multibeam Sonar Mapping Systems; Pub. L. 103–335, Section 8115, Ship Propellers; and Pub. L. 103–335, Section 8120, 120 mm Mortars and Ammunition.

(b) Certain requirements of the following laws have been eliminated for subcontracts under either a contract for the acquisition of commercial items or subcontract for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 48 CFR (FAR) part 23, subpart 23.1);

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 48 CFR (FAR) part 22, subpart 22.3);

(3) 41 U.S.C. 423e(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see 48 CFR (FAR) part 3, subpart 3.1); and

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 48 CFR (FAR) part 23, subpart 23.1).

(c) The applicability of the following laws have been modified in regards to subcontracts under either a contract for the acquisition of commercial items or a subcontract for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 48 CFR (FAR) part 3, subpart 3.5);

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 48 CFR (FAR) part 15, subpart 15.8); and

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR (FAR) part 99).

(d) The FAR prescription, provision or clause for each of these statutes has been revised in the appropriate part to reflect their proper application to the acquisition of commercial items.

2. At 60 FR 15222; March 22, 1995, in the second column section 52.212–5 is correctly revised to read as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

As prescribed in 12.302(b)(4), insert the following clause:

**Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Date)**

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3));

(2) 52.222–3, Convict Labor (E.O. 11755); and

(3) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the following FAR and FIRMR clauses in this paragraph (b) that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

_____ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

_____ (3) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

_____ (4) 52.222–26, Equal Opportunity (E.O. 11246).

_____ (5) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012).

_____ (6) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

_____ (7) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012).

_____ (8) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

_____ (9) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

_____ (10) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

_____ (11) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

_____ (12) 52.225–19, European Community Sanctions for Services (E.O. 12849).

_____ (13) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).

_____ (14) 52.247–64, Preference for Privately Owned US Flagged Commercial Vessels (46 U.S.C. 1241).

_____ (15) 201–39.5202–3, Procurement Authority (FIRMR). (This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____).

(c) The Contractor agrees to comply with the following FAR clauses in this paragraph (c), applicable to commercial services, that are indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

_____ (1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

_____ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

_____ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

_____ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 *et seq.*).

_____ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor agrees to comply

with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215–2, Audit and Records—Negotiation:

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(End of clause)

Dated: March 29, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.*

[FR Doc. 95–8145 Filed 4–3–95; 8:45 am]

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federal register

Tuesday
April 4, 1995

# Part VII

# Department of Agriculture

## Agricultural Marketing Service

## 7 CFR Part 97

## Plant Variety Protection Regulations, Amendments To Conform to Change in the Law and To Increase Certification Fees; Interim Final Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 97**

**[SD–95–001]**

**RIN 0581–AB39**

## Plant Variety Protection Regulations; Amendments To Conform to Change in the Law and To Increase Certification Fees

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule revises the Plant Variety Protection Regulations to conform to changes made in the Plant Variety Protection Act (PVPA). The amendments to the PVPA become effective April 4, 1995. Fees are increased to recover the cost of administering the Act and to maintain the program as a fully user funded program.

**DATES:** Effective April 4, 1995; comments received by May 4, 1995 will be considered prior to issuance of a final rule.

**ADDRESSES:** Comments should be sent to Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, Room 500, National Agricultural Building, Beltsville, Maryland 20705–2351. Telephone (301) 504–5485. Comments will be available for public inspection at this location during regular business hours, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Telephone:(301)504–5518, FAX (301)504–5291

**SUPPLEMENTARY INFORMATION:**

### I. Executive Order 12866; Executive Order 12778

This interim final 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.

This rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### II. Regulatory Flexibility Act

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). The fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which utilize Plant Variety Protection services.

### III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements included in 7 CFR Part 97 have been approved previously by the Office of Management and Budget and have been assigned OMB control number 0581–0055.

### IV. Background Information

The Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*) (PVPA) authorizes the Secretary to issue Certificates of Plant Variety Protection which afford variety ownership rights similar to patent rights. As a member of the International Union for the Protection of New Varieties of Plants (UPOV) the United States participated in negotiations which resulted in the March 19, 1991 UPOV Convention. The PVPA was amended on October 6, 1994 to conform to the new UPOV Convention and the amendments will be effective on April 4, 1995. This interim final rule revises the regulations to conform to the amendments of the PVPA. The regulations must be revised so that they are in place when the amended Act becomes effective. It is also necessary that the program be maintained as a fully user-fee funded program. Therefore, pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

Section 97.1 (a general statement of the scope of the regulations) is revised in three respects. First, the phrase ''novel varieties'' is replaced by ''new, distinct, uniform, and stable varieties'' because the term ''novel variety'' is no longer used in the PVPA. Second, a reference to tuber reproduced plants is added to reflect the extension of the PVPA to tuber reproduced as well as sexually reproduced plant varieties. Third, the description of the rights afforded by a certificate is revised by adding conditioning and stocking as actions which require the authorization of the owner, as provided in the PVPA.

In § 97.2 (a list of definitions), the term ''hybrid'' is removed. The definition is no longer necessary because the PVPA now extends to hybrid varieties.

Section 97.5(a)(2) is revised to specify that the member states of UPOV include those countries which are members of an intergovernmental organization which is a UPOV member. This clarification is made because nationals of such countries would in any event be fully eligible for protection under section 97.5(a)(3).

Section 97.6(d), which deals with the requirement that the application must be accompanied by a seed sample, is revised by adding that, for a tuber propagated variety, the application be accompanied by ''verification that a viable cell culture will be deposited in a public depository before the issuance of the certificate and will be maintained for the duration of the certificate.'' This reflects the extension of the PVPA to tuber propagated varieties where the reference to seeds would be inapplicable. Additionally, seed samples provide information on seed characteristics and demonstrate the uniformity of the deposit. No such information is gained from a cell culture.

Section 97.7 is removed. This section relates to the statements of the applicant in signing a completed application. It is unnecessary because the applicant in signing the application states what is stated on the completed application. Further, the provision mentions items which are no longer applicable because of the amendment of the PVPA.

Section 97.11(b), which relates to the length of time an incomplete or defective application will be held, is revised to provide for holding for three months rather than six months, to reflect a change in the statute.

The heading of § 97.15 is revised by removing the word ''novel'' so that it would read ''Assigned varieties and certificates.'' As mentioned above, the amended PVPA no longer uses the term ''novel variety.''

Section 97.19 is revised by replacing the word ''novel'' with ''distinctive'' for the same reason. Similar changes would be made in §§ 97.100(b), 97.104(b), 97.105, 97.106, 97.130, 97.140, 97.141, 97.201(e), and 97.800.

Section 97.20, relating to abandonment for failure to respond to

requests for information, is revised by changing the time period from 6 months to 30 days to reflect the amendment of the PVPA. This only changes the automatic period of time provided; extensions may still be granted. In connection with this change, the reference in § 97.20(c) to a ''shortened'' period of 30 days is removed.

The amendments to the PVPA provide that certificates which have been granted and applications which are pending as of the effective date of the amendments will continue to be governed by the Act as it was prior to the amendments. There is an exception for applications which are withdrawn and refilled under the new amendments to the law. Section 97.23 (relating to the withdrawal of applications) is revised by adding a provision which simplifies the withdrawal of a pending application for the purpose of refiling under the amended PVPA. All that is required is written notice and payment of the application fee. Completion of a new application form would not be necessary.

Sections 97.140 and 97.141 (which relate to notice on the label that protection has been applied for or granted, respectively) are also revised to clarify that the notice may, where applicable, specify ''PVPA–1994'' so as to give notice that the variety is subject to the new infringement provisions.

Section 97.142 (which relates to notice accompanying seed released for testing or increase only) is revised so that it would also apply to tuber reproducing plants.

A footnote is added to the provisions relating to priority contests (beginning at § 97.205) stating that they apply only to varieties protected under the PVPA as it was prior to the 1994 amendments. The amendments removed the date of determination of a variety a deciding factor in eligibility for protection. The provisions are not removed, however, because there could be a possibility that there may be a priority contest involving applications under the PVPA prior to the 1994 amendments.

Similarly, §§ 97.303 and 97.500 (relating to appeals from the decisions of the Secretary) are revised to remove references to specific sections of the PVPA. These references are unnecessary and may be confusing because there is a possibility of an appeal from the decision of the Secretary which would be governed by the PVPA as it was prior to the 1994 amendments.

The fees set forth in § 97.175 are increased. The application fee is increased from $275 to $300, the search fee from $2,050 to $2,150, and the issuance fee from $275 to $300. The fees for reviving an abandoned application, correcting or reissuance of a certificate are increased from $275 to $300. The charge for granting an extension for responding to a request is set at $50. The hourly charge for any other service not specified is increased from $40 to $60. The fee for appeal to the Secretary (refundable if appeal overturns the Commissioner's decision) is increased from $2,600 to $2,750.

These fee increases are necessary to maintain the program as a fully user funded program.

The Plant Variety Protection Advisory Board has been consulted on a fee increase on September 23, 1992. The fees were not increased at that time. The Board was also consulted and advised that the regulations should be revised to conform to any amendments made in the PVPA to conform to the new UPOV Convention. This interim final rule makes the minimum changes in the regulations to implement the PVPA and increase fees to maintain the program as a fee funded program.

**List of Subjects in 7 CFR Part 97**

Plants, Seeds.

For reasons set forth in the preamble, 7 CFR part 97 is amended as follows.

## PART 97—PLANT VARIETY AND PROTECTION

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

**Authority:** Secs. 6, 22, 23, 26, 31, 43, 56, 57, 91(c), Plant Variety Protection Act, as amended; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402b, 2403, 2426, 2427, 2501(c); Sec. 14, Plant Variety Protection Act amendments of 1994; 7 U.S.C. 2401 note; 29 FR 16210, as amended, 37 FR 6327, 6505.

**§ 97.1 [Amended]**

2. Section 97.1 is amended by removing the word ''novel'' and adding in its place ''new, distinct, uniform, and stable''; adding ''or tuber propagated'' after the word ''reproduced'' and adding ''conditioning it, stocking it,'' after the words ''exporting it,''.

**§ 97.2 [Amended]**

3. Section 97.2 is amended by removing the definition of ''hybrid''.

**§ 97.5 [Amended]**

4. Section 97.5(a)(2) is amended by adding the words ''(including states which are members of an intergovernmental organization which is a UPOV member)'' after the word ''Plants''.

**§ 97.6 [Amended]**

5. Section 97.6(d) is amended by adding the words ''or with the application for a tuber propagated variety, verification that a viable cell culture will be deposited in a public depository before the issuance of the certificate and will be maintained for the duration of the certificate'' after the word ''variety''.

**§ 97.7 [Removed and Reserved]**

6. Section 97.7 is removed and reserved.

**§ 97.11 [Amended]**

7. Section 97.11 (b) is amended by removing the number ''6'' and adding a ''3'' in its place.

**§ 97.15 [Amended]**

8. Section 97.15 heading is revised to read as follows: Assigned varieties and certificates.

**§ 97.19 [Amended]**

9. Section 97.19 is amended by removing the word ''novel'' from the undesignated paragraph at the end of the section and adding the word ''distinctive'' in its place.

**§ 97.20 [Amended]**

10. Section 97.20(a) is amended by removing the words ''6 months'' and adding the words ''30 days'' in their place; and paragraph (c) is amended by removing the word ''shortened''.

**§ 97.23 [Amended]**

11. Section 97.23 is amended by adding a new paragraph (d) as follows:

**§ 97.23 Voluntary withdrawal and abandonment of an application.**

* * * * *

(d) Transitional provision. An applicant whose application is pending on April 4, 1995, may notify the Plant Variety Protection Office in writing that he or she wishes to withdraw the application and refile it under the Plant Variety Protection Act as amended in 1994. Payment of the current application fee is required but no other formalities are necessary.

**§ 97.100 [Amended]**

12. Section 97.100(b) is amended by removing the word ''novel'' and adding the words ''new, distinct, uniform, and stable'' in its place.

**§ 97.104 [Amended]**

13. Section 97.104(b) is amended by removing the word ''novel''.

**§ 97.105 [Amended]**

14. Section 97.105(a) is amended by removing the word ''novel'' and adding the words ''new, distinct, uniform, and stable'' in its place and paragraph (b) is amended by removing the words ''for want of novelty''.

**§ 97.106 [Amended]**

15. Section 97.106(b) is amended by removing the word ''novelty'' and adding ''the variety being new, distinct, uniform, and stable'' in its place; and (c) is amended by removing the word ''novelty'' and adding ''the variety is new, distinct, uniform, and stable'' in its place; and removing the word ''novel'' and adding ''new, distinct, uniform, and stable'' in its place.

**§ 97.130 [Amended]**

16. Section 97.130(c) through (d) are amended by removing the word ''novel'' at each occurrence.

**§§ 97.140, 97.141 [Amended]**

17. Sections 97.140 and 97.141 are amended by removing the word ''novel'' and adding a new sentence to the end of each section reading ''Where applicable, ''PVPA 1994'' may be added to the notice.''.

**§ 97.142 [Amended]**

18. Section 97.142 is amended by removing the words ''other sexually'' and ''produced from seed'' and adding the word ''material'' before the word ''substantially''.

**§ 97.175 [Revised]**

19. Section 97.175 is revised to read as follows:

**§ 97.175 Fees and charges.**

The following fees and charges apply to the services and actions specified below:

| | |
|---|---|
| (a) Filing the application and notifying the public of filing | $300 |
| (b) Search or examination | 2,150 |
| (c) Allowance and issuance of certificate and notifying public of issuance | 300 |
| (d) Revive an abandoned application | 300 |
| (e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material) | 1 |
| (f) Authentication (each page) | 1 |
| (g) Correcting or reissuance of a certificate | 300 |
| (h) Recording assignments (per certificate/application) | 25 |
| (i) Copies of 8 x 10 photographs in color | 25 |
| (j) Additional fee for reconsideration | 300 |
| (k) Additional fee for late payment | 25 |
| (l) Additional fee for late replenishment of seed | 25 |
| (m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision) | 2,750 |
| (n) Granting of extension for responding to a request | 50 |

(o) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $60 per employee-hour.

**§ 97.201 [Amended]**

20. Section 97.201(e) is amended by removing the word ''novel'' in the second sentence.

21. A footnote number 2 is added to the undesignated center heading ''PRIORITY CONTEST'' preceding section 97.205, as follows: ''[2] All provisions relating to priority contests apply only to varieties protected under the Act as it was in force prior to April 4, 1995.''

**§ 97.303 [Amended]**

22. Section 97.303(b) is amended by removing ''sections 71, 72, or 73 of''.

**§ 97.500 [Amended]**

23. Section 97.500 is amended by removing ''sections 71, 72, and 73 of''.

**§ 97.800 [Amended]**

24. Section 97.800 is amended by removing the word ''novel'' and adding ''distinct, uniform, and stable'' in its place.

Dated: March 29, 1995.

**Lon S. Hatamiya,**

*Administrator.*

[FR Doc. 95–8203 Filed 4–3–95; 8:45 am]

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