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Tuesday
October 10, 1995

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1477 and 1478

RIN 0560–AE31

Disaster Payment Program for 1990 Through 1994

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the 1990, 1991, 1992, and 1993, Disaster Payment Programs and adds the 1994 Disaster Payment Program and the 1994 Tree Assistance Program (TAP) to implement statutory requirements. Also, this amendment makes technical corrections because of the consolidation of the Agricultural Stabilization and Conservation Service, with personnel of the Federal Crop Insurance Corporation, and the farm loan programs of the Farmers Home Administration into the Consolidated Farm Service Agency (CFSA).

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: 7 CFR part 1477 contact: Diane Sharp, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), Room 3644–S, P.O. Box 2415, Washington, DC 20013–2415, telephone: (202) 720–4696.

7 CFR part 1478 contact: Robert Stephenson, USDA, CFSA, Room 4714–S, P.O. Box 2415, Washington, DC 20013–2415, telephone: (202) 720–5295.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was viewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Final Regulatory Impact Analysis

Final Regulatory Impact Analysis have been prepared with respect to the 1993 and 1994 disaster programs. Copies of the analyses are available to the public from the Economic and Policy Analysis Staff, CFSA–USDA, Room 3090, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013–2415.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. The final Regulatory Impact Analysis referred to above determined, under the TAP, and damaging weather or related conditions in 1993 and 1994 (as defined in section 2251 of Pub. L. 101–624), this rule will have no significant economic impact on, a substantial number of small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this amendment will have no significant economic impact on a substantial number of small entities.

Environmental Evaluation

An Environmental Evaluation with respect to the Disaster Payment Program and TAP has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; and Rice Production Stabilization—10.065.

Executive Order 12372

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

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1980 and assigned control numbers 0560–0050 and 0560–0082.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State law to the extent that such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive. Before any judicial action may be brought regarding the provisions of this final rule, the administrative appeal remedies at 7 CFR part 780 or regulations published by the National Appeals Division which ever is applicable must be exhausted.

Background

This rule provides for payments to producers of 1993, 1994, and 1995 crops of papayas that would have been harvested if not destroyed by Hurricanes Andrew or Iniki or Typhoon Omar, and the papaya plants would not have produced fruit for a lifetime total of more than 3 crop years based on normal practices. In addition, this rule provides payment for losses of trees, shrubs, or nursery stock and inventory being grown for commercial sale, if such stock or inventory would normally have been sold in 1993, 1994, or 1995. The application must have been made by April 13, 1994, and all production data must have been submitted by May 27, 1994.

This final rule amends the Tree Assistance Program (TAP) and the Disaster Assistance Program regulations for the 1990, 1991, 1992, 1993, and 1994 crop years as authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act), the Dire Emergency Supplemental Appropriations Act of 1992, Public Law 102–229, Public Law 102–368, Public Law 101–624, Public Law 103–50,

Public Law 103–75, Public Law 103–211, and Public Law 103–330.

The TAP and disaster regulations are being amended to: (1) Add new provisions that relate to the application period for 1994 crop, which began on December 1, 1994, (disaster), and November 21 (TAP), and continued through March 31, 1995 or other such date as determined by CCC; (2) allowed producers of papayas and producers of trees, shrubs, or nursery stock and inventory that was being grown for commercial sale to file their application by May 11, 1994, (3) and provide production records by May 27, 1994; (4) provide payments for losses in 1994 for aquaculture, excluding ornamental fish, (5) provide that producers of target price commodities can be paid at the target price rather than the loan rate for acreage that is produced in excess of the permitted and is commonly referred to as flex acreage in accordance with 7 CFR 1413.43, (6) provide payments to producers of orchards if they had losses to their orchards due to freezing conditions that occurred between January 1, 1994, and March 31, 1994, and federal crop insurance was not available for such losses; (7) provide for the manner in which disbursement of the funds will be made; and (8) provide that all related documentation must be provided to the county CFSA office no later than July 15, 1995, for TAP assistance to eligible producers who incurred losses in 1994 caused by damaging weather. Other provisions of this final rule provide for: (1) Allowing county committees to reduce yields for nonprogram crops; (2) determining producer shares for disaster purposes; (3) specifying that owners of tobacco and peanut farms must sign the disaster application; (4) specifying that sod, sprigs, turf, trees, and shrubs must be dead before they are eligible for a disaster program payment; (5) making the rules that were applicable for the 1993 disaster program applicable for 1994, and (6) making certain technical corrections.

The provisions of this final rule: (1) Include losses in 1993 of nursery inventory of non-tree plants as well as tree and tree seedlings, and seedlings grown from seedbeds, and losses in 1994 of forest tree seedlings, orchard trees, and nursery inventory; (2) makes technical changes to TAP to enhance the administration of the program; and (3) sets forth the manner in which the application period for disbursement of the funds made available by the Acts will be conducted.

In accordance with Public Law 101–624, Public Law 102–229, Public Law 102–368, Public Law 103–211 and Public Law 103–311, TAP is required to be offered for 1993 losses of nursery inventory, including non-tree plants as well as tree seedlings and trees; and, 1994 losses of nursery inventory, orchard trees planted to produce annual crops and all commercial forest tree seedlings planted to produce timber, pulp or Christmas trees that were lost due to damaging weather or related conditions in 1993 or 1994.

Payments are provided for the amount of loss on each individual stand that exceeds 35 percent of the stand, adjusted for normal mortality. Payments provide 65 percent of the cost to replant or rehabilitate that portion of the loss that exceeds this 35 percent plus the normal mortality. Also, in accordance with the 1993 Act (Pub. L. 103–75) and Public Law 101–624, a 1993 TAP is authorized for orchard trees, forest tree seedlings, and nursery inventory losses resulting from damaging weather or related conditions (as defined in section 2251 of Public Law 101–624), in 1993.

List of Subjects

7 CFR Part 1477

Agriculture commodities, Disaster assistance, Fraud, Grant programs/agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1478

Disaster assistance, Grant programs/agriculture, Reporting and recordkeeping requirements, Trees.

Accordingly, 7 CFR parts 1477 and 1478 are amended as set forth below.

PART 1477—DISASTER PAYMENT PROGRAM FOR 1990 AND SUBSEQUENT YEARS

1. **Authority:** 15 U.S.C. 714b and 714c; 104 Stat. 3359, 105 Stat. 1701; 106 Stat. 117; 107 Stat. 241; 107 Stat. 739; 108 Stat. 3; 108 Stat. 2435; and 108 Stat. 3178.

2. Section 1477.1 is revised to read as follows:

§ 1477.1 General statement.

This part implements a Disaster Payment Program for the 1990 through 1994 crop years. The purpose of the program is to make disaster payments available to eligible producers on a farm that has suffered a loss of production or quality of 1990, 1991, or 1992 crops, not to exceed 2 different crop years, and of 1993 and 1994 crops due to damaging weather, to make payments for 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar for nursery crops, aquaculture, and tree crops including papaya, and make payments on 1993 losses of trees, shrubs, or nursery stock affected by disaster in 1993 that would have been sold in either 1993, 1994 or 1995, or related condition affecting the crop year for the crop for which a disaster application is made. This rule provides for 1994 crop losses from natural disasters including acquaculture, except ornamental fish, and provides payments to producers for 1995 through 1996 orchard crop losses due to freezing if the loss occurred between January 1, 1994, and March 31, 1994.

3. Section 1477.2 is revised to read as follows:

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county CFSA committees.

(b) State and county CFSA committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State CFSA committee shall take any action required by this part which has not been taken by a county CFSA committee. The State CFSA committee shall also:

(1) Correct or require a county CFSA committee to correct, any action taken by such county CFSA which is not in accordance with this part; or

(2) Require a county CFSA committee to withhold taking any action which is not in accordance with this part.

(d) CCC shall determine all yields and prices determined under this part and may utilize any agency of the USDA in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the CFSA. Any reference in this part to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county CFSA committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county Consolidated Farm Service Agency committee.

4. Section 1477.3 is amended to add the following definitions ''CCC'', ''CFSA'', ''Contract Payments'', ''Crop signup period (1994)'', ''Deputy Administrator'', ''Doublecropping'', ''Orchards'', ''Ornamental fish'' in alphabetical order; to revise the definitions ''Actual production'', ''Aquaculture'', ''Aquaculture facility'', ''Crop year'', ''Eligible crop'',

''Nonprogram crop''; to remove the definition of ''Double-cropped'' and to amend the definition of ''Disaster payment yield'' by revising paragraph (5) to read as follows:

§ 1477.3 Definitions.

* * * * *

Actual production means the quantity of the crop actually harvested or which could have been harvested as determined by the county or State CFSA committee in accordance with instructions issued by the Deputy Administrator. In the case of sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed. For the crops listed below, an appraisal will be required on any unharvested production. If a producer has any harvested production of the crop, the de minimis yield is not applicable. The appraisal must show that the yield would be equal to or less than the de minimis yield for the de minimis yield provision to apply. If an eligible producer has appraised production equal to or less than the specified quantity for the following commodities, such production shall be considered to be zero:

(1) Wheat—4 bushels per acre.

(2) Corn—9 bushels per acre.

(3) Grain Sorghum—6 bushels per acre.

(4) Barley—5 bushels per acre.

(5) Oats—7 bushels per acre.

(6) Upland cotton—66 pounds per acre.

(7) ELS cotton—33 pounds per acre.

(8) Rice—628 pounds per acre.

(9) Soybeans—2 bushels per acre.

(10) Sunflower, Oil—100 pounds per acre.

(11) Sunflower, Confectionery—100 pounds per acre.

(12) Safflower—50 pounds per acre.

(13) Flax—1 bushel per acre.

(14) Canola—50 pounds per acre.

(15) Rapeseed—50 pounds per acre.

(16) Mustard seed—50 pounds per acre.

Aquaculture means the propagation and rearing of aquatic species from a commercial operation conducted on private land or in private waters and in 1994 excludes ornamental fish.

Aquaculture facility for 1994 means a commercial operation conducted on private land or in private waters.

CCC means the Commodity Credit Corporation.

CFSA means the Consolidated Farm Service Agency.

Contract payments means a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract.

Crop signup period (1994) means the signup period ending March 31, 1995 (or other such date established by CCC), for assistance for eligible producers who have incurred 1994 crop losses.

Crop year means the year harvest begins for the crop. However, for valencia oranges harvested in 1991, 1992, 1993, and 1994, the crop shall be considered to be a 1990, 1991, and 1993 crop respectively.

Deputy Administrator means the CFSA Deputy Administrator for Farm Programs (Previously the Deputy Administrator, State and County Operations (DASCO)).

Disaster payment yield means:

* * * * *

(5) For nonprogram crops (including honey per hive), the average of the actual yields for the 3 years prior to the applicable disaster year, in accordance with instructions issued by the CFSA, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. If a producer is not able to provide adequate production evidence for the 3 previous years, the county committee shall use a yield that is equivalent to 65 percent of the average county yield for the years without adequate records. The county average yield shall be the average of the county average yields for the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest. Crop yields for the 1994 Disaster Assistance Program may be the same yield that was established for the crop for 1993 unless the State committee finds a better source to establish yields. In establishing county average yields for nonprogram crops, the State committee shall use the best available information concerning yields. Such information may include: NASS data, extension service records, credible nongovernment studies, and yields for the crop in similar counties. In the case of sod, sprigging turf, and trees and shrubs, the crop must be dead to be eligible for a disaster payment. For all nonprogram crops, the county committee may reduce the yields set by the State committee for the county or an area of the county, to what the county committee considers a normal yield if:

(i) Cultural practices, including the age of the planting or plantings, are determined to be different from those that were used to establish the yield; or

(ii) The yield was established on a State or area level and it is determined that it was too high for the county or an area of the county.

Doublecropping means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Eligible crop for crop production losses means any of the 1990 through 1994 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crops including ornamental crops, nursery crops, and for 1990 through 1992, and for 1994, aquaculture production, excluding ornamental fish for 1994.

Nonprogram crop means a crop including ornamentals such as flowering shrubs, flowering trees, field or container grown roses, or turf, and sweet potatoes produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with the instructions issued by the Agency, which is not a crop of a target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans, or sunflowers. For 1990 through 1992, and 1994 aquaculture production is considered to be a nonprogram crop.

Orchards means an area of land devoted to the cultivation of fruit trees and nut trees.

Ornamental fish for 1994 disaster purposes means any species of fish not being grown for market as food or bait.

* * * * *

5. Section 1477.4 is amended by revising paragraph (c)(2), redesignating paragraph (d) as paragraph (e), adding new paragraph (d), and revising redesignated paragraph (e) to read as follows:

§ 1477.4 Availability of disaster payments.

* * * * *

(c) * * *

(2) Producers requesting 1993 through 1995 loss benefits in accordance with §§ 1477.22 and 1477.23.

(d) Eligible producers with a loss of production on a crop in excess of 65 percent of expected production, and who are requesting 1994 crop loss benefits, or 1994 through 1996 losses on orchards, must agree to obtain crop insurance, if available in the county, any time during the disaster application period, as required under the Federal Crop Insurance Act, as a condition of eligibility to receive such disaster benefits. The requirement to purchase crop insurance for the 1995 crop year when there has been a loss in excess of 65 percent of the 1994 crop or losses for 1994 through 1996 losses on orchards does not supersede the requirement to

purchase crop insurance as set forth in 7 CFR part 402.

(e) The requirements of paragraphs (b) and (c) of this section are waived if one of the following exists:

(1) Crop insurance is not available for the commodity for which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment, deficiency forgiveness, or CFSA loans; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

6. Section 1477.5 is amended by revising paragraphs (a) introductory text, (a)(1) through (a)(3), (b)(5), (c)(1), and (c)(2) adding a new paragraph (c)(6); revising paragraph (f); redesignating paragraph (g) as paragraph (h) and revising it; and adding new paragraph (g) to read as follows:

§ 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting, prevented harvest, and law yield losses for eligible crops are authorized to be made to producers who file an Application for Disaster Benefits (Form CCC–441) in accordance with instructions issued by the Deputy Administrator if:

(1) The farm operator, or a producer with an interest in the crop, submits an Application for Disaster Credit (Form ASCS–574) in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator, or a producer with an interest in the crop, submits a report of production and disposition (Form ASCS–658) in accordance with § 1477.9;

(3) The farm operator, or a producer with an interest in the crop, submits a Certification of Crop Insurance (Form CCC–440) in accordance with § 1477.9;

* * * * *

(b) * * *

(5) For purposes of determining the total quantity of 1990 through 1993 nonprogram crops and the total quantity of all 1994 crops that producers on a farm are able to harvest, commodities which the county committee determines cannot be sold in normal commercial channels of trade are excluded.

* * * * *

(c) * * *

(1) The established target price for the applicable year's target price commodities including acreage on farms enrolled in the applicable year's acreage reduction program in accordance with 7 CFR 1413.49;

(2) The basic county loan rate for the applicable year's target price commodities for producers on farms not enrolled in the applicable year's acreage reduction program.

* * * * *

(6) The CFSA State committee may adjust downward the payment rate established by the State committee for a crop by a factor established by State committee using the following criteria:

(i) If a crop is produced with a significant and variable harvesting expense, the factor will reflect the decreasing cost in the production cycle of the crop that is:

(A) Harvested;

(B) Planted but not harvested; and

(C) Prevented from being planted because of drought, flood, or other natural disaster.

(ii) [Reserved]

* * * * *

(f) Each eligible producer's share of a disaster payment shall be based on the producer's share of the eligible crop loss. County committees are authorized to establish a different division of the disaster payment than stated above if they believe that the circumstances warrant a different share.

(g) A producer who produces a crop under contract and receives a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract, shall have the production assigned to the crop by the county committee equal to the amount of the contract payment received. Such production amount shall be determined by dividing the payment amount by the established basic rate for the crop.

(h) Crops and land use for which disaster benefits are not applicable include:

(1) Crops not intended for harvest in the year for which disaster benefits are requested.

(2) By-products resulting from processing or harvesting an eligible crop, such as cotton seed, peanut hulls, and wheat or oat straw.

(3) Except for nursery crops, plants that produce an eligible crop, such as strawberry plants and orange trees.

(4) Acreage intended for haying or grazing and designated as ACR or CU for payment.

(5) Crops which the county committee has determined are not eligible for acreage reduction program benefits as a result of failure to comply with contract provisions.

(6) Crops planted as replacement crops on failed or prevented from planted program crop acreage.

(7) Resource conserving use crops as ACR or CU for payment.

(8) Home gardens.

7. Section 1477.6 is revised to read as follows:

§ 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

If any crop yield established for a county or other producing area includes irrigated production, the State committee shall:

(a) establish a nonirrigated yield reflecting the expected yield for the crop without irrigation. Such yield shall not exceed the NASS yield. The State committee may set the nonirrigated yield to zero if no production is expected without irrigation. A separate irrigated yield shall not be established.

(b) (1) Producers of nonprogram crops, (except for soybeans, minor oil seeds, sugar beets, sugarcane, quota and nonquota tobacco, peanuts and hay) must provide actual production evidence and production costs for the current year.

(2) Exceptions to paragraph (b)(1) of this section:

(i) If production evidence and production costs cannot be provided for the current year, then 1 of the 3 previous years production and production costs may be considered.

(ii) The payment yield shall be reduced to not less than 65 percent of the established yield if just 1 of the 3 previous years evidence is used.

(3) If production evidence or costs cannot be provided for the current year or 1 of the 3 previous years, the payment yield shall be reduced to zero, unless one of the following exceptions apply:

(i) If evidence is provided that a market was available for current year production by providing one of the following:

(A) A contract for all expected production or all acres for which disaster benefits are requested; or

(B) Some other acceptable evidence of a market such as a written agreement with a grocer, retailer, wholesaler, or processor.

(ii) The county committee or Federal Crop Insurance Corporation verifies physical evidence of the crops and determines the crop was cared for in a workmanlike manner.

(4) If a producer meets either of the exceptions in paragraphs (3)(i) and (3)(ii) of this section, the county committee has the authority to reduce the yield to not less than 65 percent of the established yield.

(5) The county committee may assign production based on similar farms. The producer must file Form ASCS–574 within 15 calendar days of the disaster occurrence. If no spot check was conducted, the county committee must have personal knowledge of the disaster condition that affected the crop.

8. Section 1477.7 is amended by revising paragraph (a), redesignating paragraphs (b)(7) through (b)(9) as paragraphs (b)(8) through (b)(10) and adding a new paragraph (b)(7) to read as follows:

§ 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the local CFSA office serving the county where the producer's farm is located for administrative purposes.

(b) * * *

* * * * *

(7) Applications for payments made during the 1994 crop signup period with respect to 1994 crop losses, low quality losses, and 1994 through 1996 losses resulting from freeze damage occurring from January 1, 1994, through March 31, 1994, must be filed by March 31, 1995.

* * * * *

9. Section 1477.9 is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 1477.9 Report of acreage, production disposition, and indemnity payments.

(a) (1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in an applicable year on any acreage for which an application for a disaster payment is filed. Such production reports submitted with respect to the 1994 signup period must be submitted by April 14, 1995; with respect to the 1993 signup period by March 27, 1994; and with respect to the 1990 through the 1992 crop quality and curley top virus conditions in sugar beets must be submitted by September 30, 1993; and with respect to 1993 through 1995 losses because of Hurricanes Andrew and Iniki and Typhoon Omar must be submitted by October 8, 1993.

* * * * *

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county CFSA committee determines to be necessary in order to verify the information provided by the producer.

* * * * *

10. Section 1477.10 is amended by revising paragraph (d)(2) and introductory paragraph (e) to read as follows:

§ 1477.10 Payment limitations.

* * * * *

(d) * * *

(2) Persons filing an application during the 1994 crop signup period who are subject to the provisions of paragraph (d)(1) of this section must elect the provisions under which such payments or benefits shall be received by notifying the county office of the election by April 14, 1995.

(e) All disaster program applications within a specific signup period submitted in accordance with this part, except 1993 or 1994 crop applications, shall be totaled at the end of the signup period. In order to ensure that there is no duplication of benefits, deficiency payments made in accordance with part 1413 of this chapter and emergency livestock feed program benefits made in accordance with part 1475 of this chapter shall not be made with respect to any loss of production for which assistance is requested under this part. Accordingly, the quantity of the loss of production otherwise eligible for disaster assistance under this part on which a producer had previously obtained a deficiency payment or an emergency livestock feed program benefit shall be reduced. In order to make such a reduction, the deficiency payments and emergency livestock feed program benefits, except those payments applicable to the 1993 or 1994 crop year, shall be adjusted by a national factor obtained by:

* * * * *

11. Section 1477.11 is amended by adding new paragraph (c) to read as follows:

§ 1477.11 Special provisions for burley and flue-cured tobacco, and peanuts.

* * * * *

(c) All operators and owners of tobacco or peanut farms must sign the application for disaster.

12. Section 1477.13 is amended by revising paragraph (d) to read as follows:

§ 1477.13 Refunds to CCC.

* * * * *

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county CFSA office or was erroneously computed by such office, the loss of production shall be recomputed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation shall be remitted to CCC.

13. Section 1477.19 is amended by redesignating paragraphs (h) through (m) as paragraphs (i) through (n) and adding new paragraphs (h) and (o) to read as follows:

§ 1477.19 Other regulations.

* * * * *

(h) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply Fully with the Program;

* * * * *

(o) Part 402 of this title, Catastrophic Risk Protection Endorsement.

14. Section 1477.21 is amended to revise the introductory text, redesignate paragraphs (b) through (e) as paragraphs (c) through (f) and add a new paragraph (b) to read as follows:

§ 1477.21 Adjustment to crop production.

Notwithstanding any other provisions of this part, the following provisions are applicable to producers of 1990 through 1994 crops of: wheat, corn, barley, oats, grain sorghum, upland cotton, rice, soybeans, sunflowers, peanuts, sugar beets, tobacco, and ELS cotton, whose production has been affected by low quality due to an eligible disaster.

* * * * *

(b) A request for assistance under this section must be submitted to CCC at the CFSA office in the county where the farm is administratively located by March 31, 1995, for 1994 crops.

* * * * *

15. Section 1477.22 is amended by revising paragraph (a)(1) introductory text and adding new paragraph (a)(3) to read as follows:

§ 1477.22 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar.

* * * * *

(a) * * *

(1) For nursery and aquaculture crops except papaya, CCC shall:

* * * * *

(3) For papaya, CCC shall determine the loss for each year 1993 through 1995 based on expected production and the recovery period as determined by CCC.

(i) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by April 13, 1994, and production data must be submitted May 27, 1994, or such other dates as determined by CCC.

(ii) For papaya crops, the CCC shall determine the loss for each year 1993 through 1995 based on expected production and that the papaya plants would not have produced fruit for a lifetime total of more than 3 crop years based on normal cultivation practices.

(iii) The county committee has determined that papaya can be harvested:

(A) Between 12 and 16 months after planting; or

(B) For a lifetime total of 3 years based on normal cultivating practices.

(iv) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments according to § 1477.10, based on the percent of production that would have been sold in each of the years 1993 through 1995.

(v) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after December 1, 1994.

* * * * *

16. New § 1477.23 is added to read as follows:

§ 1477.23 1993 losses of trees, shrubs, or nursery stock and inventory.

The following provisions apply for 1993 losses of trees, shrubs, or nursery stock and inventory grown for commercial sale that would have been sold in either 1993, 1994, or 1995, but which were affected by damaging weather or related condition.

(a) A request for assistance under this section and production evidence must be submitted to the county office in the county where the farm is administratively located by May 27, 1994.

(b) For trees, shrubs, or nursery crops and inventory, the county committee shall:

(1) Determine one loss for 1993 through 1995 by reducing from the inventory on hand at the time of the disaster, the inventory remaining immediately after the disaster occurred; and calculate payments using a rate based on the value of the product at the time of the loss.

(2) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments in accordance with § 1477.10, based on the percent of production that would have been sold in each of the years.

(c) Any producer entitled to a payment may assign any such payments in accordance with part 1404, if the assignment is made after September 9, 1994.

(d) Producers cannot receive tree assistance program benefits and disaster assistance payments on the same production.

17. New § 1477.24 is added to read as follows:

§ 1477.24 1995 and 1996 orchard crop losses.

To be eligible for disaster assistance payments, losses to orchard crops must have resulted from a freeze that occurred between January 1, 1994, and March 31, 1994, and crop insurance was not available for affected orchard crop producers in the county or area.

(1) CCC shall determine the loss for each year 1995 and 1996 based on expected production and the recovery period, as determined by the county committee.

(b) A request for assistance under this section must be submitted to the county office in the county where the orchard is administratively located by March 31, 1995, and production data must be submitted by April 14, 1995, or other dates as determined by CCC.

(c) For such orchards subject to frost, the CFSA county committee shall determine the loss for each of the years 1995 and 1996 based on expected production for the orchard.

(d) The calculated payment shall be determined separately for 1994, 1995, and 1996. A separate application shall be taken for each year. However, payments will be limited in accordance with § 1477.10.

(e) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after September 30, 1994.

§ 1477.25 [Redesignated as § 1477.26]

18. Section 1477.25 is redesignated as § 1477.26.

PART 1478—TREE ASSISTANCE PROGRAM

19. The authority citation for 7 CFR part 1478 is revised to read as follows:

Authority: 7 U.S.C. 1421 note; 15 U.S.C. 714b and 714c; 104 Stat. 3359; 105 Stat. 1701; 106 Stat. 117; 107 Stat. 739; 108 Stat. 3; and 108 Stat. 2435.

20. Section 1478.1 is revised to read as follows:

§ 1478.1 General statement.

(a) The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). Within specified limits, CCC is authorized by the 1990 Act to:

(1) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing eligible trees to offset losses by an eligible orhardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to damaging weather, or related condition in 1994; and

(2) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing seedlings which would have produced trees to be harvested for commercial purposes which were planted in 1992 or 1993 and were lost in 1993 (1993 losses) and planted in 1993 or 1994 for 1994 losses, due to damaging weather, or related condition in 1993 and 1994. However;

(i) Such trees, seedlings or nursery inventory must be planted for commercial purposes and may not be:

(A) Open-field-grown sod, grasses, legumes, and other plants, that are grown in a manner that does not allow them to be counted individually or by using statistical sampling; or

(B) Plants grown for shelterbelts and wildlife enhancement plantings; and

(ii) If the request for assistance is for:

(A) Trees planted to produce annual crops, the losses must be due to damaging weather or related condition;

(B) Seedlings planted to produce trees for harvest, the losses must be due to damaging weather or related condition;

(C) Nursery inventory, the losses must be due to damaging weather or related condition;

(D) Aquatic plants, the losses must be due to damaging weather or related condition; and

(E) Owners must elect whether trees which qualify as either nursery inventory or orchard trees may be enrolled as either but not be enrolled as both nursery inventory and orchard trees.

(3) Reimburse eligible owners for an individual stand of nursery trees or nursery plants.

(b) Such assistance may not exceed 65 percent of the eligible reseeding costs and may be based on average costs or the actual costs for the replanting practices, as determined by CCC, which, after adjustments for normal mortality, exceed a 35 percent loss.

(c) Unless an extension, not to exceed 24 months is granted by the State CFSA committee, all 1993 and 1994 TAP practices must be completed within 24 months of the last day of the applicable signup. The State CFSA committee shall only approve up to an additional 24 months when delays are beyond the control of the applicants.

21. Section 1478.2 is amended by revising paragraph (a), adding new paragraphs (c) (3) and (4) and revising paragraph (d) to read as follows:

§ 1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by CFSA State

and county committees (State and county committees).

* * * * *

(c) * * *

(3) Require the county committee to approve late-filed requests received after signup ends only for those owners who applied late due to circumstances beyond their control as determined by the county committee.

(4) Require the county committee to approve applications only for those owners of trees and plants who actually owned the trees at time of the eligible disaster at the time of application.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

22. Section 1478.3 is revised to read as follows:

§ 1478.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

Annual gross revenue means with respect to a person, as defined in part 1497 of this chapter:

(1) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations.

(2) For a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

(3) The determinations made in accordance with 7 CFR 1497.3 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(4) The year for which the annual gross income shall be received for the purpose of this definition shall be the tax year preceding the year during which the losses occurred.

Approving official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

CCC means the Commodity Credit Corporation.

CFSA means the Consolidated Farm Service Agency.

County means a county or similar geographic area as determined by CCC.

Deputy Administrator, or Deputy Administrator, CFSA, U.S. Department of Agriculture.

Eligible owner means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part. Federal, State, and local governments and agencies and political subdivisions thereof are specifically excluded. In determining whether an individual or other entity is an eligible owner, such person, as determined under part 1497 of this chapter, must own 1,000 acres or less of trees which: produce annual crops for commercial purposes; or are grown for harvest for commercial purposes. Such person, as determined under part 1497, must also have annual gross revenue of $2.0 million or less, as determined under this part. Such person must also have owned the trees when the natural disaster occurred and when the application is submitted. As successor-in-interest, the applicant is allowed to receive TAP benefits if an otherwise eligible person:

(1) Acquires ownership of land or trees for which TAP benefits have been applied;

(2) Agrees to complete all practices which the original owner has not completed;

(3) Agrees to maintain the practice during the lifespan;

(4) Agrees to receive any remaining payments and assumes full responsibility for all provisions of TAP, including refund of payments made to the original participant, if necessary; and

(5) Agrees to provide a signed and dated written agreement to county committee for approval of any successor-in-interest.

Eligible trees means:

(1) For, 1993 and 1994 losses, nursery inventory which are determined by CCC to have been planted for commercial sale.

(2) For the 1993 and 1994 losses, forest tree seedlings, orchard trees, and nursery inventory, including non-tree plants.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

Harvest means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

Natural Disaster means damaging weather or related condition in 1993 for nursery inventory; and, 1994 for nursery inventory, orchard trees and forest tree seedlings, including the Midwest Floods of 1993. Losses of plants caused by damaging weather must be directly caused by the weather to be eligible for TAP.

Individual stand means an area of eligible trees which are tended by an eligible owner as a single operation, whether or not such trees or plants are planted in the same field or similar location, as determined by CCC.

Differing species of trees or plants in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of freeze, drought, earthquake, hurricane, or typhoon susceptibility.

Local county office means with respect to individual stands of eligible trees which are grown on a farm:

(1) Which has been assigned an CFSA farm serial number, the county CFSA office which services such farm; or

(2) Which has not been assigned an CFSA farm serial number, the county office which services the county in which such stand is located.

Normal mortality means:

(1) With respect to a request for relief for trees planted to produce annual crops the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling of tree survival rates in the local area, as determined by the county committee in accordance with instructions issued by CFSA.

(2) With respect to a request for relief for seedlings planted to produce trees for harvest the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the period between the time of planting and the time of the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect

seedling or tree survival rates in the local area, as determined by the county committee in accordance with instructions of the Deputy Administrator.

(3) With respect to nursery inventory planted for commercial purposes, the average extent of plant death on the individual stand which normally would have occurred with respect to eligible nursery inventory during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly affect nursery inventory survival rates in the local area, as determined by the county committee in accordance with instructions issued by CFSA.

Nursery inventory means all commercial nursery plants grown for transplant or sale, including aquatic plants, ornamental, field or container grown plants, excluding open grown field grown sod, grasses, legumes, and similar plants as determined by the Deputy Administrator.

Operator means a person who is in general control for the tree farming operations as determined by CCC.

Seedling means a tree or plant which was planted in the ground for commercial purposes.

State means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

State committee, State office, county, committee, or county office, means the respective CFSA committee or CFSA office.

Subsequent signup period means the signup period for assistance for 1993 and 1994 losses which will be held only when the President declares an economic emergency as specified in Public Law 103–211 and Public Law 103–330.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to CFSA operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in part 719 of this title.

23. Section 1478.4 is revised to read as follows:

§ 1478.4 Program availability.

(a) A request for assistance under this part made available during the initial signup period must be submitted to CCC at the county office in the county where the farm is administered by March 31, 1995.

(b) Final signup period means the signup period beginning on May 9, 1994, and ending on July 29, 1994, for 1993 nursery losses; November 21, 1994, through March 31, 1995, for 1994 losses; or other such date as established by CCC. All related documentation shall be submitted no later than July 15, 1995, for assistance to eligible producers who have incurred losses in 1994 caused by damaging weather.

24. Section 1478.5 is amended by revising paragraphs (a), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1478.5 Qualifying loss.

(a) A person shall be eligible to receive assistance under this part with respect to losses due to damaging weather, including but not limited to drought, freeze, earthquake, or related conditions in 1993 or 1994; in addition, losses due to hurricane, typhoon, or related conditions in 1993 or 1994; only if such owner is an eligible owner, as defined in this part and has sustained a qualifying loss of eligible trees, tree seedlings, or nursery inventory as determined by CCC. The only type of losses which may be considered qualifying are the following:

(1) A qualifying loss of an individual stand of trees on which the total mortality rate exceeded 35 percent plus the normal mortality rate by an eligible owner, who is an orchardist and who is the owner of the eligible trees planted in any year for commercial purposes, which are lost as a result of a freeze, earthquake, or related conditions in 1993 or 1994, or freeze, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994 or damaging weather or related conditions in 1993 or 1994 as determined by the county committee in accordance with the instructions of the Deputy Administrator;

(2) A qualifying loss of an individual stand of trees on which the total mortality rate exceeds 35 percent plus the normal mortality rate by an eligible owner who grows trees for harvest for commercial purposes and is the owner of the eligible tree seedlings which were either planted in 1993 or 1994 and were lost due to drought, earthquake, or related conditions in 1993 or 1994 or planted in 1993 or 1994 and were lost due to damaging weather, including drought, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994, as determined by the county committee in accordance with instructions of the CFSA; or

(3) A loss by an eligible owner who grows nursery inventory for commercial purposes which is lost as a result of damaging weather, or related conditions in 1993 for nurseries, and 1994 for nurseries, orchards and forest trees, as determined by the county committee in accordance with instructions of the Deputy Administrator.

* * * * *

(c) When visible evidence of losses no longer exists on the site where the trees were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

(d) Losses from 1994 disasters with respect to nursery inventory plants that produced an annual crop which was also lost are eligible if assistance was not provided with respect to such plant under part 1477 of this chapter. Payment under TAP is also authorized for owners who replant or rehabilitate orchard trees when the crop from such trees are also enrolled for benefits under part 1477 of this chapter. A person shall be eligible to receive assistance under this part for 1993 crop losses (forest tree seedlings, orchard trees, and nursery inventory) resulting from damaging weather or related conditions as associated with the conditions (as defined in sec. 2251 of Public Law 101–624) in 1993, Public Law 103–211 in 1993 and Public Law 103–330 in 1994. Also, a person shall be only eligible to receive assistance on that portion of nursery inventory plants enrolled under part 1477 of this chapter that did not receive direct benefits under part 1477 of this chapter. The portion which did not receive direct benefits under part 1477 of this chapter shall be that portion of the loss for which no compensation is made because loss levels had not reached the minimum threshold required before any payment can be earned.

(e) Eligible plants exclude plants:

(1) That were planted under the Conservation Reserve Program; and

(2) That were the subject of any cost-share assistance or other assistance under any other Federal program, unless approved in writing by the CFSA.

25. Section 1478.6 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 1478.6 Eligible costs.

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of re-establishing seedlings, trees, or nursery plants, not in

excess of the number of seedlings, trees, or nursery plants constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, reseeding, or repairing practices, as determined by CCC. Producers with trees, or nursery plants, who are eligible for both disaster and TAP payments must choose from which program they want to receive payment. That portion of plants enrolled under part 1477 of this chapter that did not receive direct benefits are eligible for TAP. The first 35 to 40 percent uninsured mortality for which part 1477 of this chapter benefits are not provided is defined as not receiving direct payment and may be eligible for TAP. If the costs are to replace lost trees, or nursery plants, the costs shall only be for replacement seedlings or plants of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of the seedlings or nursery plants, tree or plant rehabilitation measures, site preparation measures, and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival; chemicals and nutrients if needed to ensure successful plant survival; labor used to physically plant or rehabilitate such seedlings as based on standard labor rates as determined by the county committee; and nursery plant containers and tree wraps. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements, and re-establishing greenhouse structures and windscreens.

* * * * *

(e) Payments made shall be at the minimum level needed to re-establish the individual stand, as determined by the State committee or, if redelegated, by the county committee.

26. Paragraph (b) in § 1478.7 is amended by removing ''DASCO'' and adding in its place ''Deputy Administrator.''

27. Section 1478.8 is amended by revising paragraph (b)(4) and paragraph (c) and (d) to read as follows:

§ 1478.8 Obligations of an eligible owner.

* * * * *

(b) * * *

(4) Maintain the practice for either 5 years after installation, unless CCC determines that a shorter period is necessary, or 10 years if the trees established on acreage received previous Federal cost-share assistance for tree establishment. Nursery inventory has no practice maintenance requirement.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State CFSA committee or the Deputy Administrator such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

(d) Eligible owners who have been paid but choose not to implement their practices by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced by CCC, at CCC's discretion, when only part of the required replanting practice is not implemented.

* * * * *

28. Section 1478.9 is revised to read as follows:

§ 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of orchard trees planted for an annual crop of fruit, nuts, syrup, or other related commercial products shall not exceed $25,000 for 1990 losses due to freeze, earthquake, or related condition; $25,000 for 1991 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to hurricane, typhoon, or related condition; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses resulting from damaging weather or related conditions associated with the conditions (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(b) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of forest tree seedlings planted to produce trees for harvest shall not exceed $25,000 for 1990 losses due to drought, earthquake, or related conditions; $25,000 for 1991 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to hurricane, typhoon, or related conditions; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses due to damaging weather or related conditions associated with the condition (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(c) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of nursery inventory shall not exceed $25,000 for 1992 for losses due to hurricane, typhoon, and related conditions; for $25,000 for 1993 for losses due to damaging weather or related conditions; and $25,000 for 1994 for losses due to damaging weather or related conditions.

29. Section 1478.10 is revised to read as follows:

§ 1478.10 Liens and claims of creditors; set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 1403 of this chapter shall be applicable to this part.

30. Section 1478.11 is revised to read as follows:

§ 1478.11 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for

reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 780 of this title or as established by the National Appeals Division, USDA whichever is applicable.

31. Section 1478.12 is revised to read as follows:

§ 1478.12 Misrepresentation and scheme or device.

(a) A person who is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

(b) All moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CCC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

32. Section 1478.14 is revised to read as follows:

§ 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

33. Section 1478.16 is revised to read as follows:

§ 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and the OMB Number 0560–0082 has been assigned.

Signed at Washington, DC, on October 3, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–24915 Filed 10–4–95; 2:53 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–56–AD; Amendment 39–9380; AD 95–20–02]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires inspections to detect cracks in bolt holes where parts of the main landing gear (MLG) are attached to the rear spar, and repair, if necessary. This amendment is prompted by a report that cracks emanating from bolt holes in the rear spar were found during full-scale fatigue testing. The actions specified by this AD are intended to prevent unnecessary degradation of the structural integrity of the airframe due to cracks in the rear spar.

DATES: Effective November 9, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 9, 1995.

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

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on July 12, 1994 (59 FR 35488). That action proposed to require repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar, and repair, if necessary.

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

One commenter supports the proposed rule.

Another commenter, the Air Transport Association (ATA) of America on behalf of one of its members, requests that the proposed repetitive inspection intervals be revised, since they are more stringent (shorter) for airplanes on which Modification 07716 has been accomplished. ATA advises that it has contacted the manufacturer to ask that the repetitive inspections specified in Airbus Service Bulletin A300–57–6017, dated November 22, 1993 (which is referenced in the proposal as the appropriate source of service information), be reviewed and changed if correction is necessary. ATA requests that the FAA revise the final rule to incorporate such changes that the manufacturer may be considering.

The FAA does not concur that the repetitive inspection requirements need to be changed. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has assured the FAA that the repetitive intervals, although unusual, are appropriate for identifying the subject cracking in a timely manner. Modification 07716 involves oversizing the bolt holes; therefore if a crack were to develop, it could reach critical length sooner than a crack would on an airplane on which that modification has not been accomplished. Additionally, the DGAC has advised the FAA that, although modification 07716 provides additional fatigue life, the inspection interval as cited in the final rule would allow detection of further cracking before a crack reaches a critical length.

However, the DGAC also has advised the FAA that the use of HFEC techniques to detect cracking, as specified in the proposed rule, may not accurately measure crack lengths as short as 1 mm (.039 inch). The FAA concurs with these DGAC findings. Since the issuance of that proposal, Airbus has issued Service Bulletin A300–57–6017, Revision 1, dated July 25, 1994, which describes procedures for oversizing the bolt holes before performing the HFEC in order to accurately detect any cracking. The DGAC classified this service bulletin as mandatory. The final rule has been changed to reference this revised service bulletin as the appropriate source of service information, in order to ensure

that the bolt holes are oversized prior to accomplishment of the HFEC inspection. The FAA has determined that this minor change in inspection procedures will not impose an additional burden on any operator, and is a logical outgrowth of the notice that does not necessitate providing an additional opportunity for public comment.

Paragraph (c) of the proposal required repair of cracks found in accordance with paragraph (a) of the proposal. Since repairs are also necessary for cracks found during repetitive inspections, that paragraph also should have required repair of cracks found in accordance with paragraph (b). Therefore, paragraph (c) of the final rule has been changed to correct this inadvertent omission by adding the reference to paragraph (b).

Additionally, a note has been added to the final rule to indicate that accomplishment of the inspections and repair of cracking in accordance with Airbus Industrie Service Bulletin A300–57–6017 (original issue), dated November 22, 1993, prior to the effective date of this AD, is acceptable for compliance with applicable actions specified in the final rule.

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 new Note 1 has been added to this final rule to clarify this long-standing requirement. (All subsequent notes in the final rule have been renumbered accordingly.)

Subsequent to the issuance of the proposal, the FAA reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 240 work hours per airplane to accomplish the required actions (including time to gain access and close up), and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360,000, or $14,400 per airplane, per airplane cycle.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–20–02 Airbus Industrie: Amendment 39–9380. Docket 94–NM–56–AD.

Applicability: Model A300–600 series airplanes; having manufacturer's serial numbers (MSN) 252 through 553 inclusive; and on which Airbus Industrie Production Modification No. 07601 has not been accomplished prior to delivery; 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 (d) of this AD 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 degradation of the structural integrity of the airframe due to cracks in the rear spar, accomplish the following:

Note 2: Accomplishment of the inspections and repair of cracking in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, prior to the effective date of this AD, is acceptable for compliance with the applicable action specified in this amendment.

(a) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1, (includes Appendix 1), dated July 25, 1994.

Note 3: This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information.

(1) For airplanes that have accumulated 17,300 total landings or less as of the

effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(3) For airplanes that have accumulated 19,300 or more total landings as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 (as described in Airbus Industrie Service Bulletin A300–57–6020) has not been accomplished, inspect at the time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished, inspect at the time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7,500 landings.

(c) If any crack is found during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 has not been accomplished: Oversize the bolt hole by 1/32 inch and repeat the HFEC inspection required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin 300–57–6017, Revision 1, dated July 25, 1994. After accomplishing the oversizing and HFEC inspection, repeat the inspection as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph.

(i) If no cracking is detected, install the second oversize bolt in accordance with the service bulletin.

(ii) If any cracking is detected, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and installation shall be done in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 9, 1995.

Issued in Renton, Washington, on September 20, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–23812 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–60–AD; Amendment 39–9384; AD 95–20–06]

Airworthiness Directives; Air Tractor Incorporated Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor Incorporated (Air Tractor) Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 airplanes. This action requires inspecting the front spar attachment lugs and the rear spar for fatigue cracks and modifying the vertical fin if cracks are found. If no cracks are found, continue repetitively inspecting the area until cracks are found, then incorporate the modification as a terminating action. This action is prompted by two incident reports involving the failure of the front and rear spar attachment lugs of the vertical fin. The actions specified by this AD are intended to prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

DATES: Effective October 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 27, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: The FAA received reports of two incidents in which the front spar and rear spar failed on an Air Tractor AT–802A while in flight causing the vertical tail to lay over against the elevator creating difficulty in controlling the airplane. Both front spar failures occurred across the 3/16-inch thick fin front spar fitting, which is made of aluminum and bolts to the fuselage frame. Investigations reveal that Air Tractor models designed with 3/16-inch front spar attach plates are subject to fatigue failure. When front spar failure occurs the rear spar will only support the rudder loads for a short time before it also fails, which could result in loss of control of the airplane.

Air Tractor has issued Service Letter (SL) number (No.) 138, dated July 29, 1995, which specifies procedures for inspecting and modifying the fin front spar plate and the rear fin spar at the upper attachment to the fuselage frame.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent possible in-flight structural failure to the vertical fin of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Models AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–501, and AT–502 airplanes of the same type design, this AD would require inspecting the front and rear spar attachments and, if fatigue cracks are found, modifying the airplane. The inspections and modifications are to be done in accordance with the INSTRUCTIONS section in Air Tractor SL No. 138, dated July 29, 1995. The accomplishment of the proposed modification will be considered a terminating action.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–60–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–20–06 Air Tractor Incorporated: Amendment 39–9384; Docket No. 95–CE–60–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Models	Serial Nos.
AT–301 and AT–401.	301–0261 through 301–0736, and 401–0662 through 401–0736 that have been converted to turbine powerplants and equipped with all metal rudder, P/N 30456–1.
AT–302	All aircraft equipped with the all metal rudder, P/N 30456–1.
AT–400 and AT–400A.	All aircraft equipped with the all metal rudder, P/N 30456–1.
AT–402	402–0694 and 402–0695 through 402–0736.
AT–501	501–0002 through 501–0030 that have been converted to turbine powerplants and equipped with the all metal rudder, P/N 30456–1.
AT–502	502–0002 through 502–0030.

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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent possible vertical fin structural failure of the front spar attachments and consequently the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane, accomplish the following:

(a) Inspect the front spar attachment lugs on all models referenced in the APPLICABILITY section for fatigue cracks in accordance with the INSTRUCTIONS section of the Air Tractor Service Letter (SL) number (No.) 138, dated July 29, 1995.

(b) If no cracks are found during the initial inspection, repeat the inspection required by paragraph (a) of this AD at the applicable intervals as follows:

(1) For airplanes that have 3/16-inch thick fin front spar fittings, inspect at intervals not to exceed 25 hours TIS, in accordance with the INSTRUCTIONS section of the Air Tractor SL No. 138, dated July 29, 1995.

(2) For airplanes that have ¼-inch fin front spar fittings, inspect at intervals not to exceed 100 hours TIS, in accordance with the INSTRUCTIONS section of the Air Tractor SL No. 138, dated July 29, 1995.

(c) If cracks are found during any inspection required by this AD, prior to further flight, modify the front spar attachment fittings in accordance with the INSTRUCTIONS section of the Air Tractor SL No. 138, dated July 29, 1995.

(d) Incorporating the modification specified in paragraph (c) of this AD is considered terminating action for the repetitive inspection requirements of this AD. This modification may be accomplished at any time provided the front and rear spar attachment fitting are crack free.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(g) The inspection and modification required by this AD shall be done in accordance with Air Tractor Service Letter number 138, dated July 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Tractor Incorporated, P.O. Box 485, Olney, Texas 76374. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(h) This amendment (39–9384) becomes effective on October 25, 1995.

Issued in Kansas City, Missouri, on September 26, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–24604 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–157–AD; Amendment 39–9393; AD 93–16–06 R2]

Airworthiness Directives; Canadair Model CL–215–1A10 and CL 215–6B11 Series Airplanes That Are Not Equipped With Powered Ailerons

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Canadair Model CL–215–1A10 series airplanes, that currently requires modification of the right aileron and aileron tab. That AD originally was prompted by an updated flutter analysis performed by the manufacturer, which revealed a potential flutter condition on these airplanes. The actions specified in that AD are intended to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane. This amendment revises the applicability of the rule by adding additional airplanes that are subject to the addressed unsafe condition, and deleting others that are not subject to it.

DATES: Effective October 25, 1995.

The incorporation by reference of Canadair Alert Service Bulletin 215–A435, dated August 14, 1990, listed in the regulations, was approved previously by the Director of the Federal Register as of October 4, 1993 (58 FR 46766, September 3, 1993).

Comments for inclusion in the Rules Docket must be received on or before December 11, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: On August 13, 1993, the FAA issued AD 93–16–06, Amendment 39–8663 (58 FR 46766, September 3, 1993), applicable to certain Canadair Model CL–215–1A10 series airplanes, to require installing weights to the aileron balance weight mounting channel and installing washers to the interconnect tab mass balance arms. That modification will maintain an aileron control surface mass balance within specified limits. That action was prompted by an updated flutter analysis, performed by Canadair, which revealed that a potential flutter condition affecting the rudder-aileron interconnect tab could occur on certain Canadair Model CL–215–1A10 series airplanes. This flutter analysis further revealed that, if the rudder-aileron interconnect mechanism fails, a flutter condition could occur at pressure altitudes above 10,000 feet. The actions required by that AD are intended to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane.

AD 93–16–06 was applicable only to Canadair Model CL–215–1A10 series airplanes that are not equipped with powered ailerons.

Subsequent to the issuance of that AD, Transport Canada Aviation, which is the airworthiness authority for Canada, advised that additional airplanes were subject to the same unsafe condition addressed by AD 93–16–06. Further analysis had indicated that the flutter problems associated with the rudder-aileron interconnect tab could occur on all Canadair Model CL–215–1A10 series airplanes, including those equipped with powered ailerons. In light of this information, the FAA issued AD 93–16–06 R1, amendment 39–8826 (59 FR 6897, February 14, 1994), which revised the originally issued AD to add these additional airplanes to its applicability.

Recently, Transport Canada Aviation advised the FAA that additional review of the flutter analysis revealed that the problematic flutter condition can occur only on airplanes that are not equipped with powered ailerons. This finding leads to two significant considerations:

1. The previous analysis indicating that the unsafe condition could occur on airplanes equipped with powered ailerons was incorrect. Therefore, the applicability of AD 93–16–03 R1 is

unnecessarily broad, since it includes Model CL–215–1A10 airplanes that are equipped with powered ailerons.

2. Some Canadair Model CL–215–6B11 series airplanes are not equipped with powered ailerons. (The Model CL–215–6B11 is a Model CL–215–1A10 that has been converted from piston engine power to turbopropeller power.) Therefore, these airplanes are subject to the addressed unsafe condition.

Transport Canada Aviation has issued revised Canadian Airworthiness Directive CF–90–11R2, dated April 28, 1994, which calls for installing weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms on all Canadair Model CL–215–1A10 and CL–215–6B11 series airplanes that are not equipped with powered ailerons.

That revised Canadian Airworthiness Directive references Canadair Alert Service Bulletin 215–A435, dated August 14, 1990, as the appropriate source of service instructions for all of the affected airplanes. (This is the same service bulletin referenced in AD 93–16–06 and AD 93–16–06 R1.) Canadair has confirmed that, although the Model CL–215–6B11 series airplanes are not specified in the effectivity listing of that service bulletin, the installation instructions described in it are appropriate for these airplanes. (Canadair also has indicated that, at this time, it is not planning to revise the service bulletin to include the Model CL–215–6B11 in the effectivity listing.)

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this revises AD 93–16–06 R1 to require the installation of weights to the aileron balance weight mounting channel and installation of washers to the interconnect tab mass balance arms. However, the applicability of the AD has been revised to include Model CL–215–6B11 series airplanes that are not equipped with powered ailerons. The applicability has also been revised to exclude Model CL–215–1A10 series that are equipped with powered ailerons.

None of the Model CL–215–1A10 or CL–215–6B11 series airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 20 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Based on these figures, the total cost impact of this AD would be $1,200 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–157–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8826 (59 FR 6987, February 14, 1994), and by adding

a new airworthiness directive (AD), amendment 39–9393, to read as follows:

93–16–06 R Canadair: Amendment 39–9393, Docket 95–NM–157–AD. Revises AD 93–16–06 R1, amendment 39–8826.

Applicability: Model CL–215–1A10 series airplanes that are not equipped with powered ailerons; and Model CL–215–6B11 series airplanes that are not equipped with powered ailerons; 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 (d) of this AD 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 potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane, accomplish the following:

(a) For Model CL–215–1A10 series airplanes, serial numbers 1001 through 1125 inclusive, that are not equipped with powered ailerons: Within 12 months after October 4, 1993 (the effective date of AD 93–16–06, amendment 39–8663), on the right wing install weights to the aileron balance weight mounting channel and install washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990.

(b) For all other Model CL–215–1A10 series airplanes that are not equipped with powered ailerons and are not subject to paragraph (a) of this AD: Within 12 months after March 1, 1994 (the effective date of AD 93–16–06 R1, amendment 39–8826), on right wing install weights to the aileron balance weight mounting channel and install washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990.

(c) For Model CL–215–6B11 series airplanes that are not equipped with powered ailerons: Within 12 months after the effective date of this AD, on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990.

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

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

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation shall be done in accordance with Canadair Alert Service Bulletin 215–A435, dated August 14, 1990. The incorporation by reference of this document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of October 4, 1993 (58 FR 46766, September 3, 1993). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York ACO, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 15, 1995.

Issued in Renton, Washington, on October 3, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–25031 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–ACE–17]

Amendment to Class E Airspace; Washington, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Washington, IA, to accommodate a new standard instrument approach procedure (SIAP) at Washington Municipal Airport. This action will provide for additional controlled airspace necessary for both the new VOR/DME to Runway 36 and the existing VOR/DME RNAV or GPS and NDB SIAPs to Runway 31. A minor correction is also being made in the geographic coordinates of the Washington Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, AIr Traffic Operations Branch, ACE–530, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Washington, IA (60 FR 19553). The proposed action would provide controlled airspace to accommodate a VOR/DME SIAP to Runway 36 at the Washington Municipal Airport in addition to the existing VOR/DME RNAV or GPS and NDB Runway 31 SIAPs. A minor correction is also being made in the geographical coordinates of the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments or objections to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The class airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Washington, IA, by providing additional controlled airspace for aircraft executing the new VOR/DME Runway 36 SIAP and the existing VOR/DME RNAV or GPS and NDB SIAPs to Runway 31 at the Washington Municipal Airport. This action also corrects the geographic coordinates of the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1069(g); 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follow:

Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE IA E5 Washington, IA [Revised]

Washington Municipal Airport, IA.
(Lat. 41°16′34″ N, long. 91°40′24″ W).

That airspace extending upward from 700 feet above the surface within a 7-miles radius of the Washington Municipal airport and within 3.5 miles each side of the 191° bearing from the airport extending from the 7-mile radius to 13 miles sought of the airport.

* * * * *

Issued in Kansas City, MO, on September 25, 1995.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–25057 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 121, 125, and 135

[Docket No. 27229]

Flight Attendant Duty Period Limitations and Rest Requirements

AGENCY: Federal Aviation Administration.

ACTION: Notification of compliance date for final rule.

SUMMARY: This document specifies a date on and after which the Federal Aviation Administration expects full compliance with the duty limitations and rest requirements for flight attendants as required by Amendment Nos. 121–241; 125–21; and 135–52. This action is necessary following court action that stayed the compliance date for this final rule for all affected carriers based on a petition for review of the final rule from Sun Country Airlines, Inc., and the court's subsequent denial of the petition.

DATES: Affected air carriers and commercial operators are notified that the FAA will begin enforcing the flight attendant duty limitations and rest requirements rules published at 59 FR 42974 (August 19, 1994) on February 1, 1996.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Air Transportation Division, Flight Standards Service, AFS–203, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, (202) 267–3735.

SUPPLEMENTARY INFORMATION:

Availability of the Notice

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the subject matter of this notice.

Background

On August 19, 1994, the Federal Aviation Administration (FAA) published in the **Federal Register** at 59 FR 42974, a final rule requiring air carriers, air taxi, and commercial operators to provide duty period limitations and rest requirements for flight attendants engaged in air transportation and air commerce. The FAA found that this action was necessary to ensure that flight attendants would be rested sufficiently to perform their routine and emergency safety duties. As a base level, the rule requires that a flight attendant be given 9 hours of rest following up to 14 hours of scheduled flight duty. However, the scheduled duty period may be extended if the carrier augments the flight attendant crew and provides additional hours of rest. The rule also provides that flight attendants be given 24 consecutive hours of rest during any 7 consecutive days. The rule contains a definition of 'rest period' as being free of all restraint or duty and free of all responsibility for work or duty should the occasion arise. The final rule also allows operators to apply pilot rest and duty requirements to its flight attendants as an alternative to this final rule.

The final rule was effective September 19, 1994, with a compliance date of March 1, 1995, except for certain recording requirements. By publication in the **Federal Register** on October 19, 1994, the recording requirements were made effective on November 18, 1994. The compliance date of March 1, 1995, was restated in that amendment.

Sun Country Airlines challenged this rule, and on February 13, 1995, the United States Court of Appeals for the D.C. Circuit stayed the compliance date of the rule for all air carriers, air taxis and commercial operators. The Court issued its decision denying Sun Country Airlines' petition for review on May 30, 1995. A subsequent petition for rehearing and stay of its mandate were denied on August 24, 1995. The Court issued its mandate, lifting the stay, on August 25, 1995.

Because the original compliance date is now past, the FAA must establish a new date for the flight attendant rest and duty regulations. The FAA recognizes that many operators are already in compliance with the rule. The FAA also realizes that it will take some time for operators, who are not in compliance with the proposed rule, to develop and implement flight attendant schedules needed to comply with the rules. The FAA is also cognizant of the problems associated with developing schedules and adhering to those schedules during the Holiday season. Because of these considerations, the FAA is allowing sufficient time for operators to develop the procedures needed to comply with the rules. Therefore, the FAA expects full compliance with the flight attendant duty limitations and rest requirements final rule by February 1, 1996, and the FAA will take appropriate action against any operator that is not in full compliance by that date.

Issued in Washington, DC on September 28, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 95–24803 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–36301]

Revision of Rule Concerning Members' and Employees' Securities Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rule that prohibits Commissioners and members of the Senior Executive Service in the Division of Investment Management from purchasing securities issued by registered investment companies. The prohibition was deemed to be too restrictive and not necessary to prevent conflicts of interest or the appearance of impropriety. Commissioners and members of the Senior Executive Service in the Division of Investment Management and the Office of Compliance Inspections and Examinations will now be permitted to purchase securities issued by registered investment companies, provided that the securities are diversified within the meaning of the Investment Company Act of 1940.

EFFECTIVE DATE: September 29, 1995.

FOR FURTHER INFORMATION CONTACT: William Lenox, Assistant Ethics Counsel, Office of the General Counsel, at (202) 942–0970, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is amending 17 CFR 200.735–5(k) to permit Commissioners and other senior officials to purchase securities issued by registered investment companies. The Commission has regulated the securities transactions of its Commissioners and employees since the formation of the agency in 1934. In 1953 the Commission adopted a Conduct Regulation that drew a bright line between entities regulated by the Commission and those whose securities were merely registered with the Commission under the Securities Act of 1933.

From 1953 to 1980, under this bright dividing line, no member or employee could purchase securities issued by companies registered under the Investment Company Act. In 1980, for the first time, the purchase of money market and mutual funds was permitted for the staff, at a time when interest rates on money market funds had climbed rapidly, in contrast to rates then available at banks and savings and loans. The prohibition against purchasing investment company securities was retained in 17 CFR 200.735–5(k), however, for Commissioners and members of the Senior Executive Service (''SES'') within the Division of Investment Management. Commissioners and members of the SES in the Division of Investment Management were permitted to retain any such securities that they owned at the time they joined the Commission. Capital or income dividends received by such persons from securities acquired prior to entrance on duty could not be reinvested, but had to be accepted in cash, if this option was available. In 1988, this rule was amended to allow dividend reinvestment.

The Commission has now determined that such a broad restriction is not necessary, even for high-level officials. Such officials would continue not to participate in particular matters that would have a ''direct and predictable'' effect on the value of the person's financial interest, which, in the case of matters involving registered investment companies, would mean the value of the fund's shares. The value of a fund's shares generally is derived from the value of its portfolio assets. Virtually all of the matters in which the Commission considers investment company issues would not have such a direct and predictable effect on share values.

The amendment contains a restriction that the registered investment company investment be in a fund that is diversified within the meaning of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1). Limiting investments in registered investment companies to those that are diversified further limits the extent to which senior officials will be disqualified from particular matters.

Under the amended regulation, the Directors of the Division of Investment Management and the Office of Compliance Inspections and Examinations, in consultation with the General Counsel, would determine in writing if a particular SES member in the Division or Office performed official duties not involving investment companies, and might therefore be exempted from the limitations discussed in the preceding paragraph.[1]

The Commission has determined that this amendment to its Conduct Regulation relates solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice and comment are not applicable. *See* 5 U.S.C. 553. Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other laws, are not applicable. *See* 5 U.S.C. 601–612.

[1] The current rule covers members of the SES in the Division of Investment Management. Some of the positions covered by the rule were transferred to the recently created Office of Compliance Inspections and Examinations. The purpose behind the restriction still applies to these positions as well as to the new position of Director of the Office.

Effects on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furthering the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2). The Commission has considered the changes adopted in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Statutory Basis of Rule

The amendment to the Commission's rule is adopted pursuant to 15 U.S.C. 77s(a), 78w(a), 79t(a), 77sss(a), 80a–37(a), 80b–11(a).

List of Subjects in 17 CFR Part 200

Conflict of interests.

Text of Amendment

For the reasons set out in the preamble, 17 CFR Part 200, Subpart M, is amended as follows:

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

1. The authority citation for Part 200, Subpart M, continues to read as follows:

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

Section 200.735–5 is issued under 15 U.S.C. 77s(a), 78w(a), 79t(a), 77sss(a), 80a–37(a), 80b–11(a).

2. Section 200.735–5(k) is revised to read as follows:

§ 200.735–5 Securities Transactions.

* * * * *

(k) Members and employees holding a Senior Executive Service position in the Division of Investment Management or the Office of Compliance Inspections and Examinations may make discretionary investments in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a *et seq.*, provided that the

registered investment company is diversified pursuant to section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a–5(b)(1). The Directors of the Division of Investment Management and the Office of Compliance Inspections and Examinations, in consultation with the Office of the General Counsel, shall determine in writing whether Senior Executive Service positions in their respective Division or Office whose duties do not include fund matters also may invest in nondiversified registered investment companies.

* * * * *

By the Commission.

Dated: September 29, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–24795 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 95–80]

Customs Service Field Organization—San Jose, CA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of the Customs Service by designating San Jose, California, as a port of entry. This change is made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs published a document in the **Federal Register** (60 FR 25176) on May 11, 1995, proposing to amend § 101.3, Customs Regulations (19 CFR 101.3) by designating a four county area surrounding San Jose, California, as a port of entry for Customs purposes and to amend § 101.4, Customs Regulations (19 CFR 101.4) by removing Monterey as a Customs station. Monterey, which is part of the four county area encompassed within San Jose, is presently listed in § 101.4(c), Customs Regulations, as a Customs station under the supervision of the San Francisco port of entry. San Jose is presently part of the port of entry of San Francisco.

As the proposal stated, the city of San Jose requested designation as a port of entry stating that the efficiency in having a port of entry located in San Jose would represent a considerable saving of time and cost for the business community.

The request for port of entry status stated that there will be several Federal Government benefits if the port of entry is approved. Approval will support the national goal of United States competitiveness by strengthening the economic competitiveness of one of the nation's most critical high technology areas. It will increase the efficiency of the regional Customs service by improving the distribution of entries which must be cleared through the San Francisco-Oakland port and the San Jose port. It will decrease congestion on the Bay Area's freeways due to shipments going directly to San Jose International Airport. Finally, it will further the Customs goal of increased automation, since San Jose International Airport has provided the equipment necessary to supply a fully automated, highly efficient Customs port.

The proposal stated that the San Jose port of entry will be served by three major modes of transportation (air, rail and highway) and that San Jose has a population of 2,167,000.

The City of San Jose has committed to the optimal use of electronic data input equipment and software to permit integration with any Customs system for electronic processing of commercial entries. San Jose International Airport has provided, at no cost to the Federal Government, computer equipment and systems which are needed to comply with the goals of the National Customs Automation Program.

Based on the information provided to Customs, the proposal set forth Customs belief that San Jose meets the current standards for port of entry designation set forth in T.D. 82–37, as revised by T.D. 86–14 and T.D. 87–65.

Analysis of Comments

Two entities responded to the proposal. One, an airline, responded favorably to the proposal. One, a Customs broker, responded negatively to the proposal.

The Customs broker is concerned with how shipments subject to Food and Drug Administration (FDA) processing will be handled. The current procedure for handling cargo which is subject to FDA examination and/or holding will continue, that is, FDA-related entries currently filed in San Francisco or Oakland for goods located in San Jose are forwarded first to the FDA office in Alameda, and their determination is forwarded or faxed to the San Jose FDA office. FDA has informed Customs that the procedure will not change once San Jose becomes a separate port. The time required to clear an FDA-related entry should not change at all.

Most of the broker's other comments related to the relative staffing between the ports of San Francisco and San Jose and to entry submission at both ports. San Jose is currently being staffed with six positions (five inspectors and one supervisor) funded by COBRA user fees. This staffing will not change in the near future. Customs believes the current staffing at San Jose is sufficient to process both passengers and cargo. The staffing will remain constant through the year 2000.

Regarding the commenter's concern that there will be inconvenience or added processing time when San Jose becomes a port, Customs notes that brokers will be able to file their entries at San Francisco International Airport or San Jose International Airport, whichever they choose.

Determination

After consideration of the comments and further review, Customs has determined to amend § 101.3 to establish San Jose as a port of entry and to amend § 101.4 to remove Monterey as a Customs station.

Limits of Port of Entry

The geographical limits of the port of entry of San Jose are as follows:

All of Santa Clara, Santa Cruz, Monterey and San Benito Counties in the State of California.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document was issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the

provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this are exempt from consideration under Executive Order 12866.

Drafting Information: The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

Amendments to the Regulations

For the reasons set forth in the preamble, part 101 of the Customs Regulation is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citations for §§ 101.3 and 101.4 continue to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. Section 101.3(b) is amended by adding ''San Jose'' to the list of ports of entry in appropriate alphabetical order in the State of California and by adding ''T.D. 95–80'' in the adjacent ''Limits of Port'' column.

§ 101.4 [Amended]

3. Section 101.4(c) is amended by removing ''Monterey'' from the ''Customs station'' column and ''San Francisco-Oakland'' from the adjacent ''Supervisory Port of Entry'' column.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: September 20, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–24705 Filed 10–6–95; 8:45 am]

BILLING CODE 4820–02–P o

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 95C–0091]

Listing of Color Additives Exempt From Certification; Fruit Juice Color Additive and Vegetable Juice Color Additive

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use in food of dried fruit juice color additive, dried vegetable juice color additive, and vegetable juice color additive prepared by water infusion of the dried vegetable. This action is in response to a petition filed by GNT Gesellshaft für Nahrungsmitteltechnologie mbH.

DATES: Effective November 13, 1995, except as to any provisions that may be stayed by the filing of proper objections; written objections and request for a hearing by November 9, 1995.

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

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 28, 1995 (60 FR 20997), FDA announced that a color additive petition (CAP 5C0245) had been filed by GNT Gesellshaft für Nahrungsmitteltechnologie mbH c/o Burditt & Radzius, Chtd., 333 West Wacker Dr., suite 2600, Chicago, IL 60606–1218. The petition proposed to amend the color additive regulations in § 73.250 *Fruit juice* (21 CFR 73.250) to provide for the safe use of dried fruit juice color additive and in § 73.260 *Vegetable juice* (21 CFR 73.260) to provide for the safe use of dried vegetable juice color additive and vegetable juice color additive prepared by water infusion of the dried vegetable. The petition was filed under section 721(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(b)(5)). The agency now notes that this action is more accurately covered under section 721(d) of the act (21 U.S.C. 379e(d)). The agency finds that because the regulatory action was described properly in the filing notice, however, the error in citation was not misleading, and thus, an amended notice is not necessary.

In two notices published in the **Federal Register** of May 18, 1965 (30 FR 6735), FDA proposed to list fruit juice color additive and vegetable juice color additive for food use. The proposed fruit juice regulation provided for the preparation of fruit juice color additive either by expression of fresh fruits or by water infusion of the dried fruit; the proposed vegetable juice regulation provided for the preparation of vegetable juice color additive only by expression of fresh vegetables. In the **Federal Register** of January 27, 1966 (31 FR 1063), FDA published a final rule permanently listing fruit juice color additive and vegetable juice color additive for food use. In the preamble to the final rule, the agency indicated that it had received a comment that the regulation for vegetable juice color additive also provide for the use of a water infusion of vegetables. However, the agency declined to revise the proposed rule for the vegetable juice regulation as suggested because the comment presented no evidence that water infusions of vegetables were being manufactured or distributed in the United States for coloring purposes or that authorization for such water infusions was needed. The current color additive petition (CAP 5C0245) contains information that shows that water infusions of dried vegetables are being manufactured and that authorization for use of water infusions of dried vegetables to color food is needed.

FDA has evaluated the data in the petition and other relevant information and concludes that the petitioned uses of the color additives fruit juice and vegetable juice in food are safe. Therefore, the agency is amending § 73.250 to provide for the safe use of dried fruit juice color additive and § 73.260 to provide for the safe use of dried vegetable juice color additive and of vegetable juice color additive prepared by water infusion of the dried vegetable. Also, to prevent any potential misunderstanding of the amended identity statements in §§ 73.250 and 73.260, the agency is revising the wording of these statements.

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person

listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule and announced its conclusion in the Notice of Filing for CAP 5C0245 (60 FR 20997). No new information or comments have been received that would affect the agency's conclusion that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before November 9, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 73.250 is amended by removing the first sentence of paragraph (a)(1) and adding two new sentences in its place to read as follows:

§ 73.250 Fruit juice.

(a) *Identity.* (1) The color additive fruit juice is prepared either by expressing the juice from mature varieties of fresh, edible fruits, or by the water infusion of the dried fruit. The color additive may be concentrated or dried. * * *

* * * * *

3. Section 73.260 is amended by removing the first sentence of paragraph (a)(1) and adding two new sentences in its place to read as follows:

§ 73.260 Vegetable juice.

(a) *Identity.* (1) The color additive vegetable juice is prepared either by expressing the juice from mature varieties of fresh, edible vegetables, or by the water infusion of the dried vegetable. The color additive may be concentrated or dried. * * *

* * * * *

Dated: September 28, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–24953 Filed 10–6–95; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5306–1]

Oregon: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule and public comment period.

SUMMARY: Oregon has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oregon's application and has made a decision, subject to public review and comment, that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA approves Oregon's hazardous waste program revisions. Oregon's application for program revision is available for public review and comment.

DATES: Authorization of the revised program shall become effective on December 7, 1995, unless significant adverse comments on Oregon's program revision application are received by the close of business on November 8, 1995.

If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of Oregon's program revision application are available, Monday to Friday, from 9 AM to 4 PM at the following addresses for inspection and copying: Oregon Department of Environmental Quality, Eighth Floor Reception, 811 SW Sixth Avenue, Portland, Oregon 97204. Telephone number: (503) 229–6534. U.S. EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone number: (206) 553–1259. Written comments and questions should be directed to René Dagseth, HW 107, EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Renée Dagseth, 206–553–1889.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266, 268, 124 and 270. In this case, Oregon has applied for authorization of its corrective action program, including rules which are equivalent to the Federal program described in 40 CFR 264.100. Oregon also has requested authorization for the use of corrective action management units (CAMUs). As a result of this action, the majority of future RCRA permits will be issued by Oregon.

B. Oregon

Oregon's RCRA base program was authorized and became effective on January 30, 1986. Revisions to Oregon's RCRA program were authorized and became effective on May 29, 1990; October 4, 1994; and, August 15, 1995. Oregon submitted a program revision application on August 1, 1995 for additional program approvals. Today, Oregon is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed Oregon's application, and has made an immediate final decision, subject to public review and comment, that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA grants Oregon final authorization for the additional program modifications. The public may submit written comments on EPA's decision up until November 8, 1995. Copies of Oregon's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Oregon's program revision shall become effective December 7, 1995, unless an adverse comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Description of Oregon's Program

Oregon's revision application includes rules which pertain to corrective action through the permits process and corrective action management units (CAMUs). Oregon is applying for authorization of the following Federal hazardous waste regulations.

Federal requirement	State authority*
HSWA Codification Rule: Corrective Action, 50 FR 28702 7/15/85; RCRA 3004(v)(1)(2).	OAR 340–100–002(1), effective 5/95.
HSWA Codification Rule: Pre-Construction Ban, 50 FR 28702, 7/15/85	OAR 340–100–002(1), effective 5/95; OAR 340–105–010, effective 3/91; OAR 340–105–115, effective 8/85.
HSWA Codification Rule: Interim Status, 50 FR 28702, 7/15/95	OAR 340–100–002(1), effective 5/95; OAR 340–105–010, effective 3/95.
HSWA Codification Rule 2: Permit Application Requirements Regarding Corrective Action, 52 FR 45788, 12/1/87.	OAR 340–100–002(1), effective 5/95.
HSWA Codification Rule 2: Corrective Action Beyond Facility Boundary, 52 FR 45788, 12/1/87.	OAR 340–100–002(1), effective 5/95.
HSWA Codification Rule 2: Corrective Action for Injection Wells, 52 FR 45788, 12/1/87.	OAR 340–100–002(1), effective 5/95; OAR 340–44–015, effective 8/83.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, 54 FR 9596, 3/7/89.	OAR 340–100–002(1), effective 5/95; OAR 340–105–001(3), effective 3/91; OAR 340–105–010, effective 3/91; OAR 340–106–002, effective 7/85.
Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C, 58 FR 8658, 2/93.	OAR 340–100–002(1), effective 5/95.

*The rules referenced are part of the Oregon Administrative Rules (OAR).

Some portions of Oregon's revised program are broader in scope than the Federal program, and thus are not Federally enforceable. Of the State regulations cited above, OAR 340–105–014 may be broader in scope than the Federal program when Oregon requests that facilities provide information relevant to State-only requirements such as zoning. The same regulation may be more stringent than the Federal 40 CFR 270.14 if, for example, Oregon requests permitted facility operators to provide information which is at a greater level of detail than the Federal program requirements.

D. Status of Federal Permits

Upon the effective date of authorization, Oregon will begin to administer and enforce corrective action requirements. EPA actions which fall under the Federal omnibus authority of section 3005(c)(3) of RCRA, 42 U.S.C. 6925(c)(3), and/or which are federal enforcement authority, including actions issued pursuant to sections 3008 (h), 3013, or 7003 of RCRA, 42 U.S.C. 6928(h), 6934 or 6973, will continue to be adminstered by EPA. In addition, HSWA amendments for which the State has not been authorized will continue to be adminstered and enforced by EPA.

After this authorization becomes effective, an orderly transition of permits to the state will ensue. Facilities operating under a joint EPA-State permit, and whose permits contain a table of authorities, will be notified that the State is assuming authority over the permit. HSWA provisions for which the State is not authorized will continue in effect under EPA-issued permits until the State is authorized for those provisions and the facility is notified that the State is assuming authority over the permit.

E. Indian Lands

Oregon is not seeking authorization to operate on Indian lands.

F. Decision

I conclude that Oregon's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program, as revised.

Oregon now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Oregon also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial

number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 22, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–24270 Filed 10–6–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7161

[OR–943–1430–01; GP5–102; OR–50376]

Withdrawal of Public Land for Hunter Creek Area of Critical Environmental Concern; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 160 acres of public land from surface entry and mining for a period of 5 years for the Bureau of Land Management to protect the Hunter Creek Area of Critical Environmental Concern. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Hunter Creek Area of Critical Environmental Concern:

Willamette Meridian

T. 37 S., R. 14 W.,
Sec. 11, SE¼SE¼;
Sec. 12, NE¼SW¼ and S½SW¼.

The area described contains 160 acres in Curry County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than the mining laws.

3. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1988), the Secretary determines the withdrawal shall be extended.

Dated: September 15, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–24957 Filed 10–6–95; 8:45 am]

BILLING CODE 4310–33–P

43 CFR Public Land Order 7162

[AZ–930–1430–01; AZA 13400, AZA 13401, AZA 13403]

Partial Revocation of Secretarial Orders Dated January 31, 1903, July 20, 1905, and March 14, 1929; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes three Secretarial orders insofar as they affect 3,090.45 acres of public lands withdrawn for the Bureau of Reclamation's Colorado River Storage and Yuma Projects. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to allow title to the lands to pass to the State of Arizona in accordance with the Arizona State Enabling Act. The lands will not be opened to surface entry or mining since the title will pass simultaneously with the revocation.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0240.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated January 31, 1903, July 20, 1905, and March 14, 1929, which withdrew public lands for the Bureau of Reclamation's Yuma and Colorado River Storage Projects, are hereby revoked insofar as they affect the following described lands:

Gila and Salt River Meridian

T. 8 S., R. 22 W.,
Sec. 16, E½, and SW¼;
Sec. 36, N½, W½SW¼, and W½SE¼SW¼.
T. 8 S., R. 23 W.,
Sec. 36, N½.
T. 9 S., R. 23 W.,
Sec. 16, portion of S½ (approximately 250 acres), and N½.
T. 9 S., R. 24 W.,
Sec. 16, NW¼NE¼, W½W½NE¼NW¼, W½NW¼, SE¼NW¼, SW¼, N½SE¼, and SE¼SE¼;
Sec. 36, E½NE¼NE¼, SW¼NE¼NE¼, E½SW¼NE¼, SE¼NE¼, NW¼, E½SW¼, E½NW¼SW¼, NW¼NW¼SW¼, S½SW¼NW¼SW¼, SW¼SW¼, and SE¼.
T. 10 S., R. 24 W.,
Sec. 16, E½, and S½NW¼.
T. 10 S., R. 25 W.,
Sec. 36, W½.

San Bernardino Meridian

T. 16 S., R. 21 E.,
Sec. 36, lots 4, 5, and 8, and S½NE¼.

The areas described aggregate 3,090.45 acres in Yuma County.

2. The lands will not be opened to location or entry since title to the lands will pass to the State of Arizona simultaneously with the revocation.

Dated: September 15, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–24959 Filed 10–6–95; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 94–110]

RIN 2115–AE96

Recreational Inflatable Personal Flotation Device Standards

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments; extension of comment period.

SUMMARY: On June 23, 1995, the Coast Guard published a interim rule (60 FR 32836) establishing regulations for approval of inflatable personal flotation devices (PFDs) for recreational boaters. Because the Coast Guard wishes to consult with the National Boating Safety Advisory Council (NBSAC) on the response to comments at its upcoming meeting on October 30–31, 1995, the comment period is being extended for 14 additional days.

DATES: Comments must be received on or before November 6, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety

Council (G–LRA/3406) (CGD 94–110), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

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, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, U.S. Coast Guard, Lifesaving and Fire Safety Standards Branch (G–MMS–4), telephone (202) 267–1444, facsimile (202) 267–1069, or electronic mail ''mvi–3/G–M18@cgsmtp.uscg.mil''. A copy of the interim rule may be obtained by calling the Coast Guard's toll-free Customer InfoLine, 1–800–368–5647. In Washington, DC, call 267–0780.

SUPPLEMENTARY INFORMATION: On June 23, 1995, the Coast Guard published an interim rule, CGD 94–110, ''Recreational Inflatable Personal Flotation Device Standards'' (60 FR 32836). The interim rule invited and encouraged interested persons to participate in the rulemaking by submitting written comments, including views, data or arguments by October 23, 1995. Several comments expressed concern about the ''Life-Saving Index'' (LSI) provisions of the rule. To address questions about the LSI, the Coast Guard held a public meeting on August 28, 1995, announced in the **Federal Register** on August 2, 1995, (60 FR 39268). Additionally, some comments have requested changes to the rule which the Coast Guard would like to discuss with its recreational boating advisory committee, NBSAC, at its upcoming meeting on October 30–31, 1995, announced elsewhere in today's **Federal Register**. Because of this planned consultation, the Coast Guard is extending the comment period for 14 additional days.

Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–110) and the specific section of the interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: October 2, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–25048 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF ENERGY

48 CFR Parts 915, 916 and 970

RIN 1991–AB19

Acquisition Regulation: Certified Cost or Pricing Data Threshold and Requirements for a Determination and Findings for Use of Cost-Reimbursement Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy amends its Acquisition Regulation to effect changes to the threshold for certified cost or pricing data; and deleting the requirement for a determination and findings for use of cost reimbursement contracts. These changes are required by the Federal Acquisition Streamlining Act of 1994 and subsequent changes to the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard, (202) 586–8174, Office of Policy (HR–51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION:

Background

DOE published an interim rule in the **Federal Register** on April 10, 1995 (60 FR 18030). The public comment period closed June 9, 1995. No public comments were received. Accordingly, the interim rule is adopted as a final rule.

List of Subjects in 48 CFR Parts 915, 916, and 970

Government procurement.

Issued in Washington, D.C. on August 7, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

48 CFR CHAPTER 9—DEPARTMENT OF ENERGY ACQUISITION REGULATION

Under the authority of 42 U.S.C. 7254 and 40 U.S.C. 486(c) the interim rule amending 48 CFR Parts 915, 916, and 970 which was published on April 10, 1995 (60 FR 18030) is adopted as a final rule without change.

[FR Doc. 95–25044 Filed 10–6–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 100295B]

Groundfish of the Gulf of Alaska; Atka Mackerel in the Central Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Atka mackerel in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 3, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Atka mackerel in the Central Regulatory Area was established by the final 1995 specifications of groundfish (60 FR 8470, February 14, 1995) as 925 metric tons (mt). At the same time, the directed fishery for Atka mackerel in the Central Regulatory Area was closed under

§ 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 8470, February 14, 1995). NMFS has determined that as of September 2, 1995, 840 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Atka mackerel in the Central Regulatory Area has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel in the Central Regulatory Area.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 3, 1995.

Richard W. Surdi,

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

[FR Doc. 95–25000 Filed 10–4–95; 10:41 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 195
Tuesday, October 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AE40

1996 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949, as amended (1949 Act), requires the Secretary of Agriculture to implement an Acreage Reduction Program (ARP) for the 1996 crop of upland cotton which will result in a ratio of carry-over to total disappearance of 29.5 percent. This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1996 crop of upland cotton.

DATES: Comments must be received on or before October 20, 1995, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division, Consolidated Farm Service Agency (CFSA), U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne E. Bjorlie, Fibers and Rice Analysis Division, CFSA, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 3501 *et seq.*

Request for Public Comment

Comments are requested with respect to this proposed rule, and such comments shall be considered in developing the final rule.

Background

The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) extended authority for an upland cotton program through the 1997 marketing year. Therefore, in accordance with section 103B of the 1949 Act, an ARP is required to be implemented for the 1996 crop of upland cotton if it is determined that in the absence of an ARP the total supply of upland cotton will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices and to meet a national emergency. However, if new legislation is enacted, the 1996 program will be amended in accordance with any new or revised provisions.

Land diversion payments also may be made to producers of upland cotton, whether or not an ARP for upland cotton is in effect, if needed to assist in adjusting the total national acreage of upland cotton to desirable goals. If, at the time of final announcement of the ARP, the projected carry-over of upland cotton for the crop year is equal to or greater than 8 million bales, a paid land diversion shall be offered to upland cotton producers.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. In making such a determination, the number of acres placed into the program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. The acres required to be devoted to conservation uses may be reduced, at the request of the producer, if the producer's total estimated deficiency payments which would be received under the feed grain, rice, wheat, upland and ELS cotton programs are estimated to be reduced in order to comply with the payment limitations set forth in section 1001 of the Food Security Act of 1985. The amount of the reduction in the acres required to be devoted to conservation uses is proportional to the estimated reduction in payments, in accordance with 7 CFR part 1413.53.

Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm plus any upland cotton acreage planted in accordance with the flexibility provisions are ineligible for upland cotton loans and payments with respect to that farm.

If it is determined that an ARP for the 1996 crop of upland cotton is needed, a preliminary announcement of the ARP uniform percentage requirement (from 0 to 25 percent) must be made not later than November 1 of the calendar year preceding the year in which the crop is harvested. Not later than January 1 of the calendar year in which the crop is harvested, a final announcement of the ARP uniform percentage requirement must be made. Producers in early planting areas may elect to participate in the program on the terms of the ARP first announced for the crop, or as subsequently revised, if the Secretary determines that the producers may be unfairly disadvantaged by the revision.

The ARP for the 1996 crop of upland cotton must be set at a level that will result in a ratio of carry-over to total disappearance of 29.5 percent, based on the most recent projection of carry-over and total disappearance at the time of announcement of the ARP. For the purposes of this provision, the term ''total disappearance'' means all upland cotton utilization, including total domestic, total export, and total residual disappearance.

Based on August 1995 supply/use estimates, ending stocks for the 1996 marketing year under a 5-percent ARP, a 12.5-percent ARP, and a 20-percent ARP are 6.0 million bales, 5.4 million bales, and 4.9 million bales, respectively. Such ARP levels would result in ratios of carry-over to total disappearance of 32.3, 29.5, and 27.5 percent, respectively. For the purposes of this proposed rule, these three ARP options will be considered. However, because of changes in the supply/use situation that may develop between now and November 1, the actual announced preliminary ARP may be different from the options discussed in this rule.

The estimated impacts of the ARP options are shown in the following table.

UPLAND COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
	Percent		
ARP	5	12.5	20
Participation	85	83	81
	Thousand acres		
Planted	14,700	13,900	13,100

UPLAND COTTON SUPPLY/DEMAND ESTIMATES—Continued

Item	Option 1	Option 2	Option 3
	Thousand bales		
Production	19,300	18,400	17,400
Domestic Use	11,800	11,700	11,600
Exports	6,800	6,600	6,400
Ending Stocks	6,000	5,400	4,700
	Percent		
Stocks to Use	32.3	29.5	26.1
	Million dollars		
Deficiency Payments	603	491	394

Accordingly, comments are requested on the 1996 acreage reduction percentage for upland cotton. The final determination of this percentage will be published in the **Federal Register** and will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended to read as follows by:

A. Revising paragraphs (a)(3)(iv) and (a)(3)(v),

B. Adding paragraph (a)(3)(vi),

C. Adding paragraph (d)(6).

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iv) 1994 upland cotton, 11.0 percent;

(v) 1995 upland cotton, 0 percent; and

(vi) 1996 upland cotton shall be within the range of 0 to 25 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(6) For the 1996 crop:

(i)–(ii) [Reserved]

(iii) Shall not be made available to producers of the 1996 crop upland cotton.

* * * * *

Signed at Washington, DC, on October 4, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–25125 Filed 10–5–95; 9:18 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 94–058–2]

Importation of Wild Turkey Carcasses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have allowed the carcasses of wild turkeys from countries where exotic Newcastle disease is considered to exist to be brought into the United States if the head, feet, and viscera of the wild turkeys had been removed. We are taking this action after considering the comments we received following the publication of the proposed rule.

DATES: This withdrawal is effective October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import/Export Products, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–7885.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, we published in the **Federal Register** (60 FR 9633–9634, Docket No. 94–058–1) a proposed rule to amend the regulations in 9 CFR part 94 to allow wild turkey carcasses from countries where exotic Newcastle disease is considered to exist to be brought into the United States if the head, feet, and viscera of the wild turkeys had been removed.

We solicited comments on the proposed rule for 60 days ending on April 24, 1995. By the close of the comment period, we had received a total of five comments. The comments were submitted by representatives of the poultry industry and a university veterinarian. All of the commenters opposed the proposed rule.

All five commenters believed that the proposed rule would adversely affect the poultry industry. Some commenters were concerned that raw carcasses that had the head, viscera, and feet removed would still harbor viable viruses. The commenters stated that the avian

influenza and Newcastle viruses still pose a threat in Mexico, and that these viruses could be present in improperly or inadequately dressed birds. Commenters also stated that wild turkeys killed by hunters could have internal or external fecal contamination as a result of damage caused by a bullet or an arrow passing through the bird, and pointed out that fecal shed of the avian influenza and Newcastle viruses has been documented. One commenter also suggested that the proposed change would encourage hunters to field dress their own game, rather than having the game dressed, cooked, and sealed by commercial services in the foreign country, which would increase the potential for contamination of the hunter's clothing and equipment with exotic disease agents.

After considering all the comments we received, we have concluded that it is necessary to reexamine the disease risk issues associated with the importation into the United States of wild turkey carcasses. Therefore, we are withdrawing the February 21, 1995, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding the importation of wild turkey carcasses are developed.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–25014 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–44]

Airworthiness Directives; CFM International CFM56–3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–3C series turbofan engines. This proposal would require a reduction of the low cycle fatigue (LCF) retirement lives for certain fan disks. This proposal is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives significantly lower than published LCF retirement lives. The actions specified by the proposed AD are intended to prevent a LCF failure of the fan disk, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by December 11, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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 95–ANE–44.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–3C series turbofan engines. A study performed by the manufacturer using updated lifing analyses revealed that certain fan disks have minimum calculated low cycle fatigue (LCF) lives which are significantly lower than published LCF retirement lives. This condition, if not corrected, could result in a LCF failure of the fan disk, which could result in an uncontained engine failure and damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a reduction of the LCF retirement lives for certain fan disks.

The FAA estimates that 33 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would not take any additional work hours per engine to accomplish the proposed actions. Assuming that the parts cost is proportional to the reduction of the LCF retirement lives, the required parts would cost approximately $17,275 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $570,075.

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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

CFM International: Docket No. 95–ANE–44.

Applicability: CFM International (CFMI) CFM56–3C series turbofan engines installed on, but not limited to Boeing 737 series aircraft.

Note: This airworthiness directive (AD) applies to each engine 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 engines 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 (d) to request approval from the Federal Aviation Administration (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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a low cycle fatigue (LCF) failure of the fan disk, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service CFM56–3C fan disks, Part Numbers 335–014–509–0 and 335–014–511–0, prior to accumulating the equivalent of 20,100 cycles at the Category C thrust rating.

(b) This action establishes the new LCF retirement life of 20,100 cycles noted in paragraph (a) of this AD, which is published in Chapter 05 of CFM56 Engine Shop Manual, CFMI–TP.SM.5.

(c) For the purpose of this AD, Category C thrust rating is defined as operation at CFM56–3C–1 engine nameplate model thrust levels.

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

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

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

Issued in Burlington, Massachusetts, on September 27, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–25033 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–23]

Proposed Establishment of Class E Airspace; Springerville, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Springerville/Babbitt Field Airport, Springerville, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 21 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Springerville/Babbitt Field Airport, Springerville, AZ.

DATES: Comments must be received on or before November 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–23, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

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

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System

Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace area at Springerville, AZ. The development of a GPS SIAP at Springerville/Babbitt Field Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 21 SIAP at Springerville/Babbitt Field Airport, Springerville, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AWP AZ E5 Springerville, AZ [New]

Springerville/Babbitt Field Airport, AZ (Lat. 34°07′43″ N, long. 109°18′41″ W).

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of Springerville/Babbitt Field Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°09′00″ N, long. 109°28′00″ W; to lat. 34°19′00″ N, long. 109°00′00″ W; to lat. 34°03′00″ N, long. 109°05′00″ W; to lat. 34°03′00″ N, 109°28°00″ W; thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on September 27, 1995.

James H. Snow,

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

[FR Doc. 95–25055 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–15]

Proposed Establishment of Class E Airspace; Byron, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Byron, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 30 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Byron Airport, Byron, CA.

DATES: Comments must be received on or before November 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–15, Air Traffic Division, PO Box 92007, Worldway Postal Center, Los Angeles, California, 90009

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261

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

FOR FURTHER INFORMATION CONTACT:

Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 1500 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (15 CFR part 71) to establish a Class E airspace area at Byron, CA. The development of a GPS SIAP at Byron Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 21 SIAP at Byron Airport, Byron, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AWP AZ E5 Byron, CA [New]

Byron Airport, CA
(Lat 37°49′40″ N, long. 121°37′27″ W)

That airspace extending upward from 700 feet above the surface within a 4.9-mile radius of Byron Airport.

* * * * *

Issued in Los Angeles, California, on September 27, 1995.

James H. Snow,

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

[FR Doc. 95–25054 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–15]

Proposed Amendment of Class E Airspace; Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Salt Lake City, Utah, Class E airspace. If amended, the airspace would accommodate a new instrument approach procedure tat Salt Lake City International Airport, Salt Lake City, Utah. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before November 15, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–15, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 95–ANM–15 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specially invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice maybe changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being place on mailing list for future NPRM'S should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to

amend Class E airspace at Salt Lake City, Utah, to accommodate a new instrument approach procedure at Salt Lake City International Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Salt Lake City, UT [Revised]

Salt Lake City International Airport, UT
(Lat. 40°47′13″ N, long. 111°58′08″ W).

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°00′00″ N, long. 111°45′03″ W, thence south along long. 111°45′03″ W, to lat. 40°22′30″ N, thence southeast to lat. 40°10′20″ N, long. 111°35′03″ W, thence southwest to lat. 40°03′30″ N, long. 111°48′33″ W, thence northwest to lat. 40°43′00″ N, long. 112°22′03″ W, thence north along long. 112°22′03″ W, to lat. 41°00′00″ N, thence east along lat. 41°00′00″ N, to the point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°00′00″ N, on the east by long. 111°25′33″ W, thence south to lat. 40°11′00″ N, thence east to lat. 40°06′00″ N, long. 110°20′00″ W, thence southwest to lat. 39°33′00″ N, long. 110°55′00″ W, thence southwest to lat. 39°04′00″ N, long. 112°27′30″ W, thence northwest to lat. 39°48′00″ N, long. 112°50′00″ W, thence west via lat. 39°48′00″ N, to the east edge of Restricted Area R–6402A, and on the west by the east edge of Restricted Area R–6402A, Restricted Area R–6402B and Restricted Area R–6406B and long. 113°00′03″ W; excluding the portion within the Price, UT and the Delta, UT, airspace areas; that airspace east of Salt Lake City extending upward from 11,000 feet MSL bounded on the northwest by the southeast edge of V–32, on the southeast by the northwest edge of V–235, on the southwest by the northeast edge of V–101 and on the west by long. 111°25′33″ W; excluding that airspace within the Evanston, WY, 1,200-foot Class E airspace area; that airspace southeast of Salt Lake City extending upward from 13,500 feet MSL bounded on the northeast by the southwest edge of V–484, on the south by the north edge of V–200 and on the west by long. 111°25′33″ W; excluding the portion within Restricted Area R–6403 and the Bonneville, UT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on August 28, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–25052 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35

RIN 1219–AA87

Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing on its proposed regulations for testing and evaluation of products by nationally recognized testing laboratories (NRTL) and the use of equivalent testing and evaluation requirements. The purpose of the hearing is to receive relevant comments on these proposed changes to MSHA's regulations for the approval of products for use in underground mines and to respond to questions from the public about these proposed changes.

DATES: The hearing will be held on Wednesday, November 15, 1995, in Washington, PA beginning at 9:00 a.m. The public record will close on December 15, 1995.

ADDRESSES: The hearing will be held at the Ramada Inn, Suite B and C, 1170 W. Chestnut Street, Washington, PA 15301. For hotel reservations contact Lisa at 412–225–9750.

Send requests to make oral presentations to the Mine Safety and Health Administration; Office of Standards, Regulations, and Variances; 4015 Wilson Boulevard, Room 631; Arlington, VA 22203; FAX: 703–235–5551. Requests to make oral presentations also can be made by calling the MSHA Office of Standards, Regulations, and Variances at 703–235–1910.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

On November 30, 1994, MSHA published a proposed rule (59 FR 61376) to revise its existing standards for testing and evaluating products for approval for use in underground mines. The comment period closed on February 21, 1995.

The proposal would require manufacturers of certain products to use

a private sector laboratory recognized by the Occupational Safety and Health Administration (OSHA) as a Nationally Recognized Testing Laboratory (NRTL) to perform the necessary testing and evaluation for MSHA approvals. This would revise MSHA's testing and evaluation responsibilities and allow the Agency to expand its post-approval product audit program and pursue the evaluation of new safer technology as applied to underground mining products.

The proposal also would enable the Agency, upon an applicant's request, to approve products based upon testing and evaluation requirements other than MSHA's, provided that the alternative requirements are equivalent to MSHA's requirements and provide at least the same measure of protection for the miner.

II. Issues

Commenters questioned a number of provisions contained in the proposal. A major area of concern was the increased cost and the interrelationship between NRTL testing and MSHA approval. Many commenters stated that requiring a manufacturer to obtain testing and evaluation by a private sector laboratory would increase costs. These commenters expressed concern that the increased flexibility and other benefits of the proposed rule would not offset these increased costs.

Other issues of particular concern include: (1) The potential delay anticipated by some manufacturers and mine operators in receiving MSHA approval; (2) the means for determining —equivalent— testing and evaluation requirements and the use of international standards; (3) the acceptance in the MSHA/OSHA NRTL program of laboratories certified under international standards; and (4) the potential for product testing and evaluation to be limited to a single private sector laboratory.

MSHA specifically solicits additional suggestions and comments on these issues at the public hearing, as well as comments on any other aspects of the proposed rule.

III. Conduct of Hearing

The hearing will be conducted in an informal manner by a panel of MSHA officials. The order of appearance of persons making presentations will be determined by the Agency and, immediately before the hearing, any unallotted time will be made available to persons making late requests. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA followed by an opportunity for members of the public to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements.

Verbatim transcripts of the proceedings will be taken and made a part of the rulemaking record. Copies of the hearing transcript will be made available for review by the public.

MSHA also will accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until December 15, 1995.

Dated: October 4, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–25163 Filed 10–6–95; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–152, RM–8700]

Radio Broadcasting Services; Brackettville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Tim Walker requesting the allotment of Channel 234A to Brackettville, Texas. Channel 234A can be allotted to Brackettville, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) south in order to avoid a short-spacing conflict with the licensed site of Station XHTA(FM), Channel 233A, Piedras Negras, Coahuila, Mexico. The coordinates for Channel 234A at Brackettville are 29–19–00 and 100–25–03. Mexican concurrence will be requested for this proposal.

DATES: Comments must be filed on or before November 20, 1995, and reply comments on or before December 5, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Tim Walker, P.O. Box 447, Hondo, Texas 78861 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–152, adopted September 20, 1995, and released September 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 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. 95–24946 Filed 10–6–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register

Vol. 60, No. 195

Tuesday, October 10, 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

Animal and Plant Health Inspection Service

[Docket No. 95–042–2]

Availability of Determination of Nonregulated Status for Genetically Engineered Tomato Line of Monsanto Company

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a tomato line developed by the Monsanto Company designated as 8338 that has been genetically engineered for delayed ripening is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Monsanto Company petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: September 27, 1995.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnologist, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1995, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 95–053–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that a tomato line designated as 8338 that has been genetically engineered for delayed ripening does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On June 13, 1995, APHIS published a notice in the **Federal Register** (60 FR 31139–31140, Docket No. 95–042–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject tomato line and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether the subject tomato line posed a plant pest risk. The comments were to have been received by APHIS on or before August 14, 1995.

APHIS received two comments on the subject petition, both from State departments of agriculture. Both of the comments were in support of nonregulated status for tomato line 8338.

Analysis

Tomato line 8338 has been genetically engineered to express the enzyme 1-aminocyclopropane-1-carboxylic acid deaminase (ACCd), which catalyzes deamination of ACC, an essential precursor for ethylene biosynthesis. Levels of ethylene control the rate of fruit ripening. Removal of ACC in the subject tomato line reduces ethylene production and delays ripening. Tomato line 8338 also contains the neomycin phosphotransferase (*nptII*) selectable marker gene, which encodes the enzyme NPTII. Expression of the *accd* gene and the *nptII* gene is driven by constitutive 35S promoters derived from the plant pathogenic caulimoviruses, figwort mosaic virus and cauliflower mosaic virus, respectively. The subject tomato line was transformed through the use of disarmed vectors from a common soil-borne bacterium, the plant pathogen *Agrobacterium tumefaciens*.

Tomato line 8338 has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains the 35S promoters and 3' regulatory gene sequences derived from the plant pathogens mentioned above, and because *A. tumefaciens* was used as the plant transformation vector. However, evaluation of field data reports from field tests of the subject tomato line conducted under APHIS permits or notifications since 1992 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the subject tomato plants' release into the environment.

Determination

Based on its analysis of the data submitted by Monsanto and a review of other scientific data, comments received, and field tests of the subject tomato line, APHIS has determined that tomato line 8338: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than other tomatoes developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not harm other organisms, such as bees, that are beneficial to agriculture; and (5) should not cause damage to raw or processed agricultural commodities. Therefore, APHIS has concluded that tomato line 8338 and any progeny derived from hybrid crosses with other nontransformed tomato varieties will be just as safe to grow as traditionally bred tomato lines that are not regulated under 7 CFR part 340.

The effect of this determination is that a tomato line designated as 8338 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of tomato line 8338 or its progeny. However, the importation of the subject

tomato line or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that tomato line 8338 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 2nd day of October 1995.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–25015 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on November 9, 1995 in Campbell's Conference Center (River Room), 104 W. Wooden, Chelan, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. The focus of this meeting will be to continue discussion on Forest Health. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington, 98807, 509–662–4335.

Dated: September 25, 1995.

Paul Hart,

Desiganted Federal Official, Wenatchee National Forest.

[FR Doc. 95–25039 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–11–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on October 11, 1995 at the Hal Holmes Conference Center, 201 N. Ruby, Ellensburg, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will focus on continued discussion regarding recreation use in riparian areas. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington. 98807, 509–662–4335.

Dated: September 25, 1995.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 95–25040 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–11–M

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on October 31, 1995 at the Swinomish Indian Tribal Community Center, 1729 Reservation Road, in La Conner, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m.

Agenda items to be covered include: (1) Briefing on marbled murrelt critical habitat and recovery plans by U.S. Fish & Wildlife Service; (2) discussion and update of Section 2001 of the ''Recession Bill (Pub. L. 104–19) relating to release of Section 318 timber sales, substitute volume, FY 1996 salvage program, and citizen participation (public involvement) under the provisions of Section 2001; (3) Access and Travel Management subcommittee update; (4) overview of management alternatives from the Draft Environmental Impact Statement for the Snoqualmie Pass Adaptive Management Area; (5) overview of the proposed Plum Creek Timber Company Habitat Conservation Plan; (6) other topics, as appropriate; and (7) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Christopher Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: October 3, 1995.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 95–25035 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on October 25, 1995, November 15, 1995 and December 13, 1995. The purpose of these meetings is to continue with the development of a Draft River Management Plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meetings will be held October 25, November 15, and December 13, 1995 at 7:30 p.m.

ADDRESSES: The meetings will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire

Send written comments to Davis Pratt III, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Saco Ranger District, (603) 447–5448.

Dated: September 29, 1995.

Terrence O. Clark III,

Acting Forest Supervisor.

[FR Doc. 95–24955 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–11–M

National Agricultural Statistics Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Agricultural Surveys Program.

DATES: Comments on this notice must be received by December 11, 1995 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Number: 0535–0213.

Expiration Date of Approval: January 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Agricultural Surveys Program obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreages, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, State and national farm policymakers, and Government agencies are important users of statistics. Agricultural statistics are used to plan and administer other related Federal and State programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 16 minutes per response.

Respondents: Farms.

Estimated Annual Number of Respondents: 490,000.

Estimated Total Annual Burden on Respondents: 128,143 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Send comments regarding the necessity for and utility of the information; the accuracy of the burden estimate; ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology; ways to enhance the quality, utility, and clarity of the information; or any other aspect of this collection of information to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 14th and Independence Avenue SW., Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC October 3, 1995.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 95–25018 Filed 10–6–95; 8:45 am]

BILLING CODE 3410–20–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release

AGENCY: Assassination Records Review Board.

ACTION: Notice of formal determinations.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on September 20 and 21, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street NW., Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107.9(c)(4)(A) (1992). On September 20 and 21, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS.—CIA DOCUMENTS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
104–10015–10016	12	0	Open in Full	n/a
104–10015–10041	5	0	Open in Full	n/a
104–10015–10042	3	0	Open in Full	n/a
104–10015–10044	12	1	Postponed in Part	09/2005
104–10015–10051	1	1	Postponed in Part	09/2005
104–10015–10053	1	1	Postponed in Part	09/2005
104–10015–10054	2	0	Open in Full	n/a
104–10015–10062	3	0	Open in Full	n/a
104–10015–10073	2	0	Open in Full	n/a
104–10015–10076	3	0	Open in Full	n/a

REVIEW BOARD DETERMINATIONS.—CIA DOCUMENTS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
104–10015–10079	2	0	Open in Full	n/a
104–10015–10094	2	0	Open in Full	n/a
104–10015–10103	3	0	Open in Full	n/a
104–10015–10108	8	0	Open in Full	n/a
104–10015–10112	3	0	Open in Full	n/a
104–10015–10113	3	0	Open in Full	n/a
104–10015–10137	3	0	Open in Full	n/a
104–10015–10140	8	0	Open in Full	n/a
104–10015–10145	5	0	Open in Full	n/a
104–10015–10146	4	0	Open in Full	n/a
104–10015–10166	2	0	Open in Full	n/a
104–10015–10167	2	0	Open in Full	n/a
104–10015–10169	10	0	Open in Full	n/a
104–10015–10170	6	0	Open in Full	n/a
104–10015–10172	12	0	Open in Full	n/a
104–10015–10175	6	0	Open in Full	n/a
104–10015–10179	8	0	Open in Full	n/a
104–10015–10180	9	0	Open in Full	n/a
104–10015–10182	13	0	Open in Full	n/a
104–10015–10183	3	0	Open in Full	n/a
104–10015–10184	2	0	Open in Full	n/a
104–10015–10185	5	0	Open in Full	n/a
104–10015–10186	8	0	Open in Full	n/a
104–10015–10187	2	0	Open in Full	n/a
104–10015–10189	4	0	Open in Full	n/a
104–10015–10190	2	0	Open in Full	n/a
104–10015–10191	5	0	Open in Full	n/a
104–10015–10193	3	0	Open in Full	n/a
104–10015–10194	6	0	Open in Full	n/a
104–10015–10195	7	0	Open in Full	n/a
104–10015–10198	2	0	Open in Full	n/a
104–10015–10199	5	1	Postponed in Part	09/2005
104–10015–10200	10	0	Open in Full	n/a
104–10015–10201	3	0	Open in Full	n/a
104–10015–10203	6	0	Open in Full	n/a
104–10015–10204	4	0	Open in Full	n/a
104–10015–10205	1	0	Open in Full	n/a
104–10015–10206	8	0	Open in Full	n/a
104–10015–10208	3	0	Open in Full	n/a
104–10015–10209	5	0	Open in Full	n/a
104–10015–10210	3	0	Open in Full	n/a
104–10015–10211	1	0	Open in Full	n/a
104–10015–10232	2	0	Open in Full	n/a
104–10015–10235	1	0	Open in Full	n/a
104–10015–10239	1	0	Open in Full	n/a
104–10015–10241	9	0	Open in Full	n/a
104–10015–10242	6	0	Open in Full	n/a
104–10015–10244	1	1	Postponed in Part	09/2005
104–10015–10245	1	0	Open in Full	n/a
104–10015–10247	1	0	Open in Full	n/a
104–10015–10249	3	0	Open in Full	n/a

Dated: October 3, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–25007 Filed 10–6–95; 8:45 am]

BILLING CODE 6118–01–M

DEPARTMENT OF COMMERCE

[A–588–029]

Fishnetting of Man-Made Fibers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 14, 1995, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping duty finding on fishnetting of man-made fibers from Japan. This review covers one company for the period June 1, 1993 through May 31, 1994. We did not receive any comments on the preliminary results. Therefore, the dumping margin for the company reviewed is unchanged from the margin presented in the preliminary results.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–4474/3814.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1995, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping finding on fishnetting of man-made fibers from Japan (60 FR 36261). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, not including salmon gill netting, from Japan. This merchandise is currently classified under item numbers 5608.11.00, 5608.19.10, and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The period of review is June 1, 1993, through May 31, 1994.

Applicable Statute

The Department is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

United States Price

As stated in the preliminary results, in accordance with section 772(b) of the Act, the Department based USP on purchase price, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on c.i.f. U.S. port and packed prices to unrelated purchasers in the United States. The contract date was the date that the terms of sale, quantity, and price were final; thus, the Department accepted the respondent's contract date as the date of sale. We made adjustments, where applicable, for Japanese and U.S. ocean freight, marine insurance, shipping charges, and inland freight. No other adjustments were claimed or allowed. We reviewed information Yamaji submitted regarding product matches and determined product comparisons based on this information. We first compared products sold in the United States to identical products sold in the home market. For several of the products sold in the United States, we did not find a contemporaneous sale of the identical product in the home market. To determine similar merchandise in the home market, we grouped products according to their specifications. We then compared U.S. sales to these groups, again using these specifications as our matching criterion. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Reviews,* 56 FR 31692, 31714 (July 11, 1991).

Foreign Market Value

In accordance with section 773(a) of the Act, the Department calculated FMV for Yamaji based on f.o.b. and delivered prices to unrelated purchasers in the home market. We used the invoice date as the date of sale for these transactions. Because information from Yamaji indicated that there were no cost differences between the U.S. merchandise and similar home market merchandise, we did not make a difference in merchandise adjustment to FMV for physical differences in accordance with 19 CFR 353.57(a). We adjusted FMV for the differences in packing costs between the home market and the U.S. market. We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. No other adjustments were claimed or allowed.

We gave interested parties an opportunity to comment on the preliminary results and received no written comments. Accordingly, we will continue to apply the rate of 2.58 percent as established in the preliminary determination.

Final Results of Review

As a result of this review, we determine that the following margin exists for the period June 1, 1993, through May 31, 1994:

Manufacturer/exporter	Percent margin
Yamaji	2.58

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate established above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be zero percent, the all others rate established in the final results of the first administrative review (49 FR 19339, April 30, 1984).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms if the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25062 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–842]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Everett Kelly, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4194, respectively.

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 Rounds Agreements Act (URAA).

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on March 29, 1995 (60 FR 17053, April 4, 1995) the following events have occurred:

On April 18, 1995, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) requesting the identification of producers and exporters, and information on production and sales of PVA exported to the United States. We received a response in May 1995, identifying Sichuan Vinylon Works (Sichuan) and Guangxi Import and Export Corporation (Guangxi) as companies who sold the subject merchandise during the period of investigation (POI).

On April 24, 1995, the United States International Trade Commission (ITC) notified the Department of Commerce (the Department) of its affirmative preliminary determination.

In May 1995, the Department presented questionnaires to MOFTEC and counsel for Guangxi and Sichuan. Responses to the questionnaire were received in June and July from Guangxi, Guangxi Vinylon Plant (Guangxi Vinylon), which produces PVA sold by Guangxi, and Sichuan. The Department issued supplemental questionnaires to these companies and received responses to them, during August 1995. We also requested and received additional information during September 1995.

The Department invited petitioner and respondents to provide information for valuing the factors of production. The parties submitted such information during August and September 1995.

On September 19, 1995, petitioner amended the petition to exclude from the scope of this investigation polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. We have revised the scope of this investigation to reflect petitioners' amendment (see the ''Scope of Investigation'' section of this notice, below).

On September 21, 1995, Isolyser Co., Inc. (Isolyser), an importer of the subject merchandise, requested the Department to consider PVA hydrolyzed at a level of at least 98 percent to be a separate like product. Isolyser's request was submitted too late for consideration in the preliminary determination. We will, however, consider it in our final determination.

Scope of Investigation

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, except for polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent, which are excluded.

The merchandise under investigation is currently classifiable under subheading 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.

Period of Investigation

The period of investigation is October 1, 1994, through March 31, 1995.

Separate Rates

Each of the responding PRC exporters, Sichuan and Guangxi, has requested a separate, company-specific rate. According to both respondents' business licenses, each is ''owned by all the people''. As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* 59 FR 22585, 22586 (May 2, 1994) (*Silicon Carbide*), and the *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by all the people does not, in itself, require the application of a single rate. Accordingly both respondents are eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control, including laws, regulations and provisions enacted by the State Council of the central government of the PRC. Respondents have also submitted documents which establish that PVA is not included on the list of products that may be subject to central government export constraints (*Export Provisions*). The Department has reviewed these and

other enactments in prior cases and has previously determined that these laws indicate that the responsibility for managing state-owned enterprises has been shifted from the government to the enterprise itself. (See *Silicon Carbide* and *Furfuryl Alcohol*). Nothing on the record of this investigation would lead us to reconsider this determination.

However, as stated in previous cases, there is some evidence (on this record), that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (See *Silicon Carbide* and *Furfuryl Alcohol*). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent has asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions, and there is no information on the record that suggests central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that Guangxi and Sichuan have met the criteria for the application of separate rates. We will examine this matter further at verification and determine whether the questionnaire responses are supported by verifiable documentation.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, *e.g., Silicon Carbide* and *Furfuryl Alcohol*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(c) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the NV section, below.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are the countries most comparable to the PRC in terms of overall economic development (*see* Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated June 15, 1995). According to the available information on the record, we have determined that India is the only significant producer of PVA among these six potential surrogate countries. Accordingly, we have calculated Normal Value (NV) using Indian prices for the PRC producers' factors of production. We have obtained and relied upon published, publicly available information wherever possible.

Fair Value Comparisons

To determine whether sales of PVA from the PRC to the United States by Guangxi and Sichuan were made at less than fair value, we compared Export Price (EP) to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For both Guangxi and Sichuan, we calculated Export Price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The constructed export price under section 772(b) is not otherwise warranted on the basis of the facts of this investigation.

Petitioner has claimed that two customers of the respondents are affiliated resellers under section 771(33) through common PRC government control. As we have accepted Guangxi's and Sichuan's separate rates claims based on absence of PRC government control for purposes of the preliminary determination, there is no basis to consider these customers as affiliated parties.

We calculated EP based on packed, FOB PRC port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for the following services: foreign inland freight, brokerage and handling, loading and containerization, ocean freight, and marine insurance. As all movement services were provided by PRC suppliers, these services were valued in the surrogate country.

We excluded certain U.S. sales by Guangxi from our analysis because the information available at this time indicates that the appropriate date of sale for these transactions is outside the POI.

Normal Value

In accordance with section 773(c) of the Act we calculated NV based on factors of production reported by Sichuan and by Guangxi Vinylon, which produced the PVA for Guangxi. To calculate NV, the reported unit factor quantities were multiplied by Indian values. Where possible, we used public information for the surrogate values. The selection of the surrogate values applied in this determination was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of a tax-exclusive domestic price. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices or, in the case of labor rates, consumer price indices, published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of surrogate values, *see* the Valuation

Memorandum, dated October 2, 1995. We then added amounts for overhead, general expenses (including interest) and profit, based on the experience of a PVA producer in India (see Valuation Memorandum), and packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

Guangxi's reporting of packing material factor units could not be converted to the weight unit of the surrogate value. For the preliminary determination, we used the factor weights from the public version of Sichuan's response to calculate the value for Guangxi's packing materials.

As we could not identify an appropriate Indian surrogate value for one raw material-nitrogen, we applied an Indonesian price for this factor. Sichuan obtained two raw material factors from market economy sources and paid in market economy currencies. For these two factors, we valued them based on the price actually paid by Sichuan.

China-Wide Rate

MOFTEC identified what we believe to be the only two PRC exporters of PVA to the United States during the POI. Both have responded in this investigation. We compared the respondents' sales data with U.S. import statistics for time periods including the POI and found no indication of unreported sales. Accordingly, we have based the China-wide rate on the weighted-average of the margins calculated in this proceeding.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of PVA from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service will require a cash deposit or posting of a bond equal to the estimated dumping margins by which the normal value exceeds the export price, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Guangxi GITIC Import and Export Corp	121.74
Sichuan Vinylon Works	187.56
PRC-Wide Rate	176.10

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 17, 1995, and rebuttal briefs, no later than November 20, 1995. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary should be limited to five pages total, including footnotes. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. At this time, the hearing is scheduled for November 22, 1995, the time and place to be determined, at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by December 18, 1995.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 2, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25059 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–836]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773 or (202) 482–0922, respectively.

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).

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on March 29, 1995 (60 FR 17053, April 4, 1995), the following events have occurred:

On April 10, 1995, one company, Denki Kagaku Kogyo Kabushiki Kaisha (Denki), requested that it not be required to respond to the antidumping questionnaire in this investigation because it accounted for a small portion of total Japanese exports to the United States. The petitioner stated in a filing that they did not object.

On April 24, 1995, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its affirmative preliminary determination.

During May the Department sent antidumping questionnaires to the Ministry of International Trade and Industry and the following companies: Kuraray Co., Ltd. (Kuraray), Nippon Synthetic Chemical Industry Co., Ltd. (Nippon Goshei), Unitika Ltd. (Unitika), and Shin-Etsu Chemical Co., Ltd. (Shin-Etsu). The Department received notification from Nippon Goshei and Shin-Etsu that they would not be responding to the Department's antidumping questionnaire. Kuraray responded to Section A of the antidumping questionnaire and then notified the Department it would not be responding to the remaining sections of the questionnaire. Unitika did not file a questionnaire response.

On July 21, 1995, the petitioner in this investigation, Air Products and Chemicals, Inc., requested that the Department postpone the preliminary determination until October 2, 1995. We granted this request pursuant to section 733(c)(1)(A) of the Act, and postponed the preliminary determination until not later than October 2, 1995 (60 FR 39931, August, 4, 1995).

On September 19, 1995, the petitioner amended the petition to exclude from the scope of this investigation polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or poylvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. We have revised the scope of this investigation to reflect the petitioner's amendment (*see* the ''Scope of Investigation'' section of this notice, below).

Scope of Investigation

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, except for polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or poylvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent, which are excluded.

The merchandise under investigation is currently classifiable under subheading 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.

Period of Investigation

The period of investigation (POI) is April 1, 1994, through March 31, 1995.

Facts Available

Pursuant to section 776 of the Act, the Department will use the facts otherwise available if necessary information is not available on the record, or if an interested party or any other person withholds requested information, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Section 776(c) explains that where the Department relies on ''secondary information,'' the Department will, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA, clarifies that the petition is ''secondary information.'' *See* SAA, published in H. Doc. 103–316, 103d Cong., 2d Sess. at 807, 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. However, where corroboration is not practicable, the Department may use the uncorroborated information.

In the present case, all respondents failed to respond to the Department's antidumping questionnaire. Therefore, the Department determines that necessary information is not on the record, and that no party has acted to the best of its ability and thus, that application of section 776(b) is warranted.

In the present case, the petition is the only information on the record which could form the basis for a dumping calculation. Therefore, the Department has based the margins for all parties on information in the petition.

In accordance with section 776(c) of the Act, the Department attempted to corroborate the petition information by comparing the petition information on export price against U.S. Customs data and Japanese export statistics. However, both of these sources record prices based on the HTSUS subheading 3905.20.00, which includes both subject and non-subject merchandise. We were therefore unable to use either source of information to corroborate the prices contained in the petition. However, on the record of this investigation is a price quote from an independent source which does tend to corroborate the export price used in the petition (*see* Memorandum from Lou Apple to the file dated August 1, 1995).

As to normal value starting price, or any other foreign costs, we are not aware of any practicable means of corroborating such information.

Finally, we examined the ocean freight charge in the petition as it is a significant adjustment element which is not foreign based. Based on our examination of the supporting documentation contained in the petition, we find that the ocean freight charge has probative value.

We note that one respondent submitted a section A response which contained some pricing information. However, because of the danger of self-serving statements by respondents who do not cooperate, such information cannot be used to adjust the margin alleged in the petition.

Accordingly, we have preliminarily relied upon the information contained in the petition. We have assigned to all exporters a margin of 77.49 percent, the margin calculated in the petition on merchandise which is within the scope of this investigation.

All-Others Rate

Under section 735(c)(5) of the Act, the ''all-others rate'' will normally be a weighted average of the weighted-average dumping margins established for all exporters and producers, but excluding any zero or de minimis margins, or any margins based entirely on the facts available. However, this provision also states that if all weighted-average margins are zero, de minimis, or based on the facts available, the Department may use other reasonable methods to calculate the all-others rate, including a weighted-average of such margins. In this case, as discussed above, the margin assigned to all companies is 77.49 percent, based on

the facts available. Therefore, also based on the facts available, the Department determines the all-others rate to be 77.49 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of PVA from Japan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The dumping margins are as follows:

Exporter/manufacturer	Margin percentage
Kuraray	77.49
Nippon Goshei	77.49
Unitika	77.49
Shin-Etsu	77.49
All Others	77.49

The all others rate applies to all entries of subject merchandise except for entries from exporters that are identified above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 9, 1995, and rebuttal briefs, no later than November 16, 1995. A list of authorities used and a summary of arguments made in the briefs should accompany these briefs. Such summary must be limited to five pages total, including footnotes. In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 1:30 p.m. on November 20, 1995, at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by December 18, 1995.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 2, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25060 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–824]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Barbara Wojcik-Betancourt, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–0629, respectively.

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).

Preliminary Determination

We preliminarily determine that polyvinyl alcohol from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on March 29, 1995, (60 FR 17053, April 4, 1995), the following events have occurred:

On April 24, 1995, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its affirmative preliminary determination.

In May 1995, the Department presented an antidumping duty questionnaire to Chang Chun Petrochemical Co., Ltd. (Chang Chun), the sole Taiwan producer of the subject merchandise. Chang Chun submitted its questionnaire responses in June and July 1995. The Department issued supplemental questionnaires, and Chang Chun responded to them, in August 1995. During September 1995, the Department requested and received additional information from Chang Chun. In addition, both petitioner and Chang Chun submitted comments regarding treatment of various issues for the preliminary determination.

Pursuant to section 733(c)(1)(B) of the Act, as amended, the Department determined that this investigation is extraordinarily complicated and additional time is necessary to make the preliminary determination. Accordingly, we postponed the preliminary determination until October 2, 1995 (60 FR 35899, July 12, 1995).

On September 19, 1995, petitioner amended the petition to exclude from the scope of this investigation polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. We have revised the scope of this investigation to reflect petitioner's amendment (see the ''Scope of Investigation'' section of this notice, below).

Scope of Investigation

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, except for polyvinyl alcohols covalently bonded with acetoacetylate, carboxylic

acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, or polyvinyl alcohols covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent, which are excluded.

The merchandise under investigation is currently classifiable under subheading 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.

Period of Investigation

The period of investigation (POI) is April 1, 1994, through March 31, 1995.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products in the home market to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons on the basis of the characteristics listed in the Department's antidumping questionnaire.

Chang Chun reported that it sells to customers at three levels of trade in the home market: distributor, retailer, and end-user; and to two levels of trade in the U.S. market: distributor and end-user. It has requested that we make comparisons at the same level of trade, in accordance with section 773(a)(1)(B) of the Act.

Under this section of the Act, the Department will compare products, to the extent practicable, at the same level of trade. Section 773(a)(7)(A)(i) specifies that the difference in level of trade must involve the performance of different selling activities by the seller (i.e. the responding exporter).

While Chang Chun has identified different functions performed by its customers at the alleged levels of trade, it has failed to demonstrate that Chang Chun itself engages in different selling activities among end-users, distributors, and retailers. Chang Chun states that it ''treats end-users and distributors the same as far as the handling of the transactions.'' Apart from a quantity rebate offered only to home market distributors, and a commission paid on some end-user U.S. sales, it has not reported any other selling activities that differ among the alleged levels of trade. Because Chang Chun reports performing no other selling activities and reports incurring no expenses for technical service, warranty or advertising, it has failed to demonstrate that it performs different selling activities dependent on the customer.

Based on this analysis, we have determined that Chang Chun has failed to support its contention that it sells to different levels of trade. In making our comparisons, we therefore, made no distinctions between levels of trade.

Fair Value Comparisons

To determine whether Chang Chun's sales of PVA to the United States were made at less than fair value, we compared Export Price (EP) to the Normal Value (NV), as specified below.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and Constructed Export Price (CEP) under section 772(b) is not otherwise warranted based on the facts of this investigation.

We calculated EP based on packed, FOB factory, C&F or CIF prices to unaffiliated customers in the United States. We made deductions from the starting price (gross unit price), where appropriate, for the following charges: inland freight in Taiwan; freight and marine insurance; brokerage and handling; ocean freight, ocean freight fees; and harbor construction tax.

Normal Value

In accordance with section 773(a)(1)(B) of the Act, we have based NV on sales in Taiwan, the home market. We compared all home market sales to the cost of production (COP), as described below. In every instance, home market prices were above COP, and we calculated NV based on FOB factory or delivered prices to unaffiliated customers, and made deductions from the starting price for freight, discounts, and rebates (reported also as a discounts by Chang Chun), and post-sale billing corrections. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In addition, we adjusted for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii). These circumstances included differences in imputed credit expenses and commissions. Chang Chun paid commissions on some U.S. sales, but paid no commissions on any home market sales. Thus, we deducted the lesser of either (1) the amount of the weighted-average commission paid on the U.S. sales of a product; or (2) the sum of the weighted average indirect selling expenses paid on the home market sales, and then added the weighted-averaged amount of the commission paid on the U.S. sales to NV in accordance with 19 CFR 353.56(a)(2).

Petitioner claims that Chang Chun's sales to its major distributors in the home market should be considered sales to affiliated parties under section 771(33) because suppliers are so reliant on Chang Chun that Chang Chun is in a position to legally or operationally exercise restraint or direction over these suppliers. Chang Chun responds that it has no ownership, overlapping management, or financial arrangements with these customers and is in no position to control its distributors. For the preliminary determination, we have considered these customers to be unaffiliated, but will examine this issue further at verification prior to the final determination.

Cost of Production Analysis

Pursuant to an allegation made by the petitioner, we initiated a cost of production investigation in our notice of initiation (60 FR 17053, April 4, 1995). To determine whether the home market prices were above COP, pursuant to section 773(b), we calculated COP based on the sum of Chang Chun's reported cost of materials, fabrication, general expenses, and packing. We made no adjustment to Chang Chun's submitted cost data for purposes of the preliminary determination.

Petitioner claims that Chang Chun has incorrectly treated acetic acid as a co-product of PVA production rather than a by-product in its cost allocation methodology. We have preliminarily treated acetic acid as a co-product, but will examine this issue further at verification for the final determination.

Results of COP Analysis

In accordance with section 773(b)(1) of the Act, we compared home market sales to the weighted-average cost of production, by product, to determine whether sales were made below the COP within an extended period of time in substantial quantities at prices that do not permit the recovery of all costs within a reasonable period of time.

Based on our preliminary analysis, none of Chang Chun's sales were found to be below cost. Accordingly, we calculated NV for all U.S. sales based on price to price comparisons.

Comparison Methodology

In accordance with section 777A(d)(1)(A)(i), we calculated weighted-average EPs for comparisons to weighted average NVs. The weighted-averages were calculated and compared by product characteristics.

Petitioner argues that monthly average home market and U.S. prices should be used in calculating the dumping margin due to alleged differences in the time, volume, and distribution of sales during the POI. Petitioner contends that the use of monthly averages is appropriate in order to avoid understating a margin calculated using yearly POI averages.

The Department's standard practice in past antidumping investigations involving weighted-average foreign market values (now NV) was to calculate a single weighted-average price for each product during the 6-month POI. The Department intends to extend this practice to the calculation of POI average prices in both markets under the new section 777A of the Act. At this point, the available information on the record does not establish a sufficient basis to use monthly average prices instead of POI average prices.

Currency Conversion

For the purpose of the preliminary determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of Chicago, in accordance with section 773A(a) of the Act.

Verification

As provided in section 788(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of polyvinyl alcohol from Taiwan, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Chang Chun Petrochemical Co., Ltd.	4.03
All others	4.03

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by Chang Chun.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 17, 1995, and rebuttal briefs, no later than November 20, 1995. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 22, 1995, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by December 18, 1995.

This determination is published pursuant to section 733(f) of the Act.

Dated: October 3, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–25061 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 081195B]

Small Takes of Marine Mammals Incidental to Specified Activities; McDonnell Douglas Aerospace Delta II Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of harbor seals, California sea lions, and northern elephant seals by harassment incidental to launches of McDonnell Douglas Aerospace Delta II (MDA Delta II) vehicles at Space Launch Complex 2W (SLC–2W), Vandenberg Air Force Base, CA (Vandenberg) has been issued to the U.S. Air Force.

EFFECTIVE DATE: This authorization is effective from September 19, 1995, until September 19, 1996.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 301–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified

geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, The Marine Mammal Protection Act Amendments of 1994 (1994 Amendments). One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to one year. The MMPA defines ''harassment'' as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 12, 1995, NMFS received an application from the U.S. Air Force requesting an authorization for the harassment of small numbers of harbor seals and potentially for other pinniped species incidental to launches of Delta II vehicles at SLC–2W, Vandenberg. These launches would place Department of Defense, National Aeronautic and Space Administration (NASA), and commercial, medium-weight payloads into polar or near-polar orbits. MDA/NASA intends to launch approximately 4–5 Delta IIs during the period of this proposed 1-year authorization.

Because SLC–2W is located north of most other launch complexes at Vandenberg, and because there are oil production platforms located off the coast to the south of SLC–2W, missions flown from SLC–2W cannot fly directly on their final southward course. The normal trajectory for a SLC–2W launch is 259.5 degrees west for the first 90 seconds, then a 41–second dog-leg maneuver to bring the vehicle on its southward course of 196 degrees. This trajectory takes the launch vehicle away from the coast and nearly 30 miles west of San Miguel Island (SMI), the westernmost Channel Island (Air Force, 1995b)[1]. As a result of the noise associated with the launch itself, there is a potential to cause a startle response to those harbor seals and other pinnipeds that may haul out on the coastline of Vandenberg. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–2W while low-level sonic booms could be heard over the water in the area west of the Channel Islands.

A notice of receipt of the application and the proposed authorization was published on August 18, 1995 (60 FR 43120) and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, one letter was received. The comments contained in this letter are discussed in detail below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the above-mentioned notice and needs not be repeated here.

Comments and Responses

Comment 1. There are a number of cetacean species and other pinniped species (Guadalupe fur seals and Steller sea lions) that are likely to occur at least occasionally in areas where they could be subject to noise from rockets launched at Vandenberg. The Marine Mammal Commission (MMC) recommends NMFS consult with applicant to determine whether these species would be harassed.

Response. There are three species of pinnipeds reported hauling out on occasion in the vicinity of SLC–2: harbor seals, California sea lions, and northern elephant seals. NMFS is unaware of other species of pinnipeds being in the vicinity of Vandenberg. For example, Steller sea lions have not been seen in the Channel Islands area since 1984 and Guadalupe fur seals, which breed in Mexico, are rarely seen in southern California. On the Channel Islands, the sonic boom signature is expected to be indistinguishable from ambient noise levels. Over water, the sonic boom is significantly less than that estimated to cause a temporary threshold shift injury and NMFS is unaware of any scientific evidence indicating that a behavioral response results from a single, low-frequency sonic boom. As stated in the proposed authorization, there is also no evidence that airborne noises from the launch itself will cause a startle effect on marine mammals in the water. Although the potential does exist that other marine mammal species will hear either the launch noise or the sonic boom, simply hearing the noise does not necessarily mean that the animals have been harassed.

Comment 2. The notice of proposed authorization does not indicate whether long-term or cumulative studies have been or are being done to look at possible long-term, cumulative effects—e.g., decreases in the number of seals or the proportion of pups that haul out. Without such information, it is not reasonable to conclude that there are no cumulative effects or that any cumulative effects, like short-term effects, are likely to be negligible.

Response. While NMFS is unaware of any long-term studies on the effects on pinnipeds from launch noises, monitoring at Vandenberg for Titan IV launches provides baseline information for future studies. However, the fact that these haul-outs remain active indicates that there are no immediately evident long-term, cumulative impacts. Launch noises are infrequent enough and divided between North and South Vandenberg so that these impacts will likely be less significant, cumulatively, than humans, pets and motorized vessels would be. Therefore, determining the long-term impacts from launch activities and resultant noise would be difficult.

Comment 3. The MMPA prescribes requirements for monitoring and reporting to ensure that only small numbers of specified animals are harassed and that the effects of the harassment are negligible. The proposed authorization does not explain the rationale for proposing that only harbor seals in the vicinity of Purisima Point be monitored. NMFS also appears to have ignored that the cumulative effects may be non-negligible.

Response. NMFS has modified the authorization to require monitoring launch noises at the nearest active pinniped haul-out to SLC–2 and at Purisima Point. Monitoring at these close-in locations is necessary because of the high noise level of the launch. More distant haulouts are likely to result in less frequent response by the seals with resultant fewer behavioral modifications to study. Launches during

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

this 1-year authorization are unlikely to result in measureable cumulative effects. However, this will be a subject for future review as commercial payload launches from Vandenberg increase over the next few years.

Comment 4. NMFS requires a report only at the end of the authorization period. The MMC recommends at a minimum the Air Force should report killed and injured animals immediately and that the authorization should be rescinded if a marine mammal is killed or injured as a result of the authorization.

Response. NMFS will require as part of the authorization that the Air Force submit a monitoring report, no later than 90 days after each Delta II launch. Because no humans are allowed on the coastline adjacent to the launch pad during launches, launch effect observations are limited to time-lapse photography. This limits the cause and effect criterion necessary to revoke an authorization. If there are indications that more than harassment takings are occurring, NMFS will review the evidence to determine appropriate action.

Comment 5. The MMC recommends that NMFS consult with the Air Force to determine whether a 5-year authorization under section 101(a)(5)(A) would be more appropriate.

Response. NMFS agrees with this recommendation and several months ago discussed this option with the Air Force. The Air Force's 5-year authorization, which expires on September 23, 1996, is limited to Titan IV launches. We anticipate they will apply for a new 5-year authorization late this year or early next year, which should include all planned launches at Vandenberg. In the interim, while this new authorization request is being prepared and new regulations proposed, the Air Force will continue to apply for incidental harassment authorizations for launches.

Conclusion

Based upon the information provided in the proposed authorization, NMFS has determined that the short-term impact of the launching of Delta II rockets is expected to result at worst, in a temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. These launchings are not expected to result in any reduction in the number of pinnipeds, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the northern Channel Islands are unlikely.

Therefore, since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, California sea lions, and northern elephant seals; would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS determined that the requirements of section 101(a)(5)(D) had been met and the incidental harassment authorization was issued.

Dated: Ocotober 2, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–25001 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

[Docket No. 95053144–5144–01]

Request for Comments on Proposed Examination Guidelines for Computer-Implemented Inventions; Comment Period Extension

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period and document availability.

SUMMARY: This notice announces the availability of the legal analysis referred to in the Request for Comments on Proposed Examination Guidelines for Computer-Implemented Inventions and extends the comment period of the notice until November 13, 1995.

DATES: Written comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Nancy J. Linck, Solicitor. Comments may also be submitted by telefax at (730) 305–9373 or by electronic mail through the INTERNET to ''comments-software@uspto.gov.''

FOR FURTHER INFORMATION CONTACT: Karen A. Buchanan, Associate Solicitor, by telephone at (703) 305–9035, by telefax at 703–305–9373, or by mail to her attention addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

The legal analysis may be obtained from Karen A. Buchanan. In addition, the legal analysis is available through anonymous file transfer protocol (ftp) via the Internet (address: ftp://ftp.uspto.gov/pub/software/) and through the World Wide Web (address: http://www.uspto.gov/web/software/).

SUPPLEMENTARY INFORMATION: On June 2, 1995 (60 FR 28778), the PTO published its Request for Comments on Proposed Examination Guidelines for Computer-Implemented Inventions. This notice reported that a legal analysis supporting the guidelines was being prepared. The legal analysis is now available and may be obtained from Karen A. Buchanan, who can be reached using the information indicated above.

The Patent and Trademark Office is also extending the comment period until November 13, 1995, in order to give the public an opportunity to include comments on the guidelines in light of the legal analysis which is now being made available.

Dated: October 4, 1995.

Philip G. Hampton, II,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 95–25041 Filed 10–6–95; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Reimbursement Rates for Fiscal Year 1996

Notice is hereby given that the Deputy Chief Financial Officer in a memorandum dated September 22, 1995, established the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 1996. These rates are effective October 1, 1995.

INPATIENT OUTPATIENT AND OTHER RATES AND CHARGES

Per inpatient day	International military education and training (IMET)	Inter-agency and other Federal agency sponsored patients	Other
I. Inpatient Rates [1 2]			
A. Burn Center .	$1,871	$3,564	$3,794

INPATIENT OUTPATIENT AND OTHER RATES AND CHARGES—Continued

Per inpatient day	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other
B. Surgical Care Services (Cosmetic Surgery)	773	1,472	1,567
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) Charges [3])			

1. FY 1996 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Interagency	Other (full) 3rd party
Large Urban	$2,387	$4,452	$4,713
Other Urban/Rural .	2,284	4,450	4,745
Overseas ..	2,316	5,707	6,038

2. Overview

The FY 1996 inpatient rates are based on the cost per DRG which is the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The average costs per Relative Weighted Product (RWP) for large urban, other urban/rural and overseas facilities will be published annually as an inpatient standardized amount. (See item 1 above). A ''relative weighted product'' for each DRG case to apply to the standardized amount will be determined from the DRG weights published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1) with adjustments for outliers. Standardized amounts will be adjusted for area wage differences and indirect medical education. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in part 3 of Section I.C., below.

3. Example of Adjusted Standardized Amounts for Procedures Performed

Large Urban Area—Example

a. The cost to be recovered is DoD's cost for medical services provided in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System infection except viral meningitis. Relative Weighted Product for an inlier case is the CHAMPUS weight of 2.0327.

c. The DoD adjusted standardized amount to be recovered is $4,713 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a non-teaching hospital with area wage index of 1.0 is the RWP factor (2.0327) in item 3.b., above, times the amount ($4,713) in 3.c., above.

Cost to be recovered is $9,580.

Meprs code [4]	Per visit clinical services	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other
	II. Outpatient Rates [1 2]			
A. Medical Care:				
BAA	Internal Medicine	$79	$154	$163
BAB	Allergy	27	53	56
BAC	Cardiology	56	109	116
BAE	Diabetes	34	66	70
BAF	Endocrinology	73	143	152
BAG	Gastroenterology	92	179	190
BAH	Hematology	130	253	269
BAI	Hypertension	29	57	60
BAJ	Nephrology	111	216	230
BAK	Neurology	86	166	177
BAL	Nutrition	24	47	51
BAM	Oncology	76	148	157
BAN	Pulmonary Disease	99	193	205
BAO	Rheumatology	71	139	147
BAP	Dermatology	48	94	100
BAQ	Infectious Disease	67	130	139
BAR	Physical Medicine	64	124	132
B. Surgical Care:				
BBA	General Surgery	93	181	193
BBB	Cardiovascular/Thoracic Surgery	89	172	183
BBC	Neurosurgery	110	215	228
BBD	Ophthalmology	64	123	131
BBE	Organ Transplant	127	246	262
BBF	Otolaryngology	73	141	150
BBG	Plastic Surgery	82	159	170
BBH	Proctology	77	150	159
BBI	Urology	84	164	174
BBJ	Pediatric Surgery	61	118	125

Meprs code [4]	Per visit clinical services	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other
C. Obstetrical and Gynecological (OB–GYN):				
BCA	Family Planning	42	82	87
BCB	Gynecology	57	111	118
BCC	Obstetrics	55	106	113
D. Pediatric Care:				
BDA	Pediatric	43	83	88
BDB	Adolescent	42	81	86
BDC	Well Baby	31	60	64
E. Orthopaedic Care:				
BEA	Orthopaedic	79	154	163
BEB	Cast Clinic	33	65	69
BEC	Hand Surgery	33	65	69
BEE	Orthopaedic Appliance	54	105	112
BEF	Podiatry	38	74	79
BEZ	Chiropractic Clinic	24	46	49
F. Psychiatric and/or Mental Health Care:				
BFA	Psychiatry	80	155	165
BFB	Psychology	65	127	135
BFC	Child Guidance	27	53	56
BFD	Mental Health	57	112	119
BFE	Social Work	62	121	129
BFF	Substance Abuse Rehabilitation	48	93	98
G. Primary Medical Care:				
BGA	Family Practice	51	99	105
BHA	Primary Care	50	96	102
BHB	Medical Examination	45	88	93
BHC	Optometry	35	67	71
BHD	Audiology Clinic	28	54	57
BHE	Speech Pathology	42	82	88
BHF	Community Health	39	76	80
BHG	Occupational Health	41	79	84
BHI	Immediate Care Clinic	67	131	139
H. Emergency Medical Care: BIA	Emergency Care Clinic	79	153	163
I. Flight Medicine Clinic: BJA	Flight Medicine	73	142	151
J. Underseas Medicine Care: BKA	Underseas Medicine Clinic	32	61	65
K. Rehabilitative Services:				
BLA	Physical Therapy	24	46	49
BLB	Occupational Therapy	47	91	96
BLC	Neuromuscularskeletal Screening	18	35	37
L. Same Day Surgery		378	721	767

III. Other Rates and Charges

	A. Immunizations	9	17	18
	B. Hyperbaric Services			
	1–60 minutes	113	219	233
	61–120 minutes	221	430	452
	121–180 minutes	330	640	671
	181–240 minutes	438	851	889
	Each Additional Hour	113	219	233

(Note: Charges may be prorated based on usage)

	C. Family Member Rate (formerly Military Dependents Rate)	9.70		
	D. Third Party Drug Reimbursement Rates [5]			

The FY 1996 third party drug reimbursement rates are for prescriptions requested by external providers and obtained at the Military Treatment Facility. The third party drug reimbursement rates are too voluminous to include in this notice. A complete listing of these rates, however, is available on request from the OASD (Health Affairs) action officer, LCDR Pat Kelly [(703) 756–8910].

	E. High Cost Services Requested by External Providers [6]			

Meprs code [4]	Per visit clinical services	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other
The FY 1996 high cost services requested by external providers are too voluminous to include in this notice. A complete listing of these rates, however, is available on request from the OASD (Health Affairs) action officer, LCDR Part Kelly [(703) 756–8910].				
	F. Elective Cosmetic Surgery Procedures and Rates			

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [7]	FY 1996 charge [8]	Amount of charge
Mammaplasty	85.50	19325	Surgical Care Services or	(a)
	85.32	19324	Same Day Surgery	(b)
	85.31	19318		
Mastopexy	85.60	19316	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Facial Rhytidectomy	86.82	15824	Surgical Care Services or	(a)
	86.22		Same Day Surgery	(b)
Blepharoplasty	08.70	15820	Surgical Care Services or	(a)
	08.44	15821	Same Day Surgery	(b)
		15822		
		15823		
Metoplasty (Augmentation Reduction)	76.68	21208	Surgical Care Services or	(a)
	76.67	21209	Same Day Surgery	(b)
Abdominoplasty	86.83	15831	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Lipectomy, suction per region [9]	86.83	15876	Surgical Care Services or	(a)
		15877	Same Day Surgery	(b)
		15878		
		15879		
Rhinoplasty	21.87	30400	Surgical Care Services or	(a)
	21.86	30410	Same Day Surgery	(b)
Scar revisions beyond CHAMPUS	86.84	1578	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Mandibular or Maxillary Repositioning	76.41	21194	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Minor Skin Lesions [10]	86.30	1578	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Dermabrasion	86.25	15780	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Hair Restoration	86.64	15775	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Removing Tatoos	86.25	15780	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Chemical Peel	86.24	15790	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Arm/Thigh Dermolipectomy	86.83	1583	Surgical Care Services or	(a)
			Same Day Surgery	(b)
Brow Lift	86.3	15839	Surgical Care Services or	(a)
			Same Day Surgery	(b)

Meprs code [4]	Per visit clinical services	International military education and training (IMET)	Interagency and other Federal agency sponsored patients	Other
	G. Dental Rate			
N/A	Dental Services	$14	$27	$29
Dental service charges are based on a Composite Time Value. Provider should calculate the charges based on the time value of the procedure times the CTV rate.				
	H. Ambulance Rate			
N/A	Ambulance Service	35	68	72
Ambulance charges are based on hours of service. Provider should calculate the charges based on the number of hours (or fraction thereof) that the ambulance is logged out on a patient run.				

Notes on Cosmetic Surgery Changes

[a] Charges for Surgical Care Services contained in Section I.B. (See Notes 8 through 10 on reimbursable rates for further details.)

[b] Charges for Same Day Surgery are contained in Section II.L. (See Notes 8 through 10 on reimbursable rates for further details.)

Notes on Reimbursable Rates

[1] Percentages are applied to both inpatient and outpatient services provided when billing third party payers (e.g., insurance companies). Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups are 96 percent hospital and 4 percent professional fee. The outpatient per visit percentages are 58 percent hospital, 29 percent ancillary and 13 percent professional

[2] DoD civilian employees located in overseas areas shall be render a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] The cost of DRG (Diagnosis Related Groups) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the Direct Care System will be comparable to procedures utilized by Health Care Financing Administration (HFCA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per relative weight product for large urban, other urban/rural, and overseas will be published annually as an inpatient standardized amount and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. An example of this hierarchical arrangement is as follows:

Outpaitnet Care (Functional Category)	Meprs code
Medical Care (Summary Account)	BA
Internal Medicine (Subaccount)	BAA

MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system.

[5] High Cost prescription services requested by external providers (Physicians, Dentists, etc.) are only relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost prescriptions in those instances in which dependents who have medical insurance, seen by provides external to a Military Medical Treatment Facility (MTF), obtain the prescribed medication from an MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. A third party payer may be billed if the total prescription costs in a day exceed $25.00 when bundled together. The standard cost of high cost medications include the cost of the drugs plus a dispensing fee, per prescription. The prescription cost is calculated by multiplying the number of units (tablets, capsules, etc.) times the unit cost and adding a $7.00 dispensing fee per prescription.

[6] Charges for high cost services requested by external providers (Physicians, Dentists, etc.) are only relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost services in those instances in which dependents who have medical insurance, seen by provides external to a Military Medical Treatment Facility (MTF), obtain the prescribed service from an MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. A third party payer may be billed if the total ancillary services costs in a day exceed $25,00 when bundled together.

[7] The attending physical is to complete the Physicians' Current Procedural Terminology code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the admission type of the patient, e.g., outpatient surgical, same day/ambulatory surgery, or surgical care services.

[8] Family members of active duty personnel, retirees and their family members, and survivors will be charged cosmetic surgery rates. The patient shall be charged the rate as specified in the FY 1996 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for Surgical Care Services in Section I.B., or Same Day Surgery as contained in Section II.L. of this attachment. The patient will be responsible for both the cost of the implant(s) in addition to the prescribed cosmetic surgery rates.

Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration Guidelines.

[9] Each regional lipectomy will carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[10] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges are for the entire treatment regardless of the number of visits required.

Dated: October 2, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–24950 Filed 10–6–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are partnership successes within DoD and action items related to the Defense Partnership Council Plan of Action.

DATES: The meeting is to be held Wednesday, November 1, 1995, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by October 27, 1995, in order to be considered at the November 1 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: October 3, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–24948 Filed 10–6–95; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program, Scientific Advisory Board; Meetings

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: October 24–25, 1995 from 0830 to approximately 1730.

Place: Federal Highway Administration Conference Room, 901 N. Stuart Street, Suite 304, Arlington, VA.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Kimberly Kay, 8000 Westpark Drive, Suite 400, McLean, VA 22102, or telephone 703 506–1400 extension 552.

Dated: October 2, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–24951 Filed 10–6–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Community College of the Air Force Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on 14 November 1995 at 8:30 a.m. in the Senior Noncommissioned Academy Conference Room, Building 1143, Maxwell Air Force Base Gunter Annex, Alabama. The meeting will be open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a CCAF mission briefing, pending legislation, and reaffirmation of the CCAF.

For further information, contact First Lieutenant Kyle Monson, (334) 953–7848, Community College of the Air Force, Maxwell Air Force Base, Alabama, 36112–6653.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–24956 Filed 10–6–95; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $15 and $10 each, respectively.

ADDRESSES: Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing AE, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: The Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. The BPI is available on two 3½ inch diskettes in Microsoft's Word for Window's format in addition to the printed version. Please specify which is desired when placing the order. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.,* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–12 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments. BPA's solicitations include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 18, 1995.

Steven C. Kallio,

Manager, Contracts and Property Management.

[FR Doc. 95–25045 Filed 10–6–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER95–1321–001, et al.]

Idaho Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 29, 1995.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER95–1321–001]

Take notice that on September 13, 1995, Idaho Power Company tendered for filing a refund report in the above-referenced docket.

2. Great Bay Power Corporation

[Docket No. ER95–1435–000]

Take notice that on September 19, 1995, Great Bay Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Great Bay Power Corporation

[Docket No. ER95–1666–000]

Take notice that on September 19, 1995, Great Bay Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. ConAgra Energy Services

[Docket No. ER95–1751–000]

Take notice that ConAgra Energy Services (C.E.S.) on September 14, 1995, tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Rate Schedule No. 1.

C.E.S. intends to engage in electric power and energy transactions both as a broker and a marketer. In transactions where C.E.S. does not take title to the electricity, C.E.S. will serve as a broker. In transactions where C.E.S. does take title to the electricity, it will function as a marketer. In marketing transactions, C.E.S. proposes to charge market-determined rates, mutually agreed upon

by the parties. All sales and purchases will be arms-length transactions.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Enpower, Inc.

[Docket No. ER95–1752–000]

Take notice that on September 14, 1995, Enpower, Inc. (Enpower) petitioned the Commission for acceptance of Enpower Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Enpower intends to engage in wholesale electric power and energy purchases and sales as a marketer. Enpower develops, owns and operates non-utility generating facilities and related business ventures in the United States.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER95–1753–000]

Take notice that on September 14, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Heartland Energy Services (Heartland). This Service Agreement specifies that Heartland has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Heartland to enter into separately scheduled transactions under which NMPC will sell to Heartland capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of September 6, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Heartland.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER95–1755–000]

Take notice that on September 14, 1995, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Acquila Power Corp. (Acquila). This Service Agreement specifies that Acquila has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Acquila to enter into separately scheduled transactions under which NMPC will sell to Acquila capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of September 6, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Acquila.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company

[Docket No. ER95–1756–000]

Take notice that on September 14, 1995, Central Power and Light Company (CPL) submitted three service agreements, each dated August 16, 1995, establishing Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) as customers under the terms of CPL's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

CPL requests an effective date of August 16, 1995, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon PSO, SWEPCO, WTU and the Public Utility Commission of Texas.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER95–1757–000]

Take notice that on September 15, 1995, Northern Indiana Public Service Company tendered for filing executed Service Agreements between Northern Indiana Public Service Company and CATEX Vitol Electric, L.L.C.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide service to CATEX Vitol Electric, L.L.C. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and CATEX Vitol Electric, L.L.C. request waiver of the Commission's sixty-day notice requirement to permit an effective date of September 16, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER95–1758–000]

Take notice that on September 15, 1995, Northern Indiana Public Service Company tendered for filing executed Service Agreements between Northern Indiana Public Service Company and Wisconsin Power and Light.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Wisconsin Power and Light under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Wisconsin Power and Light request waiver of the Commission's sixty-day notice requirement to permit an effective date of September 16, 1995.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER95–1759–000]

Take notice that on September 15, 1995, Louisville Gas and Electric Company tendered for filing copies of service agreements between Louisville Gas and Electric Company and Louis Dreyfus Electric Power Inc. under Rate GSS.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER95–1760–000]

Take notice that on September 15, 1995, PECO Energy Company (PECO)

filed a Service Agreement with Electric Clearinghouse, Inc. Service Agreement dated September 7, 1995, with Electric Clearinghouse, Inc. (ECI) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds ECI as a customer under the Tariff.

PECO requests an effective date of September 7, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to ECI and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER95–1761–000]

Take notice that on September 15, 1995, PECO Energy Company (PECO) filed a Service Agreement dated September 8, 1995 with Northeast Utilities Service Company (NUSCO) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NUSCO as a customer under the Tariff.

PECO requests an effective date of September 8, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NUSCO and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER95–1762–000]

Take notice that on September 15, 1995, PECO Energy Company (PECO) filed a Service Agreement dated September 7, 1995 with CNG Power Services Corporation (CNG Energy) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CNG Energy as a customer under the Tariff.

PECO requests an effective date of September 7, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CNG Energy and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER95–1763–000]

Take notice that on September 15, 1995, PECO Energy Company (PECO) filed a Service Agreement dated September 7, 1995 with Delmarva Power & Light Company (DP&L) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds DP&L Energy as a customer under the Tariff.

PECO requests an effective date of September 7, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to DP&L and to the Pennsylvania Public Utility Commission.

Comment date: October 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Citizens Utilities Company

[Docket No. ES93–43–006]

Take notice that on September 25, 1995, Citizens Utilities Company (Citizens Utilities) filed an amendment to its application in Docket No. ES93–43–000 *et al.*

By letter orders dated September 7, 1993 (64 FERC ¶ 62,167) and November 2, 1993 (65 FERC ¶ 62,111), Citizens Utilities was authorized, in Docket No. ES93–43–000 *et al.* to issue not more than:

(1) $1.25 billion principal amount of unsecured promissory notes outstanding at any one time;

(2) $750 million aggregate principal amount of longer term debt securities with a final maturity or maturities of not less than 9 months nor more than 50 years; and

(c) 25 million shares of Common Stock of Citizens Utilities (subject to adjustment for stock splits, stock dividends, recapitalizations and similar changes after the date of the application, including an adjustment to 50 million shares of common stock as a result of an announced 2 for 1 stock split) and $300 million liquidation value of preferred stock of Citizens Utilities, subject to an overall limitation of $500 million for the aggregate of the proceeds of the issuance of Common and Preferred Stock.

The aggregate amount outstanding at any one time of the securities issued under (a), (b) and (c) was limited to $1.25 billion.

Citizens Utilities requests that the authorization granted in Docket No. ES93–43–000 *et al.* be amended to:

(A) allow Citizens Utilities to issue (a) up to $213.9 million principal amount of Convertible Subordinated Debentures; (b) up to $181.3 million of Common Stock to be issued upon conversion of the Convertible Subordinated Debentures; and (c) up to $24 million in then current market value of shares of Common Stock to be issued as interest payments on the Convertible Subordinated Debentures;

(B) assume the secondary liability on (a) up to $207.5 million principal amount of Partnership Preferred Securities to be issued by an affiliate; and (b) guarantee by the obligations of affiliates to pay distributions on certain of the affiliates' securities;

(C) increase the Common and Preferred Stock component of the previously approved financing package from a limitation of $500 million to $520 million (without increasing the overall limitation of $1.25 billion); and

(D) to extend the authorization period from November 30, 1995 to March 31, 1996.

Comment date: October 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. ES95–42–000]

Take notice that on September 26, 1995, Orange and Rockland Utilities, Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue and to renew unsecured obligations in the form of bank notes and commercial paper, from time to time, in an aggregate amount not exceed $125 million principal amount outstanding at any one time, during the period from January 1, 1996 to December 31, 1997, with final maturities not later than December 31, 1998.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Rockland Electric Company

[Docket No. ES95–43–000]

Take notice that on September 26, 1995, Rockland Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue and to renew unsecured obligations in the form of bank notes, from time to time, in an aggregate amount not exceed $10 million principal amount outstanding at any one time, during the period from January 1, 1996 to December 31, 1997, with final maturities not later than December 31, 1998.

Comment date: October 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Pedricktown Cogeneration, Limited Partnership

[Docket No. QF87–407–004]

On September 21, 1995, Pedricktown Cogeneration, Limited Partnership (Pedricktown) of 20 Montchanin Road, P.O. Box 4020, Wilmington, Delaware 19807, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fueled cogeneration facility is located in Pedricktown, New Jersey. The Commission previously certified the capacity of the facility to be 117.8

MW. The facility consists of a combustion turbine generator, a heat recovery boiler, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used in the manufacturing of polyvinyl chloride and acrylic latex. The instant application for recertification was submitted to report a change of thermal host and operational changes at the facility. The entire facility's output will be dispatched by Atlantic City Electric Company (Atlantic City). Atlantic City will provide the host's power needs through Pedricktown's interconnection facilities.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–25013 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–457–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed below, with an effective date of November 1, 1995:

Second Revised Volume No. 1
Third Revised Sheet No. 17A
Origional Volume No. 2
First Revised Sheet No. 15

ANR states that the above-referenced tariff sheets are being submitted pursuant to the ''Rate Adjustment for Viking Transportation Costs'' tariff provision contained in Section 29 of the General Terms and Conditions of Second Revised Volume No. 1 of ANR's FERC Gas Tariff. ANR states that the net result is a reimbursement to its customers of $7.8 million.

ANR states that a copy of this filing has been served by mail on all parties to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 285.214). All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24973 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–786–000]

ANR Pipeline Co.; Notice of Application

October 3, 1995.

Take notice that on September 28, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP95–786–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon a transportation service used to implement storage service for United Cities Gas Company (United Cities), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it was authorized to transport a total annual storage volume of 25,000 Mcf of natural gas for United Cities under Rate Schedule X–99. ANR further states that under Rate Schedule X–99, ANR received and delivered natural gas for United Cities to and from storage with ANR Storage Company (Storage Company) for the account of United Cities during the summer injection period and the winter withdrawal period at the following points: Defiance County, Ohio, Wastenaw County, Michigan, Mescosta County, Michigan, and Crawford County, Michigan. ANR indicates that Rate Schedule X–99 provided for an initial term of fifteen years, commencing April 1, 1980, and thereafter year to year until terminated by either party with at least twelve months written notice. It is further indicated that by a letter dated June 15, 1995, United Cities requested abandonment of Rate Schedule X–99 effective October 31, 1995. ANR avers that by mutual agreement United Cities and ANR agreed to replace Rate Schedule X–99 with a firm transportation agreement, effective November 1, 1995, under Rate Schedule FTS–1 of ANR's FERC Gas Tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24984 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, CNG Transmission Corporation (CNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1995:

Sixth Revised Sheet No. 31
Twelfth Revised Sheet No. 32
Twelfth Revised Sheet No. 33
Fifth Revised Sheet No. 34
Seventh Revised Sheet No. 35
Seventh Revised Sheet No. 36

CNG states that the purpose of this filing is to revise CNG's rates to reflect CNG's annual TCRA rate adjustment and to revise the TCRA surcharge to provide for the flowthrough of: (1) the balance in the Unrecovered Transportation Cost Account; (2) the balance in the Unrecovered Fuel Cost Reimbursement Subaccount; and (3) a portion of the interruptible service and market center service revenues.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24967 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–452–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, CNG Transmission Corporation (CNG), filed for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date on November 1, 1995:

Eleventh Revised Sheet No. 32
Eleventh Revised Sheet No. 33

CNG states that the purpose of this filing is to reduce the Section 18.2.B surcharge for Account No. 858 standard upstream transportation costs from $0.069 per Dt to zero for service during the quarterly period commencing October 1, 1995. CNG further states that it has provided workpapers that detail the demand charges reflected in CNG's proposed tariff sheets, which show that CNG, for the upcoming quarterly service period, has completely mitigated it Account No. 858 stranded costs attributable to certain transportation agreements with Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company by utilizing these contracts to transport fuel gas to the CNG system.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24978 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–2–000]

East Tennessee Natural Gas Company; Notice of Filing

October 3, 1995.

Take notice that on September 29, 1995, East Tennessee Natural Gas Company (East Tennessee) tendered for filing to become part of its FERC Gas Tariff, Second Revision Volume No. 1, Fifth Revision Sheet No. 4. East Tennessee requests an effective date of November 1, 1995.

East Tennessee states Fifth Revised Sheet No. 4 reflects changes to its transportation cost rate adjustment pursuant to Section 25 of its General Terms and Conditions. East Tennessee further states Fifth Revision Sheet No. 4 also incorporates the FT–A base transportation reservation rate for year three under its General Terms and Conditions.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24968 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes In FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1 Tenth Revised Sheet No. 4. The proposed effective date of this revised tariff sheet is November 1, 1995.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.3 of the General Terms and Conditions of its tariff, Iroquois is filing the referenced tariff sheet and supporting workpapers as part of its annual update of its Deferred Asset Surcharge to reflect the annual revenue requirement associated with its Deferred Asset for the amortization period commencing November 1, 1995. The revised tariff sheet reflects a decrease of $.0001 per Dth in Iroquois' effective Deferred Asset Surcharge for Zone 1 (from $.0010 to $.0009 per Dth), a decrease in the Zone 2 surcharge of $.0002 per Dth (from $.0009 to $.0007 per Dth), and a decrease in the Inter-Zone surcharge of $.0003 per Dth (from $.0019 to $.0016 per Dth).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24964 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–456–000]

Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Tariff

October 3, 1995.

Take notice that on September 29, 1995, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

Fourteenth Revised Sheet No. 5
Fourteenth Revised Sheet No. 6
Twelfth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $115,698, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the ''Price Differential'' costs of continuing to perform under certain gas supply contracts during the months of April through June, 1995. MRT also states that its filing includes prior period adjustments of $(127,226), plus applicable interest, attributable to amounts incurred or billed by MRT covering the period November, 1993 through December, 1994.

MRT states that copies of its filing have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24974 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–461–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume 1, Sixth Revision Sheet No. 237A and Sixth Revised Sheet No. 237B, with a proposed effective date of November 1, 1995.

National states that the proposed tariff sheets reflect out-of-period adjustments to National's Account No. 858 balance for the recovery of stranded costs pursuant to Section 23 of the General Terms and Conditions of its tariff.

National further states that copies of this compliance filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211. All such motions to intervene or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24969 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–760–000]

National Fuel Gas Supply Corp.; Notice of Request Under Blanket Authorization

October 3, 1995.

Take notice that on September 18, 1995, as supplemented on September 29, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP95–760–000 a request pursuant to §§ 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208(b), and 157.216(b)) for authorization to abandon a 1-inch regulator and relief valve at Station No. T–2487 on Line F–M124 in the Township of Sandy, Clearfield County, Pennsylvania and to construct and install a 2-inch regulator and a 4-inch relief valve at the same location to enable National and National Fuel Gas Distribution Corporation (Distribution) to meet expanding residential demand for gas service in the Treasure Lake area, under the blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National is seeking abandonment authority because the new regulator increases the design delivery capacity of the station from 9,900 SCHF to 107,000 SCHF. National states that the upgrade

is necessary to meet the growing residential needs in the Treasure Lake area. National claims that the existing regulator was designed to serve about 100 average homes, however, the replacement regulator is designed to serve approximately 1,070 average homes. National states that the total volumes to be delivered after this request do not exceed the total volumes authorized prior to the request. National asserts that its FERC Gas Tariff does not prohibit the addition of new delivery taps. National states that it has sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to its other customers. National estimates that the cost of the construction at this delivery point will be $10,000.

National asserts that it has received clearance from the U.S. Fish and Wildlife Service, and it has notified the Pennsylvania Historical and Museum Commission (Pennsylvania SHPO) of the proposed construction activity but is still waiting for clearance. National states that it will not commence construction of facilities unless and until clearance has been received from the Pennsylvania SHPO.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24985 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–450–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 28, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets to be effective November 1, 1995.

Natural states that the purpose of the filing is to comply with Section 8.3 of the Stipulation and Agreement at Docket No. RP93–36–000 (Settlement) approved by Commission letter order issued January 31, 1995 (75 FERC Paragraph 61,112). The Settlement gives Natural the right and obligation to make a limited filing under Section 4 of the NGA to eliminate from its base rates under Rate Schedules S–2, S–2/G, FTS–E and FTS–E/G $55.2 million of transmission costs associated with the Western Gas Marketing Limited supply and related upstream capacity. Such filing is to be effective November 1, 1995.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective November 1, 1995.

Natural states copies of the filing are being mailed to interested state regulatory agencies and all parties set out on the official service list at Docket No. RP93–36–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24980 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–789–000]

Natural Gas Pipeline Company of America and Northern Natural Gas Co.; Notice of Application

October 3, 1995.

Take notice that on September 28, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, and Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a joint abbreviated application in Docket No. CP95–789–000, pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing Natural to: (1) Abandon a transportation service provided under its Rate Schedule X–105 for Northern authorized in Docket No. CP78–403; (2) abandon a rescheduling of deliveries service provided under its Rate Schedule X–106 for The Peoples Gas Light and Coke Company (Peoples) and North Shore Gas Company (North Shore) authorized in Docket No. CP78–403; and authorizing Northern to: (1) Abandon its certificate authorization in Docket No. CP78–345 which allowed it to participate in a gas banking arrangement and to deliver gas to Natural, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that it provided: (1) A best efforts transportation service for Northern pursuant to a gas transportation agreement dated June 20, 1978 (Transportation Agreement), and (2) a rescheduling of deliveries service for Peoples and North Shore pursuant to a rescheduling of deliveries agreement dated June 12, 1978 (Rescheduling Agreement), between Natural, Peoples and North Shore.

Northern states that these arrangements were entered into because it needed additional gas supply during the winter months of 1978 and 1980 for delivery to its utility customers to enable them to meet their customers' winter requirements. Northern states that to obtain added supply, Northern entered into a gas banking agreement with Peoples and North Shore dated May 3, 1978 (Banking Agreement). Northern filed in Docket No. CP78–345 requesting authorization to enter into the Banking Agreement with Peoples and North Shore and to deliver gas to Natural.

The Transportation and Rescheduling Agreements were entered into to provide for the implementation of the Banking Agreement. During the winter months, pursuant to the Rescheduling Agreement, Natural reduced deliveries of sales gas made to peoples and North Shore under Natural's Rate Schedule DMQ–1 by 6,000,000 Mcf (up to 50,000 Mcf of gas per day) for Peoples and 3,000,000 Mcf (up to 25,000 Mcf of gas per day) for North Shore during two delivery periods from November 1, 1978, through March 31, 1979, and from November 1, 1979, through March 31, 1980. Pursuant to the Transportation Agreement, Natural delivered such gas to Northern in Mills County, Iowa.

During the summer months, Northern made available equivalent volumes of gas to those that it received in the winter months, plus two and one half percent (2.5%) for compressor fuel, to Natural in Mills County, Iowa, from, where, pursuant to the Transportation Agreement, Natural redelivered such gas back to Peoples and North Shore during two redelivery periods from April 1, 1980, through October 31, 1980, and from April 1, 1981, through October 31, 1981. Natural and Northern state that the effect of these arrangements was to provide for a delayed exchange of gas between Natural (for the accounts of Peoples and North Shore) and Northern.

Natural further states that it received letters from Northern dated August 22, 1995; Peoples dated September 7, 1995; and North Shore dated September 7, 1995, indicating that they no longer needed the transportation and rescheduling of deliveries services provided under the Transportation and Rescheduling Agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural or Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary,

[FR Doc. 95–24983 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–31–000]

NorAm Gas Transmission Company; Notice of Filing

October 3, 1995.

Take notice that on September 29, 1995, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective November 1, 1995:

Second Revised Sheet No. 14

NGT states that these revised tariff sheets are filed to adjust NGT's fuel percentages pursuant to the Stipulation and Agreement approved in Docket No. RP93–3–000 on September 23, 1993.

Also, NGT tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective November 1, 1995:

Second Revised Sheet No. 5
Second Revised Sheet No. 6

NGT states that these revised tariff sheets are filed in the event that NGT's pending settlement in Docket No. RP94–343 (filed September 28, 1995) is approved for effectiveness by November 1, 1995.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24966 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–448–000]

Northern Border Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 28, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1995:

First Revised Sheet Number 110
Second Revised Sheet Number 246
Second Revised Sheet Number 247
Second Revised Sheet Number 248
Seventh Revised Sheet Number 501

Northern Border states that the purpose of this filing is to (i) clarify that the amortization of a regulatory asset is pursuant to the provisions of Subsection 4.43 of Rate Schedule T–1; (ii) revise the nomination of service procedures; and (iii) revise the index of Rate Schedule T–1 Firm Shippers.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 11, 1995. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24982 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–460–000]

Northwest Pipeline Corporation; Notice of Petition for Grant of Expedited Limited Waiver of Tariff

October 3, 1995.

Take notice that on September 29, 1995, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5),

Northwest Pipeline Corporation (Northwest) tendered for filing a Petition for Grant of Limited Waiver of Tariff.

Northwest seeks waiver of various tariff provisions which address the posting of available pipeline capacity, as set forth in Third Revised Volume No. 1 of Northwest's FERC Gas Tariff, in order to restore receipt points and northbound capacity to certain Northwest shippers.

Northwest states that a copy of this filing has been served upon all Northwest's jurisdictional customers and upon relevant state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24970 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–458–000]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995 Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheets, with a proposed effective date of November 1, 1995:

First Revised Sheet No. 1
Twelfth Revised Sheet No. 4
Second Revised Sheet No. 7
Second Revised Sheet Nos. 11–12
Second Revised Sheet No. 20
First Revised Sheet No. 21A
Second Revised Sheet No. 21C
Second Revised Sheet No. 21E
First Revised Sheet No. 21F
Second Revised Sheet No. 22
Second Revised Sheet No. 36
Fourth Revised Sheet No. 85B
Alternate Fourth Revised Sheet No. 85B
Third Revised Sheet No. 86
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet No. 99
Second Revised Sheet No. 101
First Revised Sheet No. 112

In addition, Ozark submits Second Revised Sheet No. 36 which cancels Sheet Nos. 36–67, Rate Schedule T–1.

Ozark states that these changes are occasioned by the approval of certain exit fee Stipulations between Ozark Gas Transmission System (Ozark) and its Rate Schedule T–1 shippers, Columbia Gas Transmission Corporation (Columbia) and Tennessee Gas Pipeline Company (Tennessee), and granting Ozark's request to abandon service to those customers.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24972 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–459–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

October 3, 1995.

Take notice that on September 29, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, its other transition costs surcharge, and its Interruptible Transportation Rates due to a decrease in the FERC interest rate and to an increase in GSR billing units effective October 1, 1995:

Tariff Sheets Applicable to Contesting Parties

First Substitute Twenty-Second Revised Sheet No. 15
First Substitute Twenty-Second Revised Sheet No. 17
First Substitute Twelfth Revised Sheet No. 18
First Substitute Fifteenth Revised Sheet No. 29
First Substitute Fifteenth Revised Sheet No. 30
First Substitute Fifteenth Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties

First Substitute Third Revised Sheet No. 15a
First Substitute Third Revised Sheet No. 17a

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24971 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–451–000]

Tennessee Gas Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, Tennessee Gas Pipeline Company filed a limited application pursuant to Section 4 of the Natural Gas Act, and the rules and regulations of the Commission to recover gas supply realignment costs (''GSR costs'') paid, or known and measurable, at the time of the filing. Tennessee proposes that the filing become effective November 1, 1995. The tariff sheets identified below set forth Tennessee's GSR-related charges:

Sixth Revised Sheet No. 21A
Eleventh Revised Sheet No. 22
Sixth Revised Sheet No. 22A
Eleventh Revised Sheet No. 24

Fifth Revised Sheet No. 25
Fifteenth Revised Sheet No. 30

In addition, Tennessee filed the following revised tariff sheets to update its Index of Purchasers:

Second Revised Sheet No. 661
Second Revised Sheet No. 662
First Revised Sheet No. 666A
Second Revised Sheet No. 669
Second Revised Sheet No. 671
First Revised Sheet No. 672A
Second Revised Sheet No. 673
Second Revised Sheet No. 674
Second Revised Sheet No. 675
First Revised Sheet No. 675A

Tennessee states that copies of the filing were posted in conformance with Section 154.16 of the Commission's regulations and mailed to all affected customers of Tennessee and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24979 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–454–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1995:

115th Revised Sheet No. 5
20th Revised Sheet No. 5A
14th Revised Sheet No. 5A.01
12th Revised Sheet No. 5A.02
12th Revised Sheet No. 5A.03
17th Revised Sheet No. 5B

Transwestern states that the above-referenced tariff sheets are being filed in compliance with and pursuant to Section 25.6, Interest Rate Adjustment Filings, of the General Terms and Conditions of Transwestern's FERC Gas Tariff. Transwestern states that it shall file on or before November 1 to adjust the TCR Surcharge to account for actual versus estimated interest amounts and to estimate interest expense for the upcoming annual period. Transwestern, therefore, submits the above-referenced revised tariff sheets.

With these revised tariff sheets, Transwestern proposes to adjust TCR Surcharge C (Nos. 11–13) and TCR Surcharge C (No. 14) to (1) true-up for the actual quarterly interest rates published by the Commission for the period October 1, 1994 through September 30, 1995 and (2) estimate the interest expense for the upcoming twelve month period of October 1, 1995 through October 31, 1996. Pursuant to the monthly Amortization Schedule for TCR Amount #11 through TCR Amount #14 contained in Transwestern's Gas Tariff on Page Nos. 5E(v), 5E(vi), 5E(vii) and 5E(viii), the October 31, 1996 date represents the termination date of the amortization period for both TCR surcharge C (Nos. 11–13) and TCR Surcharge C (No. 14).

Transwestern states that included with this filing are worksheets detailing the interest rate true-up by month for each applicable TCR filing as well as summary worksheets showing the allocation of the additional amounts to the applicable TCR Surcharge C (Nos. 11–13) and TCR Surcharge C (No. 14).

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1995. Protestants will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24976 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–453–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1995:

1st Revised Sheet No. 5B.01

On May 2, 1995, Transwestern filed the Stipulation in Docket No. RP95–271 which resolved, among other things, all issues relating to Transwestern's recovery of unfiled take-or-pay, buy-out, buy-down and contract reformation costs (hereafter referred to as TCR II Costs) eligible for recovery under Order No. 528. Specifically, the Stipulation provides for recovery of all eligible TCR II Costs not previously recovered which are incurred by Transwestern through December 31, 1998.

The Stipulation further provides that eligible TCR II Costs will be recovered from Current Firm Shippers, as defined in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, through a reservation surcharge.

Transwestern's Stipulation was approved by Commission Order dated July 27, 1995.

On August 31, 1995, Transwestern made an initial TCR II filing in Docket No. RP95–425. In that filing Transwestern sought recovery of $10,662,519.55 (''TCR II No. 1''). These costs were allocated based on the allocation factor (''TCR II Allocation Factor'') under the TCR mechanism stated in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

By the terms of the before-mentioned Stipulation as well as Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the TCR II Allocation Factor is to be recalculated for each Current Firm Shipper to be effective on each subsequent November 1 during the TCR II amortization period.

Transwestern states that the purpose of this filing is to submit the tariff sheet containing the new TCR II reservation surcharges based on the updated TCR II Allocation Factors that resulted from that recalculation.

Transwestern also states that it is submitting a workpaper detailing the recalculation of the TCR II Allocation Factors with this filing.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24977 Filed 10–16–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–449–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 28, 1995, Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective October 29, 1995.

Trunkline states that this filing is being made to introduce the Premium Alternative Transportation option available under Trunkline's existing Rate Schedule IT and to expand the array of features available under Rate Schedule TABS–1. Specifically, the Premium Alternative Transportation option offers a transportation service with a higher scheduling and more favorable curtailment priority than currently available interruptible transportation under Rate Schedule IT. Shippers under this option will pay an annual contracting fee and usage charges for actual volumes moved. All other features are the same as currently available Rate Schedule IT service.

Trunkline also states that transfer and parking services have been added to Rate Schedule TABS–1. A TABS–1 party may transfer gas to another TABS–1 party with a TABS–1 Service Agreement at the same TABS–1 Service Point on an interruptible basis with the prior approval of Trunkline. This service is limited to one transfer direction (to either receive or deliver gas) per day per TABS–1 party; however, a TABS–1 party may make an unlimited number of transfer transactions on any day provided the transfer direction is consistent. For this service the TABS–1 party receiving the gas will pay a transfer fee per transaction. The interruptible parking service allows the TABS–1 party to nominate gas to and from parking for the account of the TABS–1 party to be parked at the TABS–1 Service Point specified in the TABS–1 Service Agreement. For this service the TABS–1 party will pay a daily parking charge.

Trunkline further states that copies of this filing are being mailed to all shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24981 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 1995.

Take notice that on September 29, 1995 Trunkline Gas Company (Trunkline) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Thirteenth Revised Sheet No. 6
Thirteenth Revised Sheet No. 7
Thirteenth Revised Sheet No. 8
Thirteenth Revised Sheet No. 9
Thirteenth Revised Sheet No. 10

The proposed effective date of these revised tariff sheets is November 1, 1995.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) a 0.40% increase (Field Zone to Zone 2), a 0.38% increase (Field Zone to Zone 1B), a 0.19% increase (Field Zone to Zone 1A), a (0.09%) decrease (Field Zone only), a 0.34% increase (Zone 1A to Zone 2), 0.31% increase (Zone 1A to Zone 1B), a 0.06% increase (Zone 1B to Zone 2), a 0.13% increase (Zone 1A only), a 0.04% increase (Zone 1B only) and a (0.13%) decrease (Zone 2 only) to the Current Fuel Reimbursement Percentages, pursuant to Section 22.3; and (2) a (0.13%) decrease to all zones in the Annual Fuel Reimbursement Surcharge, pursuant to Section 22.4.

Trunkline states that copies of this filing have been served on all jurisdictional transportation customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24965 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–455–000]

Williston Basin Interstate Pipeline Co.; Notice of Annual Report

October 3, 1995.

Take notice that on September 29, 1995 Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 358A to Second Revised Volume No. 1 of its FERC Gas Tariff pursuant to Section 39 of that Tariff.

The proposed effective date of the above-referenced tariff sheet is September 29, 1995.

Williston Basin states that as of July 31, 1995 it had a zero balance in FERC Account No. 191. As a result, Williston

Basin will neither refund nor bill its customers for any amounts under the conditions of Section No. 39.3.1 of its FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–24975 Filed 10–6–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee Renewal

AGENCY: Office of Energy Research, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a two-year period beginning in September 1995. The Committee will provide advice to both the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research. Basic nuclear science research is understood to encompass experimental and theoretical investigations of the fundamental interactions, properties, and structures of atomic nuclei.

The renewal of the DOE/NSF Nuclear Science Advisory Committee has been determined to be essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on September 22, 1995.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–25046 Filed 10–6–95; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Central Valley Project Notice of Rate Order No. WAPA–72

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Central Valley Project commercial firm power rate adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–72 and Rate Schedule CV–F8 placing provisional commercial firm power rates for capacity and energy from the Central Valley Project (CVP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates.

The commercial firm power rates will provide sufficient revenue to pay all annual costs including interest expense, plus repayment of required investment within the allowable time period. These rates consist of a capacity rate, energy base rate, and energy tier rate. The energy tier rate is applied to energy at a 70 percent and higher load factor, and is based on the average CVP Northwest energy rate. The load factor is computed based on the lesser of the customer's (1) maximum demand for the month, or if a scheduled customer, the maximum scheduled demand for the month; or (2) the customer's Contract Rate of Delivery (CRD) for commercial firm power.

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

[Commercial Firm Power Rate Schedule]

Effective period	Existing	Provisional	Percent Change
Composite Rate (mills/kWh):			
10/01/95 to 09/30/96	31.55	23.35	(26)
10/01/96 to 09/30/97	31.55	25.00	(21)
10/01/97 to 04/30/98	34.37	26.50	(23)
Capacity Rate ($/kW/month):			
10/01/95 to 09/30/96	6.57	4.03	(39)
10/01/96 to 09/30/97	6.57	4.32	(34)
10/01/97 to 04/30/98	7.16	4.58	(36)
Energy Base Rate (mills/kWh):			
10/01/95 to 09/30/96	17.73	14.83	(16)
10/01/96 to 09/30/97	17.73	15.93	(10)
10/01/97 to 04/30/98	19.33	16.93	(12)
Energy Tier Rate (mills/kWh):			
10/01/95 to 09/30/96	34.70	25.90	(25)
10/01/96 to 09/30/97	34.70	26.27	(24)
10/01/97 to 04/30/98	37.46	26.48	(29)

DATES: Rate Schedule CV–F8 will be placed into effect on an interim basis on October 1, 1995 and will be in effect until FERC confirms, approves, and places the rate schedule in effect on a final basis for a 2½-year period, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, Telephone (916) 353–4418

Mr. Joel K. Bladow, Assistant Administrator for Washington Liaison, Power Marketing Liaison Office, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, Telephone (202) 586–5581

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR Part 903.

These power rates were developed pursuant to section 302(a) of the DOE Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.,* as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these commercial firm power rates. A summary of the steps Western took to ensure involvement of interested parties in the rate process follows:

1. The proposed rate adjustment was initiated on June 9, 1995, when a letter announcing an informal customer meeting was mailed to all commercial firm power customers and interested parties. The meeting was held on June 26, 1995, in Sacramento, California. At this informal meeting, Western explained the rationale for the rate decrease and rate design methodology, and answered questions.

2. A **Federal Register** notice was published on July 10, 1995 (60 FR 35556), officially announcing the commercial firm power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

3. On July 17, 1995, letters were mailed from Western's Sacramento Area Office to all commercial firm power customers and interested parties transmitting the **Federal Register** notice of July 10, 1995.

4. On July 19, 1995, a rate brochure was mailed to all commercial firm power customers and interested parties.

5. At the public information forum held on the morning of July 26, 1995, Western explained the rationale for the rate decrease and rate design methodology in greater detail, and answered questions.

6. The comment forum was held on the afternoon of July 26, 1995, to give the public an opportunity to comment for the record. Two customer representatives made oral comments.

7. Eight comment letters were received during the consultation and comment period. The consultation and comment period ended August 11, 1995. All formally submitted comments have been considered in the preparation of this rate order.

Rate Order No. WAPA–72, confirming, approving, and placing the proposed CVP commercial firm power rates into effect on an interim basis, is issued, and the new Rate Schedule CV–F8 will be submitted promptly to FERC for confirmation and approval on a final basis.

Issued in Washington, D.C., September 19, 1995.

Charles B. Curtis,

Deputy Secretary.

Order Confirming, Approving, and Placing the Central Valley Project Commercial Firm Power Service Rates into Effect on an Interim Basis

September 19, 1995.

These power rates were developed pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902, 43 U.S.C. 371 et seq., as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the project involved were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR Part 903.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Composite rate:
Energy rate that recovers capacity and energy revenue requirements.

Contract 2948A:
Pacific Gas and Electric Company's contract with Western for the sale, interchange and transmission of power; Contract No. 14–06–200–2948A, as amended.

Corps:
United States Army Corps of Engineers.

CRD:
Contract rate of delivery. The maximum amount of capacity that Western is contractually obligated to provide to a customer.

CVP:
Central Valley Project.

DOE:
Department of Energy.

DOE Order RA6120.2:
An order dealing with power marketing administration financial reporting.

Energy base rate:
Energy rate applied to energy sales below a 70 percent monthly load factor.

Energy component:
The component of this rate which sets forth the charges for energy. It is expressed in mills/kWh and applied to each kWh made available to each customer.

Energy tier rate:
Energy rate applied to energy sales at a 70 percent and higher monthly

load factor.
FERC:
Federal Energy Regulatory Commission.
FY:
Fiscal year.
Intertie:
Pacific Northwest-Pacific Southwest Intertie.
kW:
Kilowatt (1000 watts).
kW/month:
Kilowatt per month.
kWh:
Kilowatthour.
Load factor:
The ratio of total energy delivered compared to the maximum energy available during a specified period of time.
mills/kWh:
Mills per kilowatthour.
MW:
Megawatt (1000 kW).
NEPA:
National Energy Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
Northwest:
Northwest United States.
O&M:
Operation and maintenance.
PG&E:
Pacific Gas and Electric Company.
Power factor:
The ratio of real (kW) to apparent power (kVA) at any given point and time in an electrical circuit. Generally it is expressed as a percentage ratio.
PRS:
Power repayment study.
Provisional rates:
A rate which has been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary.
RAC:
Revenue adjustment clause.
Rate brochure:
A document prepared for public distribution explaining the rationale and background of the rate proposal contained in this rate order dated July 1995.
Reclamation:
U.S. Department of the Interior, Bureau of Reclamation.
Revenue requirement:
The revenues required to recover O&M expenses, purchase power and transmission service expenses, interest, deferred expenses, and Federal investments.
Secretary:
Secretary of Energy.
Western:
U.S. Department of Energy, Western Area Power Administration.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 1995, and will be in effect pending FERC's approval of them or substitute rates on a final basis for a 2½-year period ending April 30, 1998, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in the development of these commercial firm power rates. The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. The proposed rate adjustment was initiated on June 9, 1995, when a letter announcing an informal customer meeting was mailed to all commercial firm power customers and interested parties. The meeting was held on June 26, 1995, in Sacramento, California. At this informal meeting, Western explained the rationale for the rate decrease and rate design methodology, and answered questions.

2. A **Federal Register** notice was published on July 10, 1995 (60 FR 35556), officially announcing the commercial firm power rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

3. On July 17, 1995, letters were mailed from Western's Sacramento Area Office to all commercial firm power customers and interested parties transmitting the **Federal Register** notice of July 10, 1995.

4. On July 19, 1995, a rate brochure was mailed to all customers and interested parties.

5. At the public information forum held on the morning of July 26, 1995, Western explained the rationale for the rate decrease and the rate design methodology in greater detail and answered questions.

6. The comment forum was held on the afternoon of July 26, 1995, to give the public an opportunity to comment for the record. Two customer representatives made oral comments.

7. Eight comment letters were received during the consultation and comment period. The consultation and comment period ended August 11, 1995. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The CVP in the Central Valley Basin of California has twelve dams that create reservoirs with a total capacity of 10.66 million acre-feet of water. The CVP contains 615 miles of canals, five pumping plants, and eleven powerplants.

The Emergency Relief Appropriations Act of 1935 initially authorized the CVP to be constructed by Reclamation. In 1944, Congress authorized the American River Division to be constructed by the Corps. In 1949, the Division was reauthorized for integration into the CVP. The Trinity River Division was authorized by Congress in 1955. The San Luis Unit was authorized by Congress in 1960. In 1965, Congress authorized construction of the Auburn-Folsom South Unit as an addition to the CVP. Congress authorized the San Felipe Division in 1967, and the Allen Camp Unit in 1976. In 1964, Congress authorized the Intertie, of which the CVP has the right to use 400 MW of transmission capacity to import power from the Pacific Northwest.

PG&E and Western operate under Contract 2948A, executed in 1967, which provides for the sale, interchange, and transmission of capacity and energy between Western and PG&E. Contract 2948A also includes provisions for the integration of power generated from the CVP facilities with the 400 MW of entitlement on the Intertie. The contract also provides that PG&E will support a maximum simultaneous demand of 1,152 MW for the CVP preference customers through calendar year 2004. If the CVP power facilities cannot meet obligations to the preference customers, Contract 2948A provides Western the right to purchase capacity and energy from PG&E to meet those requirements. Any energy in excess of Western's obligations to preference customers can be sold to PG&E through a banking provision in the contract. The energy made available under this banking arrangement allows Western to supplement CVP generation to meet preference customer load.

Power generated from the CVP system is first dedicated to meeting the project pumping facilities' power requirements. The remaining power generated at the power facilities is allocated to various preference customers in California.

Each preference customer's CRD is composed of firm long-term power allocations, and may include short-term withdrawable allocations that are currently allocated, but unused by another customer. For this rate adjustment it is assumed that all customer withdrawable CRDs can be withdrawn in the event the load level of 1,152 MW is exceeded.

Western's preference customer load level is limited under Contract 2948A to

a maximum simultaneous demand, excluding project loads, of 1,152 MW. The maximum simultaneous demand is the sum of each preference customer's demand for CVP power at a coincidental moment, adjusted to the load center at the Tracy Switchyard. Notwithstanding the simultaneous demand limit, Western has contractual obligations to serve approximately 1,478 MW of firm CRD to its preference customers. This level of CRD can be served because of the diversity in customers' loads and load management arrangements Western has with certain customers.

Power Repayment Study

PRSs are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA6120.2, section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs.

Existing and Provisional Rates

A comparison of the existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL RATES

[Commercial Firm Power Rate Schedule]

Effective period	Existing	Provisional	Percent change
Composite Rate (mills/kWh)			
10/01/95 to 09/30/96	31.55	23.35	(26)
10/01/96 to 09/30/97	31.55	25.00	(21)
10/01/97 to 04/30/98	34.37	26.50	(23)
Capacity Rate ($/kW/month):			
10/01/95 to 09/30/96	6.57	4.03	(39)
10/01/96 to 09/30/97	6.57	4.32	(34)
10/01/97 to 04/30/98	7.16	4.58	(36)
Energy Base Rate (mills/kWh):			
10/01/95 to 09/30/96	17.73	14.83	(16)
10/01/96 to 09/30/97	17.73	15.93	(10)
10/01/97 to 04/30/98	19.33	16.93	(12)
Energy Tier Rate (mills/kWh):			
10/01/95 to 09/30/96	34.70	25.90	(25)
10/01/96 to 09/30/97	34.70	26.27	(24)
10/01/97 to 04/30/98	37.46	26.48	(29)

Certification of Rate

Western's Administrator has certified that the CVP commercial firm power rates placed into effect on an interim basis herein are the lowest possible rates consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The CVP provisional rates for commercial firm power change the CVP rate design and lower the rates currently in effect under Amended Rate Schedule CV–F7.

The CVP provisional composite rates reflect a 21 percent to 26 percent decrease from the current composite rates established in Amended Rate Schedule CV–F7. The recent decrease in customer CVP power purchases and the corresponding decrease in purchase power expenses are the major factors in the reduced rates.

The existing rate design collects 40 percent of the revenue requirement from capacity sales and 60 percent from energy sales. Effective October 1, 1995, the rate design will change to collect 35 percent of the revenue requirement from capacity sales and 65 percent from energy sales, to reflect the greater portion of Western's costs associated with energy. A reduction in capacity purchase costs also result from Western's Sacramento Area Office entering into an arrangement with PG&E that will reduce the cost of capacity supplied by PG&E, from the current rate of approximately $17.00/kW/month to $5.875/kW/month beginning in June 1996.

The capacity rate percentage decreases are larger than the energy base rate decreases for two reasons: (1) The change in rate design from a 40 percent capacity/60 percent energy split to a 35 percent capacity/65 percent energy split, and (2) the forecasted energy tier sales were reduced disproportionately to the overall reduced forecast of customer energy sales. Therefore, the energy tier revenues are smaller, leaving more revenue to be recovered through the energy base rate.

The energy tier rate is based on the average CVP Northwest energy rate in both the existing and the provisional rates. The energy tier rate decreases between 24 percent to 29 percent from the existing rates in Amended Rate Schedule CV–F7. The decrease is due to the reduction in current market prices for energy from the Northwest from the level projected in the PRS supporting the current CVP commercial firm power rates.

The provisional composite rates increase approximately 7 percent in FY 1997 and 6 percent in FY 1998 as a result of increases in purchase power rates from Northwest suppliers and a 3 percent escalation factor in Western's O&M expenses.

The existing and proposed revenue requirements for the Central Valley Project are as follows:

	Estimated 1996 revenue	
	Existing	Proposed
Revenue requirements:	$247,898,000	$193,618,000

The provisional rates provide sufficient revenues to satisfy the cost recovery criteria set forth in DOE Order RA6120.2.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 2½-year proposed rate approval period.

CENTRAL VALLEY PROJECT—COMPARISON OF COST EVALUATION RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	Provisional ratesetting PRS 1996–98	Current rate PRS 1996–98	Difference
Revenue Distribution:			
O&M	105,521	113,066	(7,545)
Purchase Power	407,804	704,129	(296,325)
Transmission	45,098	46,191	(1,093)
Interest	29,933	26,902	3,031
Investment Repayment	21,598	25,077	(3,479)
Total Revenues	609,954	915,365	(305,411)

Basis for Rate Development

The CVP rate adjustment is needed to reflect reduced purchase power expenses that have occurred due to a decrease in customers' CVP power purchases. A major contributing factor in the rate decrease is reduced purchase power costs from PG&E. A rate decrease of 21 percent to 26 percent from the existing rate schedule occurs during the FY 1996 to FY 1998 period.

The provisional rates consist of a capacity rate, energy base rate, and energy tier rate. The energy tier rate will be applied in the same manner as it is in the current rate schedule, to any energy purchased at a 70 percent and higher monthly load factor. The energy tier rate is based on the average CVP Northwest energy rate.

The revenue recovery split between capacity and energy has changed from that in the existing rate schedule. Currently, the split is 40 percent capacity/60 percent energy. Under the provisional rates the split is 35 percent capacity/65 percent energy. This change reflects a greater portion of Western's costs associated with energy, and a decrease in capacity purchase costs.

The RAC, the Power Factor Adjustment Clause, the Low Voltage Loss Adjustment, and other provisions which are part of the commercial firm power rate schedule are not being modified at this time, and will remain as specified in the Amended Rate Schedule CV–F7.

Comments

During the public comment period, Western received eight written comments on the rate adjustment. In addition, two customer representatives commented during the July 26, 1995 public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Broadview Water District (California)
Calaveras Public Power Agency (California)
National Aeronautics and Space Administration—Ames Research Center (California)
Northern California Power Agency (California)
City of Palo Alto (California)
City of Santa Clara (California)
Trinity Public Utilities District (California)
Tuolumne Public Power Agency (California)

Representatives of the following organizations made oral comments:

City of Palo Alto (California)
Sacramento Municipal Utility District (California)

The comments received at the public meetings and in correspondence dealt with the commercial firm power rate design, specifically, the capacity/energy split for revenue recovery. All comments supported Western's efforts to reduce the rates and have the provisional rates in effect by October 1, 1995. Discussion of comments will address the capacity/energy split, and Western will address several comments with one response. The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Commercial Firm Power Rate Design (Capacity/Energy Split)

The following comments relate to the change in CVP rate design from recovering 40 percent of the revenue requirement from capacity sales and 60 percent from energy sales, to 35 percent from capacity and 65 percent from energy. Several comments supported the change in the capacity/energy split.

Comments: One customer commented that they opposed the change from a 40 percent capacity/60 percent energy split to a 30 percent capacity/70 percent energy split due to an inappropriate allocation of costs to energy, and for the reason that an unfair cost responsibility would be placed on the high load factor customers. However, this same customer sent a subsequent letter concurring with Western's proposal to change the 40 percent capacity/60 percent energy split to the 35 percent capacity/65 percent energy split used to develop the provisional rates. Other customers argued against keeping the 40 percent capacity/60 percent energy split for the reason that the 40 percent capacity/60 percent energy split is inequitable to the low load factor customers, and recommended that Western should change its capacity/energy ratio to be more in line with rate structures of other utility operations

providing comparable services and serving the same area as Western. Other comments received recommended Western consider changing the capacity/energy split to at least a 30 percent capacity/70 percent energy split.

Response: Western initially proposed to continue the existing 40 percent capacity/60 percent energy revenue requirement split. Western then developed two studies analyzing the appropriate revenue requirement split for capacity and energy. In the first study the associated costs of each CVP resource were allocated to capacity or energy. This study indicated that approximately 45 percent of the total resource cost could be allocated to capacity and 55 percent allocated to energy. An initial study analyzing a fixed/variable cost approach indicated that approximately 30 percent of Western's costs could be fixed and allocated to capacity and approximately 70 percent could be variable and allocated to energy. Further refinement of this fixed/variable cost study resulted in 35 percent allocated to capacity and 65 percent to energy. Based on these studies, the future reduction in the capacity purchase rate from PG&E, current market conditions, and comments from the CVP preference customers, Western concluded that a 35 percent allocation to capacity and 65 percent allocation to energy was a reasonable split. By shifting a larger percentage of the costs from capacity to energy, Western believes that the provisional rates will more closely reflect the cost of providing capacity and energy to its customers. The rate design reflects Western's cost of capacity and energy to provide power to all CVP customers, not an individual customer's consumption of capacity or energy. The impact on individual customers will vary depending on that customer's usage of capacity or energy from the CVP. It is Western's position that Western has an obligation to meet all its contractual commitments and that the capacity/energy revenue split coupled with the energy tier rate recognizes Western's overall cost of power.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Sacramento Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 114 Parkshore Drive, Folsom, California 95630, and the Power Marketing Liaison Office, Office of the Assistant Administrator for Washington Liaison, Room 8G–027, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1995, Rate Schedule CV–F8 for the Central Valley Project. The rate schedule shall remain in effect on an interim basis, pending confirmation and approval on a final basis by the Federal Energy Regulatory Commission, through April 30, 1998, or until superseded.

Issued in Washington, D.C., September 19, 1995.

Charles B. Curtis,

Deputy Secretary.

Schedule of Rates for Commercial Firm Power Service

Effective: October 1, 1995.

Available: Within the marketing area served by the Sacramento Area Office.

Applicable: To the commercial firm power customers for general power service supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

MONTHLY RATES

Period	Capacity	Energy
10/01/95–09/30/96.	$4.03/kW/month.	Base: 14.83 mills/kWh. Tier: 25.90 mills/kWh.
10/01/96–09/30/97.	4.32/kW/month.	Base: 15.93 mills/kWh. Tier: 26.27 mills/kWh.
10/01/97–04/30/98.	4.58/kW/month.	Base: 16.93 mills/kWh. Tier: 26.48 mills/kWh.

Billing

Demand: The rates listed above for capacity shall be the charge per kW of billing demand. The billing demand is the highest 30-minute integrated demand measured or scheduled during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy: The rates listed above for energy shall be a charge per kWh for all energy use up to, but not in excess of, the maximum kWh obligation of the United States during the month as established under the power sales contract.

The energy base rate shall be applied to all energy sales below a 70 percent monthly load factor. The energy tier rate shall be applied to all energy sales at a 70 percent and higher monthly load factor. The monthly load factor shall be calculated based on the lesser of the customer's (1) maximum demand for the month or, if a scheduled customer, the maximum scheduled demand for the month; or (2) the CRD. Only power offered under this Rate Schedule CV–F8 will be used in the calculation of the load factor.

Adjustments

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for capacity and/or energy, such overrun shall be billed at 10 times the applicable rates above. The energy base rate will be used as the overrun rate for energy.

For Revenue Adjustment

The following methodology shall be used for the revenue adjustment clause (RAC) calculation:

1. If the actual net revenue is greater than the projected net revenue for the RAC calculation period, a revenue credit will be allocated during the RAC

adjustment period. The credit will equal the difference between the actual net revenue and projected net revenue, represented by the following formula:

ANR > PNR ; C = ANR − PNR
Where:
ANR = Actual Net Revenue
PNR = Projected Net Revenue
C = Credit

2. If actual net revenue is less than the projected net revenue for the RAC calculation period, a revenue surcharge will be allocated during the RAC adjustment period.

2.1 If the actual net revenue is negative, the surcharge will be equal to the minimum investment payment plus the annual deficit, represented by the following formula:

ANR < PNR and < O ; S = MIP + AD
Where:
ANR = Actual Net Revenue
PNR = Projected Net Revenue
MIP = Minimum Investment Payment
AD = Annual Deficit
S = Surcharge

2.2 If the actual net revenue is positive, the surcharge will equal the minimum investment payment less the actual net revenue, represented by the following formula:

ANR < PNR and > 0 ; S = MIP − ANR
(if ANR > MIP, S = 0)
Where:
ANR = Actual Net Revenue
PNR = Projected Net Revenue
MIP = Minimum Investment Payment
S = Surcharge

Provided, that if the actual net revenue is greater than the minimum investment payment, the surcharge will be equal to zero.

3. The maximum RAC credit allocation will equal $20 million plus the amount of the Pacific Gas and Electric Company refund credit applied to Western power bills for the fiscal year. The maximum allocation for a RAC surcharge shall not exceed $20 million.

4. The RAC credit or surcharge shall be allocated to each CVP commercial firm power customer based on the proportion of the customer's billed obligation to Western for CVP commercial firm capacity and energy to the total billed obligation for all CVP commercial firm power customers for CVP commercial firm capacity and energy for the RAC calculation period.

5. For purposes of the RAC calculation, the following terms are defined:

5.1 Actual Net Revenue—The Recorded Net Revenue.

5.2 Annual Deficit—The amount the recorded annual expenses, including interest, exceeding recorded annual revenues.

5.3 Minimum Investment Payment—The lesser of 1 percent of the recorded unpaid investment balance at the end of the prior FY that the RAC is being calculated, or the projected net revenue.

5.4 Projected Net Revenue—The annual net revenue available for investment repayment projected in the PRS for the rate case during the FY that the RAC is being calculated (see Table 1).

5.5 RAC Adjustment Period—The period January 1 through September 30, following the RAC calculation period when credits or surcharges will be applied to the power bills.

5.6 RAC Calculation Period—The last recorded FY (October 1 through September 30).

5.7 Recorded Net Revenue—The annual net revenue available for repayment recorded in the PRS for the FY that the RAC is being calculated.

6. Subject to modification by a superseding rate schedule, the final RAC will be allocated to the customers during the period January 1, 1999, to September 30, 1999.

TABLE 1.—PROJECTED NET REVENUE AVAILABLE FOR INVESTMENT REPAYMENT FOR REVENUE ADJUSTMENT CLAUSE

Period	Projected Net Revenue '
October 1, 1995–September 30, 1996	$11,783,544
October 1, 1996–September 30, 1997	4,506,910
October 1, 1997–September 30, 1998	5,307,779

For Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor:

The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading. The low power factor charge (LPFC) will be calculated by multiplying the customer's maximum monthly demand by the kVar/kW rate for the customer's mean power factor as provided in the following Table 2:

TABLE 2.—KVAR/KW RATE TABLE

Power factor	Rate
0.94	$0.09
0.93	0.17
0.92	0.24
0.91	0.32
0.90	0.39
0.89	0.46
0.88	0.53
0.87	0.60
0.86	0.66
0.85	0.73
0.84	0.79
0.83	0.86
0.82	0.92
0.81	0.99
0.80	1.05
0.79	1.12
0.78	1.18
0.77	1.25
0.76	1.32
0.75 & below	1.38

A LPFC will be assessed when a customer's power factor is less than 95 percent.

(a) A charge of $2.50 per kVar will be assessed for every kVar required to raise a customer's power factor to 95 percent. The calculated power factor used to determine if a charge will be assessed is the arithmetic mean of a customer's measured monthly average power factor and their measured onpeak power factor, rounded to the nearest whole percent with 0.5 percent or greater rounded to the next higher percent.

(b) The mean power factor will be calculated at each customer's point of delivery. If a customer has multiple points of delivery, the power factor will be determined from totalized information from the points of delivery.

(c) No credit will be given for customers operating between 95 percent and 100 percent.

(d) Customers that have a monthly peak demand less than or equal to 50 kW will not be subject to the LPFC.

(e) The Contracting Officer may waive the LPFC for good cause in whole or in part.

[FR Doc. 95–25043 Filed 10–6–95; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5313–2]

Draft General NPDES Permit for Seafood Processors Within Three Nautical Miles of the Pribilof Islands, Alaska General NPDES Permit No. AK–G52–P000

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Draft General NPDES Permit, and Notice of Finding of No Significant Impact.

SUMMARY: The Director, Water Division, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–P000 for seafood processors within three nautical miles of the Pribilof Islands, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The proposed general NPDES permit will authorize discharges from facilities discharging through stationary outfalls on St. Paul and St. George Islands, and from mobile vessels discharging within the three nautical mile coastal zone of the Pribilof Islands. These facilities are engaged in the processing of fresh, frozen, canned, smoked, salted and pickled seafoods. Discharges authorized by the proposed permit include processing wastes, process disinfectants, sanitary wastewater and other wastewaters, including domestic wastewater, cooling water, boiler water, gray water, freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. The proposed permit will authorize discharges to waters of the United States in and contiguous to the State of Alaska, except for receiving waters excluded from coverage as protected or adjacent to a designated ''seafood processing center.''

The proposed general NPDES permit for seafood processors within the Pribilof Island coastal zone will not authorize discharges from the processing of fish mince, paste or meal. The proposed permit will not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

A draft NPDES permit, fact sheet and other documents of the administrative record are available upon request.

PUBLIC NOTICE ISSUANCE DATE: October 10, 1995.

PUBLIC NOTICE EXPIRATION DATE: November 13, 1995.

PUBLIC COMMENTS: Interested persons may submit written comments on the draft general NPDES permit to the attention of Florence Carroll at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the expiration date of the public notice.

After the expiration date of the public notice, the Director, Water Division, EPA Region 10, will make a final determination with respect to issuance of the general permit. The tentative requirements contained in the draft general permit will become final conditions if no substantive comments are received during the public comment period. The permit is expected to become effective on January 15, 1996.

Persons wishing to comment on State Certification of the proposed general NPDES permit should submit written comments within this 30-day comment period to the State of Alaska, Alaska Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795. Comments should be addressed to the attention of Alaska Water Quality Standards Consistency Review.

Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Management Program should submit written comments within this 30-day comment period, to the State of Alaska, Office of Management and Budget, Division of Governmental Coordination, P.O. Box 110030, Juneau, Alaska 99811–0030. Comments should be addressed to the attention of Alaska Coastal Management Program Consistency Review.

Persons wishing to comment on the EPA Finding of No Significant Impact (FNSI), based on the environmental assessment, should submit written comments within this 30 day period. All comments should include the name, address and telephone number of the commenter and a concise statement of the basis of any comment and the relevant facts upon which it is based. Comments should be submitted to Florence Carroll at the address below.

PUBLIC HEARING: No public hearings have been scheduled. Persons requesting a public hearing should submit their request to Florence Carroll at the address below. Notice of a public hearing will be published in the **Federal Register**. Notices will also be mailed to all interested persons receiving copies of the proposed permit.

APPEAL OF PERMIT: Within 120 days following the service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the Permit in the Federal Court of Appeal in accordance with Section 509(b)(1) of the Clean Water Act. Persons affected by a general permit may not challenge the conditions of the Permit as a right of further EPA proceedings. Instead, they may either challenge the Permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual permit.

ADMINISTRATIVE RECORD: The complete administrative record for the draft permit is available for public review at the EPA Region 10 Library, 10th Floor, at the address listed below. Copies of the draft general NPDES permit, fact sheet, the environmental assessment, the biological assessment, and the Pribilof Seafood Ocean Discharge Criteria Evaluation are available upon request from the Region 10 Public Information Center at 1–800–424–4EPA (4372).

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, NPDES Compliance Unit (WD–135), 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760.

REGULATORY FLEXIBILITY ACT: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: September 21, 1995.

David Teeter,

Acting Director, Office of Water.

Finding of No Significant Impact (FNSI)

To All Interested Government Agencies, Public Groups, and Individuals:

In accordance with the Environmental Protection Agency (EPA) procedures for complying with the National Environmental Policy Act (NEPA), 40 CFR Part 6, Subpart F, EPA has conducted an environmental review of the following proposed action:

Issuance of general National Pollutant Discharge Elimination System (NPDES) Permit, no. AK-G52–P000, to owners and operators of facilities, both mobile and shore-based, engaged in the processing of seafood within three nautical miles of the Pribilof Islands, Alaska

The general NPDES permit requirements, including effluent limitations, monitoring provisions, and other conditions applicable to the operations covered are specified in the proposed permit. The permit Fact Sheet

describes the basis for the permit provisions.

An environmental assessment (EA) for this proposed action has been prepared. Based on the EA and the proposed permit conditions, and in accordance with the guidelines for determining the significance of federal actions (40 CFR 1508.27) and EPA criteria for initiating an environmental impact statement (EIS) (40 CFR 6.605), EPA has concluded that issuance of this general NPDES permit will not result in a significant effect on the human environment. This action will not significantly affect land use patterns or population, wetlands or floodplains, threatened or endangered species, farmlands, ecologically critical areas, historic resources, air quality, water quality, noise levels, fish and wildlife resources, nor will it conflict with approved local, regional, or state land use plans or policies. For the above reasons EPA has determined that an EIS will not be prepared.

The term of the proposed NPDES permit is two years only, during which time additional field data will be collected. Another EA will be prepared for the subsequent five-year permit based on analyses utilizing that additional field data.

A copy of the EA evaluating the potential impacts of the proposed action is available upon request by calling (206) 553–1214, or at the above address, and is incorporated into this FNSI by reference.

Comments supporting or disagreeing with this FNSI may be submitted to the following address for consideration: Rick Seaborne, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–126, Seattle, Washington 98101.

After evaluating the comments received, EPA will make a final decision. No administrative action will be taken on the proposed permit for at least 30 days after the release date (indicated above) of this FNSI. EPA will fully consider all comments received during this public notice period before taking final action.

Sincerely,

David Teeter,

Acting Director, Water Division.

[FR Doc. 95–25047 Filed 10–10–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

September 29, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0680.

Expiration Date: 12/31/96.

Title: ARMIS Video Dialtone Quarterly Report; ARMIS Video Dialtone Fourth Quarter Report.

Form Nos.: FCC Report 43–09A; FCC Report 43–09B.

Estimated Annual Burden: 4,620 total annual hours; average 462 hours per respondent; 10 respondents.

Description: FCC Report 43–09A provides a quarterly report of wholly dedicated and shared video dialtone investment, expense, and revenue captured in a carrier's subsidiary accounting records. FCC Report 43–09B provides a fourth quarter report of video dialtone investment, expense, and revenue disaggregated by regulated and nonregulated classification and by jurisdictional categories. The reports are prescribed for every local exchange carrier (LEC) that has obtained Section 214 authorization from the Commission to provide video dialtone trials or commercial services. The reports will enable the Commission, State regulatory agencies, local exchange carriers and other interested parties to analyze LECs' video dialtone investment, revenue, and costs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–24945 Filed 10–6–95; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Approved by Office of Management and Budget

October 2, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0370.

Expiration Date: 09/30/98.

Title: Part 32 - Uniform System of Accounts for Telecommunications Companies.

Estimated Annual Burden: 3,031,868 total annual hours; average 12,685 hours per respondent; 239 respondents.

Description: The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulated telecommunications operations of less than $100 million are designated as Class B companies and are subject to a less detailed accounting system than those designated as Class A companies.

OMB Control No.: 3060–0675.

Expiration Date: 09/30/98.

Title: Accounting and Reporting Requirements for Video Dialtone Service (RAO Letter 25).

Estimated Annual Burden: 8500 total annual hours; average 850 hours per respondent; 10 respondents.

Description: Carriers offering video dialtone are required to establish two sets of subsidiary accounting records: one to capture the investment, expense and revenue wholly dedicated to video dialtone; the other to capture the investment, expense and revenue shared between video dialtone and other services. RAO Letter applies to those carriers that have been authorized by the Commission to provide video dialtone service. RAO 25 provides guidance to carriers on establishing the subsidiary accounting records they use to track the investment, expense and revenue related to their provision of video dialtone service. RAO 25 is needed to ensure that the subsidiary records maintained by the carriers include all relevant data and to ensure that the data is auditable.

OMB Control No.: 3060–0676.

Expiration Date: 09/30/98.

Title: Policies and Rules Concerning Changing Long Distance Carrier (CC Docket No. 91–64), Section 64.1100.

Estimated Annual Burden: 92 total annual hours; average 1.22 hours per respondent; 75 respondents.

Description: Interexchange carriers (IXCs) that generate orders for long distance service are required to employ one of four alternative procedures to verify end users' orders before placing those orders with the local exchange carrier (LEC).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–25003 Filed 10–6–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Royal Caribbean Cruises Ltd., 1050 Caribbean Way, Miami, Florida 33132–2096

Vessel: GRANDEUR OF THE SEAS

Dated: October 3, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–24954 Filed 10–6–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Ohio State Bancshares, 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 November 3, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Ohio State Bancshares, Inc., Marion, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Marion Bank, Marion, Ohio. Comments on this application must be received by October 31, 1995.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bancshares of Mississippi, Inc. ESOP, Forest, Mississippi (formerly Farmers & Merchants ESOP), and Community Bancshares of Mississippi, Inc., Forest, Mississippi (formerly Forest Bancorp, Inc.); to merge with Community Bancshares of Indianola, Inc., Indianola, Mississippi (formerly Delta Bancorp, Inc.), and thereby indirectly acquire Community Bank, Indianola, Mississippi (formerly Peoples Bank of Mississippi).

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation Two, Kansas City, Missouri, and Dickinson Financial Corporation, Kansas City, Missouri; to acquire 7.64 percent of the voting shares of UMB Financial Corporation, Kansas City, Missouri; and thereby indirectly acquire UMB Bank, N.A., Kansas City, Missouri; UMB Bank, Boonville, Missouri; UMB Bank North Central, Brookfield, Missouri; UMB Bank, Jefferson City, Missouri; UMB Bank Northeast, Monroe City, Missouri; UMB Bank Cass County, Peculiar, Missouri; UMB Bank Northwest, St. Joseph, Missouri; UMB Bank of St. Louis, N.A., St. Louis, Missouri; UMB Bank Southwest, Carthage, Missouri; UMB Bank Warrensburg, Warrensburg, Missouri; UMB Bank Warsaw, Warsaw, Missouri; UMB Bank Colorado, Security, Colorado; UMB Bank USA, New Castle, Delaware; UMB First State Bank of Morrisonville, Illinois; UMB Bank Kansas, Overland Park, Kansas; and UMB National Bank of America, Salina, Kansas.

Board of Governors of the Federal Reserve System, October 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–25004 Filed 10–6–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Data Collections Available for Public Comment and Recommendations

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects

1. State Medicaid Fraud Control Units Annual Report and Certification Application (42 CFR 1007.15 and 1007.17)—0990–0162—Extension No Change—The program data required of initial applicants to become certified, and the annual reports required for recertification are used by the Office of Inspector General to ensure that Federal matching funds are only expended for allowable costs. In addition, the reports are analyzed to monitor program activities and determine whether technical assistance is required. Burden Information for New Applicants—

Number of Respondents; 2; Frequency of Response: one-time; Burden per Response: 112 hours; Burden for New Applicants: 224 hours—Burden Information for Recertification—Number of Respondents: 45; Frequency of Response: annually; Burden per Response: 56 hours; Burden for Recertification: 2520 hours—Total Burden: 2744 hours.

2. Evaluation of Family Preservation and Reunification Services—New—The key goals of family preservation programs are to avoid unnecessary foster care placement, ensure the safety of children, and improve family functioning. This evaluation will test, in six sites, whether these service delivery objectives are attained. The results will be used to inform policy decisions. Child welfare case workers, investigating workers and caretakers of families receiving services will be interviewed.—Burden Information—Investigating Worker Interviews—Number: 2,000; Time per Interview: 20 minutes; Burden; 667 hours—Caseworker Interviews—Number: 3,000; Frequency: twice; Time: 20 minutes; Burden: 2,000 hours—Caretaker Interviews—Number: 3,000; Frequency: 3 times; Average Time: 55 minutes; Burden: 8,250 hours—Staff Questionnaire—Number: 150; Time: 15 minutes; Burden: 38 hours—Contact Sheets—Number: 21,000; Time: 5 minutes; Burden: 1,750 hours—Administrative Burden—468 hours—Total Burden—13,173 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 60 days of this notice.

Dated: October 3, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 95–25011 Filed 10–6–95; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act; September 1995

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of September, 1995. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since September 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, SW., Aerospace Building, 7th Floor West, Washington DC 20447,Fax: (202) 205–3598, Phone: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the **Federal Register** (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of September, 1995

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of September, 1995.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend Work Pays Demonstration Project by adding provisions to: Reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

Date Received: 3/14/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Glen Brooks, (916) 657–3291.

Project Title: California—Assistance Payments Demonstration Project (Amendment).

Description: Would amend the Assistance Payments Demonstration Project by: Exempting certain categories of AFDC families from the State's benefit cuts; paying the exempt cases based on grant levels in effect in California on November 1, 1992; and renewing the waiver of the Medicaid maintenance of effort provision at section 1902(c)(1) of the Social Security Act, which was vacated by the Ninth Circuit Court of Appeals in its decision in *Beno* v. *Shalala.*

Date Received: 8/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—Work Pays Demonstration Project (Amendment).

Description: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

Date Received: 11/9/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: California—School Attendance Demonstration Project.

Description: In San Diego County, require AFDC recipients ages 16–18 to attend school or participate in JOBS.

Date Received: 12/5/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Bruce Wagstaff, (916) 657–2367.

Project Title: Connecticut—A Fair Chance—Modification.

Description: Proposed modifications would: establish time limits; disregard earnings for time-limited recipients up to poverty level; reduce benefit increase for additional children by one-half; require minor parents to live with adult; change redetermination, verification, and reporting requirements; provide employer tax credits for hiring AFDC recipients; require biometric identification as condition of eligibility for unit; establish two-tier payment system for new residents; simplify and conform AFDC and Food Stamp rules on resources; allow 24 weeks of job search without child care guarantee; change good cause criteria regarding participation; change JOBS sanctions; apply uniform sanction policy for JOBS, child support, and voluntary quits; extend transitional Medicaid to two years; provide transitional child care while income below 75% of state median; limit the application period for transitional child care to 6 months after leaving AFDC; establish fee for child care for AFDC recipients; serve non-custodial parents under JOBS.

Date Received: 8/10/95.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Nancy Wiggett, (203) 424–5329.

Project Title: Georgia—Work for Welfare Project.

Description: Work for Welfare Project. In 10 pilot counties would require every non-exempt recipient and non-supporting parent to work up to 20 hours per month in a state, local government, federal agency or nonprofit organization; extends job search; and increases sanctions for JOBS noncompliance. On a statewide basis, would increase the automobile exemption to $4,500 and disregard earned income of children who are full-time students.

Date Received: 6/30/94.

Type: AFDC.

Current Status: Pending.

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Georgia—Jobs First Project.

Description: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC-UP cases.

Date Received: 7/5/94.

Type: AFDC.

Current Status: Pending (not previously published).

Contact Person: Nancy Meszaros, (404) 657–3608.

Project Title: Hawaii—Families Are Better Together.

Description: Statewide, would eliminate 100-hour, attachment to the work force, 30 day unemployment and principal wage earner criteria for AFDC-UP families.

Date Received: 5/22/95.

Type: AFDC.

Current Status: Pending.

Contact Person: Patricia Murakami, (808) 586–5230.

Project Title: Illinois—Six Month Paternity Establishment Demonstration.

Description: In 20 counties, would require the establishment of paternity, unless good cause exists, within 6 months of application or redetermination as a condition of AFDC and Medicaid eligibility for both mother and child; would deny Medicaid to children age 7 and under, exclude children from filing rules, and exempt Department from making protective payments to eligible children, when custodial parent has not cooperated in establishing paternity; delegate the establishment of paternity in uncontested cases to caseworkers who perform assistance payment or social service functions under title IV–A or XX.

Date Received: 7/18/95.

Title: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Karan D. Maxson, (217) 785–3300.

Project Title: Kansas—Actively Creating Tomorrow for Families Demonstration.

Description: Would, after 30 months of participation in JOBS, make adults ineligible for AFDC for 3 years; replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income and income and resources of children in school; count income and resources of family members who receive SSI; exempt one vehicle without regard for equity value if used to produce income; allow only half AFDC benefit increase for births of a second child to families where the parent is not working and eliminate increase for the birth of any child if families already have at least two children; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; extend Medicaid transitional benefits to 24 months; eliminate various JOBS requirements, including those related to target groups, participation rate of UP cases and the 20-hour work requirement limit for parents with children under 6; require school attendance; require minors in AFDC and NPA Food Stamps cases to live with a guardian; make work requirements and penalties in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities.

Date Received: 7/26/94.

Type: Combined AFDC/Medicaid.

Current Status: Pending.

Contact Person: Faith Spencer, (913) 296–0775.

Project Title: Louisiana—Individual Responsibility Project.

Description: Statewide, would limit AFDC benefits to 24 months out of a 60 month period for able-bodied recipients with extensions where the individual has been actively seeking employment, where job availability is unfavorable, where the individual loses a job for factors unrelated to his job performance, or where the individual requires up to one year to complete employment related education or training; require each child to attend school and be immunized or the child will be removed from the budget group; and applies a full family sanction where the parent has declined or refused an opportunity for full-time employment, without good cause.

Date Received: 9/22/95.

Type: AFDC.

Current Status: New.

Contact Person: Sammy Guillory, (504) 342–4089.

Project Title: Maine—Welfare to Work Program.

Description: Statewide, would require caretaker relatives to sign a family contract; require participation in parenting classes and health care

services; provide one-time vendor payments in lieu of AFDC for the purpose of obtaining/retaining employment; provide voucher payments to both married and unmarried minor parents; limit JOBS exemptions; expand eligibility for Transitional Medicaid and Child Care and replace sliding-scale fees with flat-rate fees; reduce Transitional Medicaid reporting requirements; disregard entire value of one vehicle; and apply any federal savings to the JOBS program services. In selected sites, implement ASPIRE-Plus, a subsidized employment program, would cash out food stamps, divert AFDC benefits and pass through all child support collected to families who participate in ASPIRE-Plus.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: New.

Contact Person: Susan Dustin, (207) 287–3104.

Project Title: New Hampshire—Earned Income Disregard Demonstration Project.

Description: AFDC applicants and recipients would have the first $200 plus ½ the remaining earned income disregarded.

Date Received: 9/20/93.

Type: AFDC.

Current Status: Pending.

Contact Person: Avis L. Crane, (603) 271–4255.

Project Title: New Hampshire—New Hampshire Employment Program and Family Assistance Program.

Description: Statewide, would replace AFDC with Employment Program administered by both Employment Security Agency and Family Assistance Program; require job search and other employment-related activities for first 26 weeks of receipt followed by work-related activities for 26 weeks; eliminate JOBS target group funding requirement and change JOBS reporting requirements; require recipients attending post-secondary or part-time vocational training to participate in work-related activities; eliminate JOBS services priority for volunteers; establish limits for provision of transportation and other JOBS services based on activity and local conditions; eliminate remoteness as exemption from JOBS; require non-custodial parents to participate in JOBS; increase earned income disregard to 50%; eliminate AFDC–UP eligibility requirements; allow transitional case management for up to one year; raise resource limit to $2,000 and exclude one vehicle and life insurance policies; pass through child support directly to family; take SSI income into account in determining eligibility/payment; eliminate conciliation and apply JOBS sanction of 50% of AFDC benefits for three months followed by no payment for three months, allowing option to increase initial sanction up to 100%; exempt pregnant women from JOBS only during third trimester; for minor parents cases, include in assistance unit any parent or sibling living in the home; eliminate gross income test; disregard educational grants; allow emergency assistance for families with employment-related barriers; allow State to eliminate the certificate option for child care and development block grant funds and use of these funds for capital improvement; eliminate ceiling on At Risk Child Care funds; provide that FFP for AFDC not be reduced during life of demonstration; fund computer system modifications at 80% FFP; require pregnant recipients to cooperate with child support; require that AFDC apply for Medicaid as a unit and not individually; eliminate requirement of receipt of AFDC for 3 of last 6 months in order to receive transitional Medicaid; and allow State to require that some individuals be assigned to a managed care program; substitute outcome measures for JOBS participation rates; change participation requirements for parents with children under 6, UP recipients and minors; establish a medical deduction; increase the sanction for non-cooperation with child support; exempt individuals with significant employment barriers from JOBS; treat lump sum income and all real property, except a home, as a resource; and use 20% of gross earned income as a Medicaid disregard. Also contains various Food Stamp waivers.

Date Received: 9/18/95.

Type: AFDC.

Current Status: New.

Contact Person: Marianne Broshek, (603) 271–4442.

Project Title: North Carolina—Work First Program.

Description: Statewide would eliminate increase in AFDC benefits resulting from a birth of a child, limit JOBS exemptions, require a self-sufficiency contract, and limit AFDC receipt to 24 cumulative months. Families who reach the time limit could not reapply for 3 years. The contract would require: Cooperation with child support; child immunizations and medical check-ups; school attendance; and that teen parents live with a parent/adult and graduate from high school. Failure to sign the contract would result in denial of the AFDC application. Failure to comply would result in the loss of the adult's AFDC benefits and (starting with the second sanction) Medicaid coverage for of a minimum of: 3 months for the first sanction, 3 months for the second, 6 months for the third, and 3 years for the fourth. The State would offer new applicants a one-time payment in lieu of AFDC; expand AFDC-UP eligibility; raise the resource limit to $3,000 and the vehicle asset limit to $5,000 for AFDC and Food Stamps; and provide for automatic food stamps eligibility for AFDC-eligible families.

Date Received: 9/20/95.

Type: AFDC/Medicaid.

Current Status: New.

Contact Person: Kevin Fitzgerald, (919) 733–3055.

Project Title: Oregon—Oregon Option.

Description: As a statewide project, would incorporate waivers already approved in 1992 for JOBS Welfare Program and in 1994 for the JOBS Plus Demonstration with previously pending waiver requests to increase vehicle asset limit and extend transitional child care. Requests guaranteed level of federal funding, with funds not used for benefits to be used for other community support or prevention programs. Also would, with some exceptions, limit receipt of AFDC benefits to no more than 24 out of 84 months for families with employable parents; allow case manager to determine JOBS exemptions on an individual basis; eliminate the time restrictions on job search; impose progressive sanctions, leading to full-family ineligibility, for non-compliance with JOBS; require ineligible alien parents of AFDC children to participate in JOBS; require counseling for recipients with substance abuse problems; require teen parents to live in an adult-supervised setting; discontinue the AFDC–UP program from June through September each year and eliminate the 100-hour rule and work history requirements; increase asset limit to $2,500 for non-JOBS participants and $10,000 for JOBS participants, and treat lump-sum payments as an asset; require annual AFDC eligibility redeterminations; modify the rules for potential liability under EBT.

Date Received: 7/10/95.

Type: AFDC/Medicaid.

Current Status: Pending.

Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Expansion of the Transitional Child Care Program.

Description: Provide transitional child care benefits without regard to months of prior receipt of AFDC and provide benefits for 24 months.

Date Received: 8/8/94.

Type: AFDC.

Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Oregon—Increased AFDC Motor Vehicle Limit.
Description: Would increase automobile asset limit to $9000.
Date Received: 11/12/93.
Type: AFDC.
Current Status: Pending.
Contact Person: Jim Neely, (503) 945–5607.

Project Title: Pennsylvania—School Attendance Improvement Program.
Description: In 7 sites, would require school attendance as condition of eligibility.
Date Received: 9/12/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: Pennsylvania—Savings for Education Program.
Description: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.
Date Received: 12/29/94.
Type: AFDC.
Current Status: Pending.
Contact Person: Patricia H. O'Neal, (717) 787–4081.

Project Title: South Carolina—Family Independence Program.
Description: Statewide, would, with exceptions, time limit AFDC benefits to families with able bodied adults to 24 months out of 120 months, not to exceed 60 months in a lifetime; eliminate increase in AFDC benefit resulting from birth of children 10 or more months after the family begins AFDC receipt, but provide benefits to such children in the form of vouchers for goods and services permitting child's mother to participate in education, training, and employment-related activities; eliminate deprivation requirements, principal earner provisions, work history requirements, and 100-hour rule for AFDC–UP; increase AFDC resource limit to $2,500 and disregard as resources one vehicle with a market value up to $10,000, the balance in an Individual Development Account (IDA) up to $10,000, and the cash value of life insurance; disregard from income up to $10,000 in lump sum payments deposited in an IDA within 30 days of receipt, earned income of children attending school, and interest and dividend income up to $400; require participation in a family skills training program; require certain AFDC recipients to submit to random drug tests and/or participate in alcohol or drug treatment; require children to attend school; increase amount of child support passed through to AFDC recipients; require more extensive information for child support enforcement purposes; modify JOBS exemptions and good cause criteria, and increase sanctions for non-compliance; make job search a condition of eligibility; allow non-custodial parents of AFDC children to participate in JOBS; pay transitional grant equaling 3 percent of the maximum family grant following employment; and provide transitional grant Medicaid and child care for 12 months from the date of employment for cases previously closed due to time limit.
Date Received: 6/12/95.
Type: AFDC .
Current Status: Pending.
Contact Person: Linda Martin (804) 737–6010.

III. Listing of Approved Proposals Since September 1, 1995

Project Title: California—Work Pays Demonstration Project (Amendments) originally submitted as Incentive to Self-Sufficiency Demonstration.
Contact Person: Bruce Wagstaff, (916) 657–2367.
Project Title: Florida—Family Transition Program (Amendments).
Contact Person: Don Winstead, (904) 921–5567.
Project Title: Illinois—School Attendance Demonstration.
Contact Person: Karan D. Maxson, (217) 785–3300.
Project Title: Illinois—Work and Responsibility Demonstration.
Contact Person: Karan D. Maxson, (217) 785–3300.
Project Title: Mississippi—A New Direction Demonstration Program—Amendment.
Contact Person: Larry Temple, (601) 359–4476.
Project Title: North Dakota—Training, Education, Employment and Management Project.
Contact Person: Kevin Iverson, (701) 224–2729.
Project Title: Ohio—Learning, Earning and Parenting (LEAP) Program.
Contact Person: Jackie Martin, (614) 466–8530.
Project Title: Washington—Success Through Employment Program.
Contact Person: Liz Begert Dunbar, (206) 438–8350.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research).

Dated: October 3, 1995.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 95–25026 Filed 10–6–95; 8:45 am]

BILLING CODE 4184–01–P

Health Care Financing Administration

[ORD–080–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act; July 1995

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice lists new proposals for Medicaid demonstration projects submitted to the Department of Health and Human Services during the month of July 1995 under the authority of section 1115 of the Social Security Act. This notice also lists proposals that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.SSA.GOV/HCFA/HCFAHP2.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to

improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of July 1995

A. Comprehensive Health Reform Programs

1. New Proposals

The following comprehensive health reform proposals were received during the month of July:

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency P.O. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011

Federal Project Officer:

Maria Boulmetis Health Care Financing Administration Office of Research and Demonstrations Mail Stop C3–18–26, 7500 Security Boulevard Baltimore, MD 21244–1850

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level (subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact:

Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer:

David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact:

Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271–4422.

Federal Project Officer:

Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois seeks to develop a managed care delivery system using a series of networks, either local or statewide, to tailor its Medicaid delivery system to the needs of local urban neighborhoods or large rural areas.

Date Received: September 15, 1994.

State Contact:

Tom Toberman, Manager, Federal/State Monitoring, 201 South Grand Avenue East, Springfield, IL 62763, (217) 782–2570.

Federal Project Officer:

Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a ''managed cooperation demonstration project'' in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact:

Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

Federal Project Officer:

Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Kentucky Health Care Partnership—Kentucky.

Description: Kentucky proposes to enroll all non-institutional AFDC, AFDC-related, and aged, blind, and disabled Medicaid-eligible individuals in regional managed care networks operated by a sole-source contractor. The proposed start date of the demonstration is December 1, 1995.

Date Received: June 19, 1995.

State Contact:

Larry A. McCarthy, Director, Program Development and Budget, Department of Medicaid Services, 275 East Main Street, Frankfort, KY 40621, (406) 444–4540.

Federal Project Officer:

Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with

incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact:

Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

Federal Project Officer:

Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994

State Contact:

Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–6922.

Federal Project Officer:

Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Granite State Partnership for Access and Affordability in Health Care—New Hampshire Description: New Hampshire proposes to extend Medicaid eligibility to adults with incomes below the AFDC cash standard and to create a public insurance product for low-income workers. The State also seeks to implement a number of pilot initiatives to help redesign its health care delivery system.

Date Received: June 14, 1994.

State Contact:

Barry Bodell, New Hampshire Department of Health and Human Services, Office of the Commissioner, 6 Hazen Drive, Concord, NH 03301–6505, (603) 271–4332.

Federal Project Officer:

Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses. The proposed enrollment date for Home Relief and AFDC recipients is November 1, 1995, followed by a 1-year enrollment period for the supplemental security income (SSI) population beginning January 1, 1997.

Date Received: March 17, 1995.

State Contact:

Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer:

Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: SoonerCare—Oklahoma.

Description: Oklahoma proposes to implement a 5-year statewide managed care demonstration using both fully and partially capitated delivery systems. The emphasis of the program is to address access problems in rural areas by encouraging the development of rural-based managed care initiatives. The State will employ traditional fully capitated managed care delivery models for urban areas and will introduce a series of partial capitation models in the rural areas of the State. All currently eligible, non-institutionalized Medicaid beneficiaries will be enrolled during the first 2 years of the project.

Date Received: January 6, 1995.

State Contact:

Dr. Garth Splinter, Oklahoma Health Care Authority, Lincoln Plaza, 4545 North Lincoln Blvd., Suite 124, Oklahoma City, OK 73105, (405) 530–3439.

Federal Project Officer:

Helaine I. Fingold, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Awards of Waivers Pending)

No conceptual proposals were approved during the month of July.

4. Approved Grant Proposals (Award of Waivers Pending)

No grant proposals were awarded during the month of July.

5. Approved Proposals

The following proposal was approved during the month of July.

Demonstration Title/State: Health Access Plan Demonstration—Vermont.

Description: Vermont will integrate Medicaid beneficiaries into managed care plans and expand coverage to uninsured individuals up to 150 percent of the Federal poverty level. The State will also provide a prescription drug benefit to low-income Medicare beneficiaries.

Date Received: February 24, 1995.

Date Approved: July 28, 1995.

State Contact:

Veronica Celani, Health Policy Director, Vermont Agency of Human Services, 103 State Street, Waterbury, VT 05671, (802) 828–2949.

Federal Project Officer:

Sherrie Fried, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

6. Disapproved Proposals

No comprehensive health reform proposals have been disapproved since January 1, 1993.

7. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of July.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

No new proposals were received during the month of July.

2. Pending Proposals:

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health

agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact:

Dann Milne, Director, Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer:

Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled ''Georgia Children's Benefit Plan'' to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact:

Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer:

Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: High Cost User Initiative—Maryland.

Description: Maryland proposes to implement an integrated case management system for high-cost, high-risk Medicaid beneficiaries.

Date Received: July 8, 1994.

State Contact:

John Folkemer, Maryland Department of Health and Mental Hygiene, Office of Medical Assistance Policy, 201 West Preston Street, Baltimore, MD 21201, (410) 225–5206.

Federal Project Officer:

William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact:

Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer:

Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995.

State Contact:

Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer:

Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact:

Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer:

Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact:

Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer:

Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact:

Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer:

Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact:

Jean Sheil, Division of Economic Support, Wisconsin Department of Health and

Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer:

J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Conceptual Proposals (Award of Waivers Pending)

No conceptual proposals were awarded during the month of July.

4. Approved Proposals

No proposals were approved during the month of July.

5. Disapproved Proposals

No proposals were disapproved during the month of July.

6. Withdrawn Proposals

No proposals were withdrawn during the month of July.

IV. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments.)

Dated: September 29, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–24947 Filed 10–6–95; 8:45 am]

BILLING CODE 4120–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Preliminary)]

Clad Steel Plate From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–739 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of clad steel plate, provided for in subheading 7210.90.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 13, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by November 20, 1995.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 29, 1995, by Lukens Steel Company, Coatesville, PA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on October 20, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than October 18, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 25, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a

document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 4, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–25042 Filed 10–6–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32742]

RailTex, Inc.—Acquisition of Control Exemption—Dallas, Garland & Northeastern Railroad, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission under 49 U.S.C. 10505 exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.,* the acquisition of control by RailTex, Inc. of Dallas, Garland & Northeastern Railroad, Inc. (DGNO) subject to standard labor protective conditions. RailTex presently controls 15 class III rail carriers located in 20 states. DRGO became a carrier in 1992 pursuant to exemptions in Finance Docket No. 32014 to lease and operate Missouri Pacific Railroad Company lines in Texas, and Finance Docket No. 32015 to operate via trackage rights over Dallas Area Rapid Transit lines. At that time, DGNO was placed into an independent voting trust, which RailTex seeks to dissolve by acquiring control of DGNO.

DATES: This exemption will be effective on November 9, 1995. Petitions to stay must be filed October 20, 1995. Petitions to reopen must be filed by October 30, 1995.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32742 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, D.C. 20423; and (2) Petitioner's representative: Patricia E. Dietrich, Slover & Loftus, 1224 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: September 27, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25025 Filed 10–6–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32700]

JP Rail, Inc., d/b/a Southern Railroad Company of New Jersey—Notice of Exemption—Operation of Salem Branch Rail Line in Salem County, New Jersey

JP Rail, Inc., d/b/a Southern Railroad Company of New Jersey (JP Rail), has filed a notice of exemption to operate under contract the Salem Branch Rail Line, which is owned by the County of Salem, NJ. It is approximately 18.6 miles in length and includes: (a) the Salem Branch, between the connection with Consolidated Rail Corporation at approximately milepost 11.0 in Swedesboro, NJ, and approximately milepost 28.4 in the City of Salem, NJ; and (b) the Glass House Spur, between milepost 0.0 and milepost 1.2, in the City of Salem. The notice of exemption became effective on May 1, 1995.[1]

Any comments must be filed with the Commission and served on: John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

Decided: September 29, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–25027 Filed 10–6–95; 8:45 am]

BILLING CODE 7035–01–P

[1] On May 5, 1995, West Jersey Railroad Co. (West Jersey), the line's previous operator, petitioned to reject or revoke the notice of exemption. On August 22, 1995, it requested permission to withdraw its petition because a settlement had been reached. Permission to withdraw will be granted. West Jersey had been authorized to operate this line in *Pioneer Railroad Company, Inc., West Jersey Railroad Division—Lease and Operation Exemption—West Jersey Shortline, Inc.,* Finance Docket No. 31334 (ICC served Oct. 14, 1988).

JP Rail has requested that the exemption be made effective on May 1, 1995, the date the notice of exemption was filed, and not 7 days later as provided under 49 CFR 1150.32(b). It has stated that immediate effectiveness was necessary because, absent JP Rail's service, shippers would have been left stranded with undelivered loaded cars. JP Rail's request will be granted; the effective date of the exemption will be May 1, 1995.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *BASF Corporation of America, et al.*, Civil Action No. 95–2244, has been lodged with the United States District Court for the Central District of Illinois on September 29, 1995.

The Consent Decree resolves the claims alleged against BASF Corporation of America, and OXY USA Inc., under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* The proposed Consent Decree provides for the payment by these settling parties of $142,228 of the United States' unrecovered response costs and estimated future oversight costs at the Cross Brothers Pail (Pembroke) Site (''Site''), in Pembroke Township, Kankakee County, Illinois. The proposed Consent Decree also provides for the payment by these settling parties of civil penalties of $144,000 for their alleged failure to perform response activities at the Site pursuant to an administrative order issued by the United States Environmental Protection Agency.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *BASF Corporation of America, et al.*, D.J. Ref. 90–11–2–477A.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Central District of Illinois, 201 S. Vine Street, Room 226, Urbana, Illinois 61801, at the Office of Regional Counsel, United States Environmental Protection Agency,

Region V, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction costs) payable to the ''Consent Decree Library.''

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–24960 Filed 10–6–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on September 29, 1995, a proposed Consent Decree in *United States, et al.* v. *Borough of Plum, et al.,* Civil Action No. 93–370, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint, filed by the United States on March 11, 1993, seeks injunctive relief and civil penalties under Section 309 of the Clean Water Act, 33 U.S.C. 1319. The Commonwealth of Pennsylvania intervened in the action as a plaintiff. The plaintiffs' complaints allege that the Borough of Plum and the Plum Borough Municipal Sewer Authority (now known as the Plum Borough Municipal Authority) violated the Clean Water Act and the Pennsylvania Clean Streams Law by, among other things, discharging raw sewage into Abers Creek, discharging from the Holiday Park Sewage Treatment Plant in violation of a discharge permit, and improperly operating and maintaining the Holiday Park Sewage Treatment Plant.

Under this Consent Decree, both defendants will pay a civil penalty of $180,000 for their past violations. In addition, the Plum Borough Municipal Authority will implement appropriate injunctive relief, including the construction of equalization tanks that will retain raw sewage so that it can be treated and discharged from the Holiday Park Sewage Treatment Plant rather than discharged directly into Abers Creek.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States, et al.* v. *Borough of Plum, et al.,* DOJ Ref. #90–5–1–1–3960.

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, 14th Floor Gulf Tower, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219; U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 199107; and at the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–24961 Filed 10–6–95; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 108–95]

Privacy Act of 1974; Privacy Act Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Department components have reviewed their Privacy Act systems of records to identify any minor changes that will clarify and/or more accurately describe their systems of records. As a result, the Antitrust Division, the Executive Office for Immigration Review, the Immigration and Naturalization Service (INS), and the Justice Management Division are republishing a total of 14 systems of records. In addition, both the Executive Office for Immigration Review and the INS are publishing a current appendix of office locations.

For public convenience, all changes have been italicized and a table of contents precedes the republication below.

Dated: September 18, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

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JUSTICE/ATR–003

SYSTEM NAME:

Index of Defendants in Pending and Terminated Antitrust Cases.

SYSTEM LOCATION:

U.S. Department of Justice: *Liberty Place, Suite 200,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws.

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included in information is proper case name, the judicial district and number of the case, and the date filed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this index system exists under 28 U.S.C. 522 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use of this cross index system is generally made by Department personnel for reference to proper case name. In addition a compilation of antitrust cases filed is prepared as needed showing the names of all defendants in pending civil and criminal Government antitrust cases. This compilation is utilized within the Department and occasionally distributed to other Government agencies for reference and statistical purposes.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained on index cards.

RETRIEVABILITY:

Information in the system is retrieved by reference to the name of individual or corporate defendants in antitrust cases.

SAFEGUARDS:

Information contained in the system is unclassified and of a public nature. During working hours access to the index is monitored by Antitrust Division personnel; during non-duty hours the area in which the system is maintained is locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Freedom of Information Act/ Privacy Act Unit; Antitrust Division; U.S. Department of Justice; Liberty Place, Suite 200, Washington, DC 20530.*

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access to a record from this system shall be in writing and be clearly identified as a ''Privacy Access Request''. Included in the request should be the name of the defendant in pending or terminated Government antitrust litigation. Requesters should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this index are complaints filed under the antitrust laws by the United States and from Department records relating to such cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR–004

SYSTEM NAME:

Statements by Antitrust Division Officials (ATD Speech File).

SYSTEM LOCATION:

U.S. Department of Justice, *Liberty Place, Suite 200,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of the Antitrust Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record for each public statement or speech issued or made by employees of the Antitrust Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel for the identification of the subject matter of and persons originating public statements by Antitrust Division employees; such reference is utilized in aid of compliance with requests from the public and within the agency for access to texts of such statements.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on

behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the index system is maintained on index cards.

RETRIEVABILITY:

This reference index utilizes name of present and former employees making or issuing statements as well as the subject matter or title of the statement.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours personnel monitor access to this index; the area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Freedom of Information Act/ Privacy Act* Unit, Antitrust Division, U.S. Department of Justice, *Liberty Place, Suite 200,* Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a ''Privacy Access Request''. Included in the request should be the name of the Antitrust Division employee making or issuing a public statement. Requesting should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those records reflecting public statements issued or made by Antitrust Division employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR–007

SYSTEM NAME:

Antitrust Division Case Cards.

SYSTEM LOCATION:

U.S. Department of Justice, *Liberty Place, Suite 200,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the Untied States under the antitrust laws where the defendant's name appears in the case title.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included information is proper case name, the judicial district, number of the case, the commodity involved, each alleged violation, the section of the Antitrust Division responsible for the matter, and the disposition of the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel. It is utilized for referrals to case names, the preparation of speeches and to aid in determinations of the antitrust histories of companies.

A record maintained in this system, or any facts derived thereform, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antritrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is maintained on index cards.

RETRIEVABILITY:

Information is retrieved by case name.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. This area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Freedom of Information Act/ Privacy Act* Unit, Antitrust Division. U.S. Department of Justice, *Liberty Place, Suite 200* Washington DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a ''Privacy Access Request.'' Included in the request should be the name of the defendant appearing in the title of the pending or terminated Government antitrust litigation. Requester should indicate a return address. Requests will be directed to the System Manager above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the

index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to be information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those records reflecting litigation conducted by the Antitrust Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE–ATR–008

SYSTEM NAME:

Freedom of Information/Privacy Requester/Subject Index File

SYSTEM LOCATION:

U.S. Department of Justice, *Liberty Place, Suite 200,* Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested information under the Freedom of Information and Privacy Acts from files maintained by the Antitrust Division and individuals about whom material has been requested under the above acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a record of every FOIA/PA request made, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Division personnel for the identification of the subject matter of and persons originating Freedom of Information and Privacy Act requests. Such reference is utilized in aid of access to files, maintained by the Freedom of Information and Privacy Unit, for purposes of reference to requests on appeal, questions concerning pending or terminated requests, and compliance with requests similar or identical to past requests.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from the systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) The Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Request files are retrieved by case number or through a cross reference to the manual and automated indexes which are accessed by name. Summary data on requests received through July 31, 1983, is retrieved from the index cards; summary data as of August 1, 1983, is retrieved from magnetic disks and tapes. Summary data consists of such data elements as name of requester, date and subject of request, date assigned, response date (and a brief description of the response), case number, and date appealed, if applicable.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. The area is locked during non-duty hours. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information and Privacy Acts Control Officer, Antitrust Division, U.S. Department of Justice, *Liberty Place, Suite 200,* Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

RECORD ACCESS PROCEDURE:

Request for access to a record from this system should be made in writing and be clearly identified as a ''Privacy Access Request.'' Included in the request should be the name of the individuals having made the Freedom of Information request and/or the individual about whom the records were requested. Requesters should indicate a return address. Requesters will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of the information maintained in the system are those records derived from the receipt and processing of Freedom of Information and Privacy Act requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has examined this system of records from subsections (c)(3), (d), (e)(4) (G) and (H), and (f) of the Privacy Act. This system is exempted pursuant to 5 U.S.C. 552a(k)(2) to the extent that the records contained in the system reflect Antitrust Division law enforcement and investigative information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register**.

JUSTICE/ATR–014

SYSTEM NAME:

Civil Investigative Demand (CID) Tracking System, (JUSTICE/ATR–014).

SYSTEM LOCATION:

Information Systems Support Group, Antitrust Division, Department of Justice, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001.

CATEGORIES OF INDIVIDUALS COVERED:

Recipients of Antitrust Division (ATD) CID's in connection with certain ATD civil investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The CID number, the name of the CID recipient, the name of the company that employs the CID recipient, the date of CID, the type of CID (documentary, interrogatory or oral), the Department of Justice file number for the investigation and/or the title or subject of the previous investigation for which the CID was issued, and a reference indicating whether a matter was litigated as a result of information obtained by CID.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained pursuant to 28 U.S.C. 522, 44 U.S.C. 3101, and 28 CFR 0.40(a).

PURPOSE OF THE SYSTEM:

The proposed system contains information relating to the issuance of CID's (CID's require the production of documents and/or answers to written interrogatories, or oral testimony in connection with certain ATD civil investigations.) The system will be used by ATD to determine whether a party has been the recipient of a CID during a previous investigation(s), to identify the title (or nature) of that investigation(s), and to determine whether that individual should be issued a CID in an ongoing investigation(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Where ATD has reason to believe that information from this system of records, *e.g.,* names of individuals who are potential sources of information, may assist another agency (whether Federal State, local or foreign) in the conduct of its investigation(s) the information may be disclosed to such agency to provide that agency with or to assist the agency in identifying essential investigative leads.

Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department or any of the Department's components or its subdivisions; any Department employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or its subdivisions.

Records or information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Records or information may be disclosed as is necessary to respond to congressional inquiries on behalf of constituents

Records may be disclosed to the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of title 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this system are stored in a computer database.

RETRIEVABILITY:

Records are retrieved by the name of the individual who has been issued a CID.

SAFEGUARDS:

The information stored on the computer database is password-protected. Passwords and user ID's are issued to authorized ATD employees only on a need-to-know basis.

RETENTION AND DISPOSAL:

Proposed plans for the retention and disposal of these records are being reviewed by the Department. Upon submission to and approved by the NARA, this system notice will be revised to identify the appropriate General Records Schedule that will govern the disposition of these records.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Chief, Information Systems Support Group, Antitrust Division, Department of Justice, Judiciary Center Building, room 11852, 555 4th Street, NW, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer, Antitrust Division, Department of Justice *Liberty Place, Suite 200* Washington, DC 20530. Clearly mark the letter and envelop ''FOIA/PA Request.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope ''FOIA/PA Request.'' Clearly indicate the name of the requester, name of the individual for which information is sought and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the FOIA/PA Officer listed above and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer listed above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelop ''FOIA/PA Request.''

RECORD SOURCE CATEGORIES:

Employers of CID recipients, or other investigative sources, who may provide the names of potential CID recipients; the individuals covered by the system; and records generated by virtue of the issuance of CID's.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/EOIR–001

SYSTEM NAME:

Records and Management Information System (JUSTICE/EOIR–001).

SYSTEM LOCATION:

Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041. The system is also located in EOIR field offices (see appendix identified as JUSTICE/EOIR–999).

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains case-related information pertaining to aliens and alleged aliens brought into the immigration hearing process, including certain aliens previously or subsequently admitted for lawful permanent residence.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the name, file number, address and nationality of aliens and alleged aliens, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens or lawful permanent residents brought into the administrative adjudication process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority granted the Attorney General pursuant to 44 U.S.C. 3101 and 3103 and to fulfill the legislative mandate under 8 U.S.C. 1103, 1226 and 1252. Such authority has been delegated to EOIR by 8 CFR part 3.

PURPOSE(S):

Information in this system serves as the official record of immigration proceedings. EOIR employees use the information to prepare, process and track the proceedings. The information is further used to generate statistical reports and various documents, i.e., hearing calendars and administrative orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disseminated to the Department of State; Federal courts; Members of Congress; the alien or alleged alien's representative or attorney of record; and, to Federal, State and local agencies. Information is disseminated to the Department of State, pursuant to 8 CFR 208.11, to allow its preparation of advisory opinions regarding applications for political asylum; to the Federal courts to enable their review of EOIR administrative decisions on appeal; to Members of Congress to respond to constituent inquiries; and, to the representative or attorney of record to ensure fair representation. Finally, in any claim in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information, including investigatory information, may be disseminated to the appropriate Federal, State or local agency charged with the responsibility of investigating or prosecuting such violation or with enforcing or implementing such law.

Release of information to the news media and the public: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular matter would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in the system, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from the system of records may be disclosed to the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in file cabinets. A subset of the records is maintained on fixed disks or removable disk packs which are stored in file cabinets. All records are stored in secured EOIR office space.

RETRIEVABILITY:

Manual records are indexed by alien file number. Automated records are retrievable by a variety of identifying data elements including, but not limited to, alien file number, alien name and nationality.

SAFEGUARDS:

Information maintained in the system is safeguarded in accordance with Department of Justice rules and procedures. Record files are maintained in file cabinets accessible only to EOIR employees. Automated information is stored on either fixed disks or removable disk packs which are stored in cabinets. Only EOIR employees in possession of specific access codes and passwords will be able to access automated information. All manual and automated records and mediums are located in EOIR office space accessible only to EOIR employees and locked during off-duty hours.

RETENTION AND DISPOSAL:

Record files are retained for six months after the final disposition of the case, then forwarded to regional Federal Records Centers. Automated records are maintained in EOIR field office data, bases for ninety days after final disposition, then transferred to the host computer at EOIR headquarters and retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESSES:

General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager listed above.

RECORD ACCESS PROCEDURES:

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 522a (k)(1) and (k)(2). Make all request for access to those portions not so exempted by writing to the system manager identified above. Clearly mark the envelope and letter ''Privacy Access Requests'': provide the full name and notarized signature to the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and, a return address.

CONTESTING RECORD PROCEDURE:

Direct all requests to contest or amend information maintained to the system manager listed above. State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Department of Justice offices and employees, primarily those of the Immigration and Naturalization Service; the Department of State and other Federal, State and local agencies; and the parties to immigration proceedings and their witnesses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain records of this system from the

access provisions of the Privacy Act (5 U.S.C. 552a(d)) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Rules have promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/EOIR–999

SYSTEM NAME:

Appendix to Executive Office for Immigration Review System of Records.

EOIR field offices are located as follows:

Executive Office for Immigration Review, Immigration Court, 901 N. Stuart Street, Room 1300, Arlington, VA 22203.
Executive Office for Immigration Review, Immigration Court, 77 Forsyth Street, SW., Atlanta, GA 30303.
Executive Office for Immigration Review, Immigration Court, U.S. Appraisers Bldg., 103 South Gay Street, Room 702, Baltimore, MD 21202.
Executive Office for Immigration Review, Immigration Court, JFK Federal Building, 15 New Sudbury Street, Room 320, Boston, MA 02203.
Executive Office for Immigration Review, Immigration Court, 130 Delaware Avenue, Suite 410, Buffalo, NY 14202.
Executive Office for Immigration Review, Immigration Court, Federal Building, Room 646, 536 South Clark Street, Chicago, IL 60605–1521.
Executive Office for Immigration Review, Immigration Court, Main Tower, Suite 700, 1200 Main Street, Dallas, TX 75202.
Executive Office for Immigration Review, Immigration Court, Byron G. Rogers Federal Building, 1961 Stout Street, Room 1403, Denver, CO 80294.
Executive Office for Immigration Review, Immigration Court, 1115 N. Imperial Avenue, 1st Floor, El Centro, CA 92243.
Executive Office for Immigration Review, Immigration Court, 625 Evans Street, Room 148A, Elizabeth, NJ 07201.
Executive Office for Immigration Review, Immigration Court, 1545 Hawkins Blvd., Suite 205, El Paso, TX 79925.
El Paso Service Processing Center, 8915 Montana, El Paso, TX 79925.
Federal Detention Center, 1705 East Hanna Road, Suite 366, Eloy, AZ 85231.
Executive Office for Immigration Review, Immigration Court, 3260 North Pinal Parkway Avenue, Florence, AZ 85232.
Executive Office for Immigration Review, Immigration Court, GSA Center, 651 Federal Drive, Suite 111–14, Guaynabo, PR 00965.
Executive Office for Immigration Review, Immigration Court, 201 East Jackson St., Harlingen, TX 78550.
Executive Office for Immigration Review, Immigration Court, 2320 La Branch Street, Room 2235, Houston, TX 77004.
Houston Service Processing Center, 15850 Export Plaza Drive, Houston, TX 77032.
Laredo Contract Facility, Route 4, P.O. Box 125A, Laredo, TX 78041.
Laredo Service Processing Center, P.O. Box 440110, Laredo, TX 78044–0110.
Executive Office for Immigration Review, Immigration Court, 300 N. Los Angeles Street, Room 2001, Los Angeles, CA 90012.
Port Isabel Service Processing Center, Route 3, Box 341, Building 37, Los Fresnos, TX 78566.
Executive Office for Immigration Review, Immigration Court, 155 S. Miami Avenue, Room 800, Miami, FL 33130.
Krome North Service Processing Center, 18201 SW. 12th Street, Miami, FL 33194.
Ulster Correctional Facility, Berme Road, P.O. Box 800, Napanoch, NY 12458.
Executive Office for Immigration Review, Immigration Court, 18 Rector St., Suite 500–R, Newark, NJ 07102.
Executive Office for Immigration Review, Immigration Court, 26 Federal Plaza, Room 13–130, New York, NY 10278.
Executive Office for Immigration Review, Immigration Court, 201 Varick Street, Room 350, New York, NY 10014.
Federal Deportation Center, Immigration Court, 1900 East Whately Rd., Oakdale, LA 71463.
Executive Office for Immigration Review, Immigration Court, Federal Building, 230 North First Avenue, Room 3114, Phoenix, AZ 85025.
Executive Office for Immigration Review, Immigration Court, U.S. Post Office/Courthouse Building, 615 E. Houston Street, Room 598, San Antonio, TX 78205–2040.
Executive Office for Immigration Review, Immigration Court, 401 West A Street, Suite 800, San Diego, CA 92101–7904.
Executive Office for Immigration Review, Immigration Court, 550 Kearny Street, Suite 800, San Francisco, CA 94108.
INS San Pedro Service Processing Center, 2001 Seaside Avenue, Room 136, San Pedro, CA 90731.
Executive Office for Immigration Review, Immigration Court, Key Tower Building, Suite 3150, 1000 Second Avenue, Seattle, WA 98104.

JUSTICE/INS–006

SYSTEM NAME:

Alien Address Reports.

SYSTEM LOCATION:

Immigration and Naturalization Service [INS]. *Headquarters.* 425 I Street NW., Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens *that were* required to report addresses *in 1980:* nonimmigrants; aliens lawfully admitted for permanent residence; aliens granted political asylum; refugees and other conditional entrants. (*The annual January requirement was terminated effective January 1, 1981.*)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index and copies of Form I–53. Alien Address Report Card for the year 1980, that provided the following alien identification information: last name, first, and middle; address in the U.S.; alien registration number (A-file No.); place entered the U.S.; date entered the U.S.; sex; country of birth, date of birth; country of citizenship; social security number (if any); occupation; employer; and signature and date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103.265 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1305, and 1380).

PURPOSE(S):

The records in this system are used for research and historical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of the individual who is the subject of the record.

B. To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

INS *Headquarters* maintains a microfilm file of 1980 I–53 reports.

RETRIEVABILITY:

Records in the system are indexed and retrievable by name of the individual.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in building, under security guard, and access to premises is by official identification. Access to automated systems is controlled by restricted passwords for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Microfilm copies, index, reports, and magnetic tapes when no longer required will be offered to NARA for permanent detention in accordance with INS schedule NC1–85–78–8.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Records, Office of Examinations, INS,

Headquarters, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address your inquiries to the system manager identified above.

RECORD ACCESS PROCEDURE:

Make all requests for assess in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURE:

Direct all requests to contest or amend information in the records to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide A-file number and/or full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from *the individuals covered by the system.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS—009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), 425 I Street NW., Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records include index and file locator data such as last and first name, alien registration number (or ''A-file'' number), date and place of birth, social security account number, date coded status transaction data and immigration status classification, verification number, and an employment eligibility statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 101 and 121 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1360, 8 U.S.C. 1324a, 20 U.S.C. 1091, 42 U.S.C. 1436a, 42 U.S.C. 1320b–7, and Executive Order 12781.

PURPOSE:

This system of records is used to verify the alien's immigrant, nonimmigrant, and/or eligibility status for any purpose consistent with INS statutory responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Federal, State, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies/contractors to make decisions concerning the (1) hiring or retention of an employee; (2) issuance of a security clearance; (3) reporting of an investigation of an employee; (4) letting of a contract; (5) issuance of a license or grant; or (6) determination of eligibility for a Federal program or other benefit. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. INS will assign appropriate access codes for remote access through secured terminals to agencies which are to perform their own automated verification. Records may also be disclosed to these agencies, or contractors operating on their behalf, for use in computer matching programs for the purpose of verifying an alien's immigrant status or non-immigrant status and/or eligibility for the purpose of making Federal program benefit eligibility determinations.

B. To employers for verifying the employment eligibility of aliens to work in the United States in compliance with employer sanctions of the 1986 Immigration Reform and Control Act. Employers are assigned secure access codes and will have access through touch-tone telephone and/or point of sale equipment.

C. To the private contractor for maintenance and for other administrative support operations (e.g., preparing for INS management reimbursable cost reports etc. based on user access), to the extent necessary to perform such contract duties.

D. To other Federal, State, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

E. To the news media and the public pursuant to 23 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff action upon the Member's behalf when the Member or staff request the information on behalf of and at the request of the individual who is the subject of the record.

G. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice Orders governing security of automated records and Privacy Act systems of records. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

A request for disposition authority is pending the approval of NARA.

SYSTEM MANAGER AND ADDRESS:

The *Director, SAVE Program*, Immigration and Naturalization Service, 425 I Street NW., Washington, DC., is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked ''Privacy Act Request.'' The requester shall include the name,

date and place of birth of the person whose record is sought and if known the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the System Manager or to the INS office that maintains the file. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS–010

SYSTEM NAME:

Freedom of Information Act/Privacy Act (FOIA/PA) Case Tracking and Reporting System.

SYSTEM LOCATION:

Headquarters Regional, *Service Centers, Administrative Centers,* District, and other Files Control Offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals making requests, individuals designated to receive responses, and individuals whose records are requested by others under the provisions of the Freedom of Information Act and/or Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information extracted from FOIA/PA requests and the documentation provided by INS personnel of actions taken on the requests. The data base consists of data such as the names of requesters, record subjects, or persons designated to receive responses to requests, mailing addresses to send responses; date of receipt of requests; assigned request control numbers; date responses are due; interim and final action(s) taken on requests and the date(s) of final and/or interim actions; the persons or offices assigned action on requests; the types of requests; fee data; alien file numbers; specific exemptions applied to denial actions; offices where requests are transferred for referral or consultations; and the names/titles of officials responsible for denials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is maintained pursuant to 44 U.S.C. 3101 and 8 U.S.C. 1103 to implement the provisions of 5 U.S.C. 552 and U.S.C. 552a.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records is used to record, control, and determine the status of FOIA/PA requests, and produce statistical reports required by both Acts. Information from the system may be provided to the record subject, the requester or other persons designated by the requester, and to other Federal agencies and Department of Justice components receiving INS referrals or with whom consultations are required in order to complete the processing of requests. All other uses are internal within INS.

Release of information to Members of Congress: Information in this system may be disclosed as is necessary to appropriately respond to congressional inquires on behalf of constituents.

Release of information to the National Archives and Records Administration (NARA) and the General Services Administration (GSA): A record from this system of records may be disclosed as a routine use to the NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records may be stored on magnetic disks and tapes.

RETRIEVABILITY:

Records are indexed and retrieved by control number or by name of requester or subject.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice Security regulations governing Privacy Act systems of records. Access to the automated system is controlled by restricted password from remote terminals in secured areas.

RETENTION AND DISPOSAL:

Records are maintained *and disposed in accordance with NARA General Records Schedule 14 Items 11 through 15 for FOIA and 22 through 26 for PA.*

SYSTEM MANAGER(S) AND ADDRESS:

Director, Files and Forms Management, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORDS ACCESS PROCEDURE:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail, the envelope and letter shall be clearly marked ''FOIA/PA Request.'' Requests should be submitted to the INS office where the request *was initially sent,* or to the Immigration and Naturalization Service, Attention: FOIA/PA Section 425 I Street, NW., Washington, DC 20536. The requester shall include the control number or name of the requester and/or name of the record subject, and the date and place of submsision of the request. The requester shall also provide a return address for response to the inquiry.

CONTESTING RECORD PROCEDURE:

Any individual desiring to contest or amend information maintained in the system should direct his request to the system manager or to the INS office where the request which is the subject of the inquiry was submitted. The request should state clearly what information is being contested, the reason(s) for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Individuals requesting information under FOIA/PA and INS officials and employees engaged in processing or making determinations on FOIA/PA requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS–012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information

about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1251, and 1252.

PURPOSE(S):

The system provides INS with an automated data base which assists in the deportation or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or date of birth. A-file number, or by alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

Deportable alien case control and detention records are marked closed and retained for statistical purposes through the end of the fiscal year. Closed cases are archived and stored in the database separate from the active cases. A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register.** Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Request.'' The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from ''The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System, (CIS), JUSTICE/INS–001A.'' Information may also come from the alien, the alien's attorney/representative, INS officials, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS—016

SYSTEM NAME:

Secondary Verification Automated Log (SVAL).

SYSTEM LOCATION:

Headquarters. Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS—999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens apply for Federal entitlements for whom INS receives a Form G–845, Document Verification request, which is submitted by Federal and State entitlements agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary paper records include Form *G–845* as submitted by the entitlement agencies and contain the following data: Alien name and identifying number, name of the entitlement agency, and immigration status as reported by the alien applicant. INS will update Form G–845 with immigration status information and return it to the entitlement agency. However, identical data, together with Form G–845 disposition data, will be recorded and maintained by INS on hard and floppy disks as a record of secondary verifications made by the entitlement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b–7.

PURPOSE(S):

The SVAL JUSTICE/INS–016 system is used to maintain records of a second attempt by entitlement agencies to verify immigration status by comparing paper documents (known as the ''secondary verification''). Secondary verification is conducted where eligibility for certain benefits was not or could not be confirmed through direct access to an INS automated database entitled ''Alien Status Verification Index'' (ASVI), JUSTICE/INS–009 (known as the ''primary verification''). Specifically, INS is asked to compare the entitlement agency's paper record, Form G–845 (which contains information provided by the immigrant aliens applying for Federal entitlements), with INS paper records; complete the Form relative to immigration status; and return it to the entitlement agency. The SVAL, JUSTICE/INS–016 system is maintained to track the interim and final disposition of the second request to verify eligibility which may require referral to an INS district office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To a Federal, State, or local government agency in response to a request for information on the status and/or disposition of a document verification request submitted by that agency.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Until they have been processed and returned to the entitlement agency, Forms G–845 are kept in a card index file. Data extracted from the form is stored in personal computers on hard and floppy disks.

RETRIEVABILITY:

These records are retrieved by serial number, A-file number and/or name of immigrant applicant.

SAFEGUARDS:

INS offices are located in buildings under guard and access to the premises is by official identification. Access to personal computers is limited to INS employees and access to records in this system is further restricted through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Form G–845 is retained long enough to complete the verification, at which time the form is returned to the entitlement agency. Completed verifications are archived on to a storage disk monthly and destroyed five (5) years after the last month contained on the disk. Disposition authority is INS Disposition Schedule NI–85–90–3.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Office of Records, Office of Examinations, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries about the system in writing to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOLA/PA) Officer at the nearest INS Office, or in the INS office maintaining the desired records (if known) by using the List of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is subject of the record, and a return address.

RECORD SOURCE CATEGORIES:

Form G–845, Request for Document Verification (furnished by entitlement agencies) and INS immigration status records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS—018

SYSTEM NAME:

Automated Data Processing Equipment Inventory Management System (AIMS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS—999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

INS employees who are responsible for the procurement and management of automated data processing equipment (ADPE); and, contractors who have been assigned ADPE to use in developing software programs for INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

An inventory reflecting (1) the ADPE procurement and management activities of INS employees and (2) the identity of contractors using such equipment to develop software programs for INS. The inventory will include information relating to the kinds and quantity of ADPE equipment procured, the disposition of such equipment and the

purpose for such disposition, and/or (where appropriate) information relating to the reassignment of responsibility for the equipment. Such reassignment may be made based upon the resignation or transfer of responsible employees, upon the expiration of the subject contracts, or otherwise upon the need to track the status or disposition of the equipment and identify the management employee responsible therefor, e.g., removal of the equipment from the inventory for repair purposes. Records will include identifying information such as INS employee or contractor name/title, social security number, office location/address and phone number, company name of the contractor, and other relevant information such as the level of responsibility assigned to the INS employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103 and 40 U.S.C. 483.

PURPOSE(S):

To provide accountability records relating to (1) INS employee management and disposition of ADPE equipment and (2) contractor use of such equipment in developing software programs for INS. The records will be used by management to track and account for the procurement and disposition of all ADPE, and thus ensure the integrity and security of the ADPE inventory.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. Where there is an indication of a violation or potential violation of law (whether civil, criminal, or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign) charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute and/or the rule, regulation or order issued pursuant thereto.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in a data base on magnetic disk.

RETRIEVABILITY:

These records may be retrieved by INS employee and contractor name, *machine serial* number, company name, or office location.

SAFEGUARDS:

The records are accessed from mainframe computer terminals located in INS offices that are locked during non-duty hours. Access is obtained through terminals which require the use of restricted passwords and user identification numbers. Only designated *personnel* have access to AIMS for creating and updating ADPE Inventory records within their jurisdiction.

RETENTION AND DISPOSAL:

A schedule for the retention and disposal of these records is under review and development.

SYSTEM MANAGER AND ADDRESS:

The Servicewide system manager is the *Associate Commissioner, Information Resources Management,* Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the full name, social security number, user identification number, and notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter ''Privacy Act Request.'' The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

The individuals covered by the system are the record sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS–019

SYSTEM NAME:

Employee Assistance Program (EAP) Treatment Referral Records.

SYSTEM LOCATION:

EAP Coordinator records are located at Immigration and Naturalization Service (INS) headquarters and in all INS regional offices. Headquarters and regional office addresses are provided in a published appendix to INS systems identified as Justice/INS–999. EAP contract facility/provider records are located in the offices of the providers throughout the Western Region and, in part, the eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine). Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former INS employees who have sought counseling and/or have been referred to the INS EAP Coordinators or directly to INS EAP contract/facility provider for counseling and/or treatment. To the limited degree that counseling and treatment may be provided to family members of these employees, these individuals, too, may be covered by the system. With respect to records maintained by the EAP Coordinator (identified in item A, below), this system covers all INS employees (and family members); with respect to the clinical records (identified in item B below), it covers all INS employees (and family members) of the Western Region and, in part, the Eastern Region (i.e., the city of Hartford, Connecticut and the States of Vermont and Maine).

CATEGORIES OF RECORDS IN THE SYSTEM:

Included are the EAP Coordinator records, i.e., those of INS headquarters employees and all INS regional offices; also included are the contract facility/provider records (i.e., clinical records) of only the Western Region and, in part the Eastern Region (i.e., the city of Hartford, Connecticut and the States of

Vermont and Maine).[1] EAP records include those maintained by the EAP Coordinators and by the EAP contract facility/providers as follows:

A. EAP Coordinator records include records which may assist in managing and monitoring the referral, attendance, and progress of the employee. Examples: Personal identification data; home addresses and/or phone numbers; insurance data; supervisors' phone numbers; notes on referrals to the contract facilities; addresses of treatment facilities or individuals providing treatment; notes regarding attendance and progress made; leave records; information on confirmed unjustified positive drug tests provided by the Drug Free Workplace Program and the Medical Review Officer under E.O. 12584; supervisory or personnel documents on workplace problems or performance; abeyance agreements (made to mitigate discipline based upon treatment); and written consent forms, together with any information which may be provided pursuant to written consent.

B. EAP contract facility records include, where appropriate, those which are maintained by the EAP Coordinator. In addition, they include any records which may assist in diagnosing, evaluating, counseling, and/or treating the employee. Examples: Pertinent psychosocial, medical, and employment histories; medical tests or screenings, including EAP drug and alcohol tests and information on confirmed unjustified positive drug tests generated by the staff of the Drug Free Workplace Program and the Medical Review Officer and provided by the EAP Coordinator or the employee's supervisor; notes and documentation on counseling; treatment and rehabilitation plans as well as behavioral improvement plans; and records of referrals by the EAP contract facility to community treatment resources. For example, employees requesting legal, financial or other assistance not related to psychological or medical health may be referred to the appropriate community resources (or subcontract providers). Where such referrals have been made, records from the subcontractor also may include relevant information related to counseling, diagnosis, prognosis, treatment, and evaluation, together with follow-up data. These records also include written consent forms used to manage referrals and the flow of information. Finally, records include account information such as contractor billings and INS payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.,* and 290ee, *et seq.*; 42 CFR part 2; Executive Order 12564; 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100–71, Sec. 503 (July 11, 1987).

PURPOSE:

The EAP is a voluntary program designed to assist the recovery of employees who are experiencing one or more of a variety of personal or behavioral problems (e.g., marital, financial, substance abuse). Records are maintained to document referral and participation in the EAP program; the nature and effects of the employee's personal or behavioral problem(s); efforts to counsel, treat, and rehabilitate the employee; and progress made in attaining his/her full recovery. Records may be used also to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[2] 5 U.S.C. 552a(b), permissive disclosures without individual consent, are as follows:

1. Where an employee has volunteered to participate in the EAP, and to the extent that it is appropriate, relevant, and necessary to enable the contractor to perform his counseling, treatment, rehabilitation, and evaluation responsibilities, INS will provide those records (identified in A, above as INS EAP Coordinator records, and which are primarily administrative in nature) to the contract facilities/providers who, on behalf of INS, operate that part of this system of records which covers the clinical records (identified in B. above).

2. Contract facilities/providers may disclose:

a. To appropriate State or local authorities to report, under State law, incidents of suspected child abuse or neglect.

b. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked file cabinets and a computerized environment.

RETRIEVABILITY:

Records are retrieved by a case number which is cross referenced to a name by the computer.

SAFEGUARDS:

In accordance with the requirements of 42 CFR 2.16, records are stored in a secure environment. Paper records of the EAP Coordinator are stored in a locked file cabinet in a locked room and in a personal computer which is password protected. Paper records of the EAP contract facility/provider are stored in locked files also and in computers which are password protected. In addition, all paper records, e.g., case files, billings and payment vouchers, are identified by case number only and cannot be identified by a name until they are cross-referenced by the computer system to a name.

Only the EAP Administrator, Coordinator or a designated staff member may access or disclose the records of the EAP Coordinator. Only a designated member of the EAP contract facility/provider may access and disclose records maintained by the facility/provider. Information maintained by the facility/provider will be disclosed to the EAP Administrator, Coordinator, the INS manager and/or supervisor only upon written consent of the individual. Further, no information in this system of records, whether maintained by the EAP Coordinator or by the EAP contract facility/provider, will be disclosed otherwise except with the written consent of the individual or as indicated under the routine use disclosure outlined in this notice.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning (General Records Schedules 26 and 36).

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, *Human Resources and* Development, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

[1] Clinical records of INS employees at headquarters and in the Northern and Southern Regions, and in the Eastern Region for those areas other than Hartford, Connecticut, the Boston District, and the States of Vermont, and Maine, are maintained by the Department of Health and Human Services, Public Health Service. Clinical records of INS employees in the Boston District, Eastern Region, are maintained by the Office of Personnel Management.

[2] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, INS will follow such restrictions. See 42 U.S.C. 290dd and 290ee.

NOTIFICATION PROCEDURE:

Same as record access procedures.

RECORDS ACCESS PROCEDURES:

Address all requests for access to EAP coordinator records to the system manager identified above. Address all requests for records maintained by the facility/provider of contract counseling services to that facility/provider. Addresses of these offices may be obtained by contacting the EAP Coordinators of the Western and Eastern Regional Offices. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in accordance with procedures outlined under Record Access Procedures. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Amendment Request.''

RECORD SOURCE CATEGORIES:

Records are generated by the employee who is the subject of the record; EAP Coordinators and EAP contract facilities/providers; the personnel office; and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS–999

SYSTEM NAME:

INS Appendix: List of principal offices of the Immigration and Naturalization Service.

Headquarters: Immigration and Naturalization Service; 425 ''I'' Street NW., Washington, DC 20536.

Regional Offices: Eastern Regional Office, 70 Kimball Avenue South, Burlington, VT 05403–6813.

Central Regional Office, Fort Snelling Fed. Bld., Room 400, Twin Cities, MN 55111–4007.

Western Regional Office, *24000 Avila Road.* Laguna Niguel, CA 92607–0080.

Regional Service Centers: Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479–0001.

Northern Service Center, *850 S Street.* Lincoln, NE 68508–1619.

Southern Service Center, P.O. Box 152122, Irving, TX 75015–0212.

Western Service Center, Post Office Box 30040, Laguna Niguel, CA 92607–0040.

Administrative Center: Eastern Administrative Center, 70 Kimball Avenue, Burlington, VT 05403–6813.

Southern Administrative Center, 7701 North Stemmons Freeway, Dallas, TX 75247–998.

Northern Administrative Center, Fort Snelling Fed. Bldg., Room 480, Twin Cities, MN 55111.

Western Administrative Center, 24000 Avila Road Laguna Niguel, CA 92677–8080.

District Offices in the United States:

Anchorage District Office, Michaelis Building, 1st Floor, 620 East 10th Avenue, Anchorage, AK 99501–7581.

Atlanta District Office, 77 Forsyth Street, SW, Room G–85, Atlanta, GA 30303.

Baltimore District Office, Equitable Bank Center, 12th Floor, Tower One, 100 South Charles Street, Baltimore, MD 21210.

Boston District Office, JFK Federal Building, Government Center, Boston, MA 02203.

Buffalo District Office, 68 Court Street, Buffalo, NY 14202.

Chicago District Office, 10 West Jackson Boulevard, Second Floor, Chicago IL 60604.

Cleveland District Office, Anthony J. Celebreze, Federal Office Building, 1240 East 9th Street, Room 1917, Cleveland, OH 44199.

Dallas District Office, 8101 North Stemmons Freeway, Dallas, TX 75247.

Denver District Office, 4730 Paris Street, Albrook Center, Denver, CO 80239–2804.

Detroit District Office Federal Building, 333 Mt. Elliott St., Detroit, MI 48207.

El Paso District Office, 700 E. San Antonio, El Paso, TX 79901.

Harlingen District Office, 2102 Teege Road, Harlingen, TX 78550.

Helene District Office Federal Building, Room 512, 301 South Park, Drawer 10036, Helene, MT 59626.

Honolulu District Office, 595 Ala Moana Boulevard, Honolulu, HI 96813.

Houston District Office, 509 North Belt, Houston, TX 77060.

Kansas District Office, 9747 N. Connant Avenue, Kansas City, MO.

Los Angeles District Office, 300 North Los Angeles Street, Los Angeles, CA 90012.

Miami District Office, 7880 Biscayne Boulevard, Miami, FL 33138.

Newark District Office Federal Building, 970 Broad Street, Newark, NJ 07102.

New Orleans District Office Postal Services Bldg., Room T–8005, 701 Loyola Ave., New Orleans, LA 70113.

New York District Office, 26 Federal Plaza, New York, NY 10278.

Omaha District Office, 3736 South 132nd Street, Omaha, NE 68144.

Philadelphia District Office, 1600 Callowhill Street, Philadelphia, PA 19130.

Phoenix District Office, 2035 North Central Avenue, Phoenix, AZ 85004.

Portland Maine District Office, 739 Warren Avenue, Portland, ME 04103.

Portland Oregon District Office, Federal Office Building, 511 NW., Broadway, Portland, OR 97209.

San Antonio District Office, U.S. Federal Building, 727 E. Durango, Suite A301, San Antonio, TX 78206.

San Diego District Office, 880 Front Street, San Ysidro, CA 92188.

San Francisco District Office, 630 Sansome Street, Appraisers Building, San Francisco, CA 94111.

San Juan District Office, P.O. Box 365068, San Juan, PR 00936–5068.

Seattle District Office, 815 Airport Way South, Seattle, WA 98134.

St. Paul District Office, 2901 Metro Drive, Suite 100 Bloomington, MN 55425.

Washington, DC District Office, 4420 North Fairfax Drive, Arlington, VA 22203.

Suboffices (Files Control Offices) in the United States:

Agana Office, 801 Pacific News Building, 238 O'Hara Street, Agana, GU 96910.

Albany Office, James T. Foley Federal Courthouse, 445 Broadway, Room 220, Albany, NY 12207.

Charlotte Office, 6 Woodlawn Green, Suite 138, Charlotte, NC 28217.

Charlotte Amalie Office, Federal District Court Bldg. PO Box 610, Charlotte Amalie, St. Thomas, VI 00801.

Cincinnati Office, J.W. Peck Federal Building, 550 Main Street, Room 8525, Cincinnati, OH 45202.

El Paso Intelligence Center, SSG Sims Street, Building 11339, El Paso, TX 79918–5100.

Hartford Office, Ribicoff Building, 450 Main Street, Hartford, CT 06103–3060.

Indianapolis Office, Gateway Plaza, 950 North Meridian, Suite 400, Indianapolis, IN 46204.

Las Vegas Office, Federal Building, U.S. Courthouse, 300 South Las Vegas Boulevard, Room 1430, Las Vegas, NV 89101.

Memphis Office, 245 Wagner Place, Suite 250, Memphis, TN 38103–3800.

Milwaukee Office, Federal Building, Room 186, 517 East Wisconsin Avenue, Milwaukee, WI 53202.

Norfolk Office, Norfolk Federal Building, 200 Granby Mall, Room 439, Norfolk, VA 23510.

Pittsburgh Office, 314 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Providence Office, Federal Building U.S. Post Office, Exchange Terrace, Providence, RI 02903.

Reno Office, *1351 Corporate Blvd.,* Reno, NV 89502.

St. Albans Office, PO Box 328, St. Albans, VT 05478.

St. Louis Office, R.A. Young Federal Building, 1222 Spruce Street, Room 1.100, St. Louis, MO 63101–2815.

Salt Lake City Office, 230 West 400 South Street, Salt Lake City, UT 84101.

Spokane Office, U.S. Courthouse Building, Room 691, Spokane, WA 99201.

Border Patrol Sector Headquarters:

Blaine Sector Headquarters, 1590 ''H'' Street, PO Drawer V, Blaine, WA 98230.

Buffalo Sector Headquarters, 231 Grand Island Boulevard, Tonawanda, NY 14150.

Del Rio Sector Headquarters, Qualia Drive, PO Box 2020, Del Rio, TX 78840.

Detroit Sector Headquarters, PO Box 32639, Detroit, MI 48232.

El Centro Sector Headquarters, 1111 North Imperial Avenue, El Centro, CA 92243.

El Paso Sector Headquarters, PO Box 9578, El Paso, TX 79986.

Grand Forks Sector Headquarters, 2320 South Washington Street, Grand Forks, ND 58201.

Harve Sector Headquarters, 2605 5th Avenue, SE, Harve, MT 59501.

Houlton Sector Headquarters, Rt. 1 Calais Rd., PO Box 706, Houlton, ME 04730.

Laredo Sector Headquarters, 207 W. Del Mar Boulevard, Laredo, TX 78041.

Livermore Sector Headquarters, 6102 9th St., Dublin, CA 94268.

Marfa Sector Headquarters, 300 Madrid Street, Marfa, TX 79843.

Mayaguez Sector Headquarters, Box 467, Ramey, PR 00604.

McAllan Sector Headquarters, 2301 South Main Street, McAllen, TX 78503.

Miami Sector Headquarters, 7201 Pembroke Rd., Pembroke Pines, FL 33023.

New Orleans Sector Headquarters, 3819 Patterson Drive, New Orleans, LA 70114.

San Diego Sector Headquarters *3752 Beyer Blvd., San Ysidro, CA 92073.*

Spokane Sector Headquarters, North 10710 Newport Highway, Spokane, WA 99218.

Swanton Sector Headquarters, Grand Avenue, Swanton, VT 05488.

Tucson Sector Headquarters, 1970 West Ajo Way, Tucson, AZ 85713.

Yuma Sector Headquarters, 350 First Street, Yuma, AZ 85364.

Border Patrol Academy:

DOJ/INS (FLETC) Artesia, 1300 West Richey Avenue, Artesia, NM 88210.

Officer Development and Training Facility, Building 64 FLETC Glynco, GA 31524.

District Offices in Foreign Countries:

Bangkok District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Box 12, APO San Francisco, CA 96346.

Mexico District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Room 118, PO Box 3087, Laredo, TX 78044.

Rome District Office, U.S. Immigration and Naturalization Service, c/o American Embassy, APO New York, NY 09794.

Suboffices (Files Control Offices) in Foreign Countries:

Athens Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Athens, Greece, PSC 108 Box 25 APO AE 09842.

Frankfurt Office, U.S. Immigration and Naturalization Service, American Consulate General, Frankfurt, Unit 25401 APO AE 09213.

Guadalajara Office, U.S. Immigration and Naturalization Service, Box 3088, Guadalajara Laredo, TX 70844–3088.

Hong Kong Office, U.S. Immigration and Naturalization Service, c/o American Consulate General, Hong Kong, PSC 464, Box 30, FPO AP 96522–0002.

London Office, U.S. Immigration and Naturalization Service, c/o American Embassy, London, England, PSC 801, Box 06, FPO AE 09498–4006.

Mexico Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Mexico City, Mexico, PO Box 3087, Room 118, Laredo, TX 78044.

Monterrey Office, U.S. Immigration and Naturalization Service, c/o American Consulate, PO Box 3098, Laredo, TX 78044–3098.

Moscow Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Moscow, USSR, PSC 77, APO AE 09721.

Nairobi Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Nairobi, Kenya Unit 64100, Box 21, APO AE 09831–4100.

New Delhi Office, U.S. Immigration and Naturalization Service, c/o American Embassy, New Delhi, India, Department of State, Washington, DC 20521–9000.

Rome Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Rome, Italy, PSC 59, APO AE 09624.

Seoul, Korea Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Seoul, Korea Unit 15550, APO AP 96205–0001.

Shannon Office, U.S. Immigration and Naturalization Service, c/o AER–RIANTA, Attn: Port Director, Shannon Airport, Shannon, Co., Clare, Ireland.

Singapore Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Singapore, FPO AP 96534.

Tijuana Office, U.S. Immigration and Naturalization Service, c/o American Consulate General, Tijuana, PO Box 439039, San Diego, CA 92143–9039.

Vienna Office, U.S. Immigration and Naturalization Service, c/o American Embassy, Vienna, Austria Unit 27937, Box 21, APO AE 09222.

JUSTICE/JMD–018

SYSTEM NAME:

Delegations of Procurement Authority, Justice/JMD–018.

SYSTEM LOCATION:

Management and Planning Staff, Department of Justice, *National Place Building, Room 1400, 1331 Pennsylvania Avenue,* NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Justice procurement personnel in the GS/GM 1102 and other series who are actively engaged in the acquisition process and who are or will be designated as contracting officers, or are authorized to obligate the Government contractually.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual delegations of procurement authority files will contain information on the employees grade/series, job title, employing bureau location, education, procurement experience and procurement-training, type of delegation, level of signatory authority, effective date of entry into the program and experience code *and any related correspondence.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 507, 509 and 510; 41 U.S.C. 257; 5 U.S.C. 301; 28 CFR 0.75(d) and 0.75(j); and Executive Order 12352.

PURPOSES:

Individual delegations of procurement authority files will be used to support a newly established Contracting Officer Standards Program which will serve as a basis to establish Department-wide training and experience standards for issuing contracting officer delegations and to ensure the standards are met. In addition, the files will be used by the Procurement Executive to manage and enhance career development of the Department's procurement work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the Department is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department to be arguably relevant to the litigation: The Department, or any of the Department's components or its subdivisions; any Department employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the Department determines that the litigation is likely to affect it or any of the Department's components or its subdivisions.

(2) Records or information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(3) Records or information may be disclosed as is necessary to respond to congressional inquiries on behalf of constituents.

(4) Records may be disclosed to the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of title 44 U.S.C. 2904 and 2906.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals of paper records are kept in standard file cabinets. Duplicates of original paper records will be stored

electronically in the Department's main frame computer.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Paper records are stored in metal filing cabinets and electronic records are stored on the Department's main frame computer. *Offices in the National Place Building are occupied during the day and are electronically secured at night.* Access to records is restricted to authorized personnel with official and electronic identification.

RETENTION AND DISPOSAL:

Files are maintained until the employee leaves the Department at which time paper records are destroyed and electronic records erased.

SYSTEM MANAGERS AND ADDRESS:

The system manager is the *Director, Management and Planning Staff*, Justice Management Division, Department of Justice, *National Place* Building, Room *1400, 1331 Pennsylvania Avenue,* NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Direct inquires to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope ''Freedom of Information/ Privacy Act Request.''

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark the letter and envelope ''Freedom of Information/Privacy Act Request.'' Clearly indicate the name of the requester, nature of the record sought, approximate date(s) of the record(s); and, provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, attention FOI/PA Officer, and, provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope ''Freedom of Information/ Privacy Act Request.''

RECORD SOURCE CATEGORIES:

Information contained in the system is collected from the individual training personnel, and general personnel records.

SYSTEMS EXCEPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–24755 Filed 10–6–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–2]

Herman E. Walker, Jr., M.D.; Revocation of Registration

On September 16, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Herman E. Walker, Jr., M.D., (Respondent) of Houma, Louisiana, notifying him of his opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AW3369697, and should not deny any pending application for renewal of his registration, under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that: (1) On two occasions in the fall of 1986, the Respondent prescribed Schedule II controlled substances to an undercover police officer for no legitimate medical reason; (2) between October 1986 and September 1988, the Respondent maintained 52 patients on prolonged and continuous regimens of Schedule III controlled substances (''anorectics''); (3) on or about January 19, 1989, an Administrative Complaint was filed against the Respondent by the Louisiana State Board of Medical Examiners (Board) charging him with prescribing, dispensing or administering legally controlled substances or any dependency-inducing medication without legitimate medical justification; (4) on September 27, 1989, the Board suspended his license to practice medicine for five years, and he was ordered by the Board to surrender his Schedule II controlled substance privileges permanently. On November 21, 1989, Louisiana's Fourth Circuit Court of Appeals stayed the Board's decision suspending his license, but upheld its decision regarding the surrender of his Schedule II controlled substances privileges. The Order to Show Cause noted that the Respondent was, therefore, without state authorization to handle controlled substances in Schedule II, citing 21 U.S.C. 824(a)(3).

By letter dated October 14, 1993, the Respondent, through counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in New Orleans, Louisiana, on April 13, 1994, where both parties called witnesses to testify and introduced documentary evidence. On September 19, 1994, the Respondent filed Proposed Findings of Fact and Conclusions of Law and Argument, and on September 20, 1994, the Government filed its Proposed Finding of Fact, Conclusions of Law and Argument.

On November 30, 1994, Judge Bittner issued her Opinion and Recommended Ruling, Finding of Fact, Conclusions of Law and Decision of the Administrative Law Judge, recommending that Respondent's DEA registration be revoked, and that any pending applications be denied. The Respondent filed exceptions to Judge Bittner's decision on January 5, 1995. On January 12, 1995, Judge Bittner transmitted the record of these proceedings, including the Respondent's exceptions, to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, to include the Respondent's exceptions, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that in 1986, as a result of an anonymous complaint against the Respondent, the Louisiana State Police Department initiated an investigation of Respondent. As part of this investigation, on October 30, 1986, a State Police Officer, posing as a patient, visited the Respondent complaining that he worked long hours, was not sleeping at night, and that he wanted something ''to perk him up.'' He did not complain of any other medical or mental condition or problem. The Officer received a prescription from the Respondent for 30 dosage units of Ritalin. Ritalan is the brand name of a product containing methylphenidate, a Schedule II controlled substance. On November 24, 1986, the State Police Officer returned to the Respondent's office, did not complain of any medical or mental condition requiring treatment, and told Respondent that he had lost or

misplaced his Ritalin prescription. The Officer received another prescription from the Respondent for, inter alia, 15 dosage units of Ritalin. Although the same State Police Officer returned to the Respondent's office on January 14, 1987, the Respondent did not prescribe any controlled substances at that time.

On May 14, 1987, a second State Police Officer visited the Respondent and told him that he had to drive all night and sought a stimulant to help him stay awake. In response to the Respondent's questions, the Officer told him that he slept very well and getting to sleep was not his problem. The Respondent refused to give the Officer a prescription for amphetamines, but the Respondent gave the Officer a prescription for XANAX, to help him sleep. XANAX is a product containing alprazolam, a Schedule IV controlled substance.

On January 19, 1989, the Board's Investigating Officer filed an Administrative Complaint against the Respondent, primarily alleging that on approximately fifty occasions between September 1987 and September 1988, the Respondent concurrently prescribed multiple or excessive amounts of controlled substances to approximately fifty-two patients. After conducting a hearing, the Board issued its decision on September 27, 1989, concluding that the Respondent had substituted—

> Prolonged medication regimes and polypharmacology for sound medical treatment, repeatedly and consistently prescribed legally controlled, dependency-inducing substances without legitimate medical justification therefor . . . [and that] such practices clearly and convincingly demonstrate medical incompetency on the physician's part and continuing and recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state.

The board, inter alia, ordered Respondent to permanently refrain from handling Schedule II controlled substances and to surrender his registration as to that schedule. However, when contacted by a DEA Diversion Investigator, the Respondent refused to surrender his DEA registration with respect to Schedule II. The district court affirmed the Board's order, and the appellate court affirmed the district court's decision. The record contains notice from the Respondent of his intent to file an appeal to the Louisiana Supreme Court, but it does not contain anything further concerning the status of that appeal.

During the hearing before Judge Bittner, Mr. Hingle, a registered pharmacist and consultant to the Board, testified that he had also served as the acting chief of the State Narcotics Program in the health Department. He testified that the Respondent had prescribed amphetamine-type substances, also called anorectics, and that the State Board of Medical Examiners had issued a policy statement (Statement) in 1984, advising physicians that if a prescription for anorectics was issued without medical justification, the physician's medical license was subject to suspension or revocation. The Statement also established standards, which if violated, would be considered per se evidence of prescribing controlled substances without legitimate medical justification. These standards included restricting the period of time anorectics could be prescribed to a single patient to 12 consecutive weeks, restricting the quantity of dosages per patient to insure the patient did not ingest more than one maximum therapeutic dosage unit per day, and restricting the issuance of anorectic prescriptions to persons who were not drug dependent and who demonstrated weight loss during the course of treatment. The Statement was part of the record, and Mr. Hingle testified that the Statement was given to physicians when they applied for their annual relicensure and was also published in a newsletter issued by the Board to all state licensed physicians.

Because of complaints and subsequent investigation results, a DEA Assistant Special Agent issued subpoenas to five pharmacies, and a DEA Diversion Investigator obtained prescriptions written for specified patients by the Respondent between January 1992 and September 1993. At the hearing before Judge Bittner, the Investigator testified that patient profiles were prepared by using those prescriptions. Mr. Hingle then testified, after referring to the patient profiles, that in numerous instances the Respondent had issued to individual patients concurrent prescriptions for multiple substances, and that he would not have filled these concurrent prescriptions because of the potential for abuse of the substances if taken in conjunction with one another. He also testified about the quantity of controlled substances contained in numerous prescriptions and opined that in specified instances the quantities prescribed or the period of time the substance was to be consumed was excessive and could result in physical dependency. For example, in a single month, one specific patient was prescribed quantities of Valium and Vicodin which would allow the patient to take approximately 11 doses a day. Vicodin was described as a phenanthrene opioid, and Valium as the brand name of a product containing diazepam, a Schedule IV controlled substance.

Also, Mr. Hingle noted a specific instance in which a prescription, dated November 22, 1993, was issued for two substances containing hydrocodone as a principal product ingredient. He testified that if the patient had filled and consumed these substances together, the effect would have been of taking a duplicate dosage of a depressant to the central nervous system, and that such effect could have been dangerous to the patient. He also testified that the Respondent had issued on January 7, 1993, five prescriptions for central nervous system depressants to one patient, that such a prescription practice was unusual, and that he could not recall ever having seen five prescriptions for controlled substances or central nervous system depressants issued on the same day to a single patient for concurrent use.

The Respondent testified during the hearing before Judge Bittner, stating that he was a physician in general practice and had been practicing medicine in Houma, Louisiana, since 1966. He stated that he was aware that Ritalin was mostly prescribed to children for attention deficit disorder, and that he had prescribed Ritalin to the State Police Officer knowing that he did not have that condition. He also testified that he knew XANAX was often used as a sleeping pill.

Further, the Respondent testified about his usual treatment and prescribing practices, especially of patients participating in his weight-control practice. During his testimony, the Respondent denied knowledge prior to the Board's action against him of the ''12-week rule'' pertaining to the prescription of anorectics. He testified that, after he became aware of the rule, he had continued prescribing anorectics in compliance with the rule, but that he had not prescribed any anorectics since the end of 1990.

In response to Mr. Hingle's testimony, the Respondent testified about his diagnosis, treatment, and issuance of prescriptions relative to specifically addressed patients. However, he did not offer into evidence any patient treatment records documenting his practices. Also, the Respondent did not acknowledge committing any wrongdoing in his prescription practices, despite the 1989 findings of the Board and the patient profile evidence of his multiple prescriptions to single patients in 1992 and 1993 presented during the hearing before

Judge Bittner. He also did not present any evidence of remedial actions taken or proposed, except his testimony that he had stopped prescribing anorectics in 1990.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) provides that the following factors be considered ''in determining the public interest:''

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive. That is, the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR. 16422 (1989).

Here, the Deputy Administrator finds that factors one, two, four and five are relevant in determining whether the Respondent's continued DEA registration would be inconsistent with the public interest. Evidence of record bearing on factor one includes the action of the Louisiana Board of Medical Examiners, as upheld by the Louisiana Fourth Circuit Court of Appeals, in ordering the Respondent to surrender his Schedule II controlled substance privileges permanently. Such action clearly reflects that Board's recommendation as to this Respondent's access to Schedule II substances.

The Respondent's testimony demonstrated his knowledge of the medical purposes for which Ritalin and XANAX would be prescribed. Yet his actions of prescribing Ritalin, which contains a Schedule II substance, and XANAX, which contains a Schedule IV substance, to State Police Officers for no legitimate medical reason is not in compliance with applicable laws relating to the dispensing of controlled substances. Such actions are relevant to factors two and four of Section 823(f).

Further, the record also established that in 1987 and 1988 the Respondent prescribed anorectics in a manner which directly violated the Louisiana Medical Board's disseminated 1984 Statement concerning the limitations placed upon issuing prescriptions for that substance. Although the Respondent denied knowledge of that Statement, significantly of record is the Board's reply to the same contention raised by the Respondent before it:

> Our findings and conclusions here, however, do not depend on whether or not Respondent did in fact have prior notice of the Statement, and we make no finding in that regard. The substance of the Statement is accepted medical fact of which any competent physician who undertakes to prescribe anorectic medications is, or should be, aware. Thus, as a physician who testified on [the Respondent's] behalf observed with respect to overprescribing anorectics, without recalling whether he himself had seen the Board's Statement, all physicians have been ''cautioned about it. I've been cautioned about amphetamines, all of us have, that you don't use them over a prolonged period of time, excessive long period of time.''

Finally, the Board's findings as to the Respondent's medical treatment and prescription practices, and the testimony of Mr. Hingle, establish instances in the record of the Respondent's prescribing excessive amounts of substances to individuals in combinations commonly seen in cases of suspected substance abuse. Despite the Respondent's testimony explaining his prescribing practices, the Deputy Administrator finds that the preponderance of the evidence warrants a conclusion that the Respondent's prescribing practices are not consistent with the prevailing and usually accepted standards of medical practice in the State of Louisiana, and ''may threaten the public health or safety.'' 21 U.S.C. 832(f)(5).

In his filed exceptions, the Respondent asserts that Judge Bittner erred in admitting hearsay evidence during the administrative hearing. However, since the Respondent's hearing was conducted in accordance with applicable statutes and regulations, the Deputy Administrator declines to adopt the Respondent's exceptions based upon his challenged evidentiary rulings. See, e.g., Klinestiver v. Drug Enforcement Administration, 606 F.2d 1128, 1129–30 (D.C. Cir. 1979); *Gary E. Stanford, M.D.,* Docket No. 91–30, 58 FR 14430 (1993).

Next, the Respondent has requested that any restrictions placed upon his DEA registration be limited to Schedule II substances as recommended by the Board. He wrote that he had been practicing medicine for the past five years under these restrictions without any violation or charges. However, the record demonstrates through the patient profiles and Mr. Hingle's testimony that the Respondent, in 1992 and 1993, had prescribed excessive quantities of controlled substances, to include substances from Schedule IV, to individual patients. Thus, the Respondent's requested restriction is inadequate; revocation is the appropriate remedy.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AW3369697, previously issued to Herman E. Walker, Jr., M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and hereby are, denied.

This order is effective November 9, 1995.

Dated: October 3, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–24949 Filed 10–6–95; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological, Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following five meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences (#1757).

Date and Time: November 3–4, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact Person: Dr. John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Archaeology proposals as part of the selection process for awards.

Date and Time: October 23–24, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact Person: Dr. Mark Weiss, Program Director for Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1758.

Agenda: To review and evaluate Physical Anthropology proposals as part of the selection process for awards.

Date and Time: November 30, December 1, 1995 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Anthropology senior research proposals as part of the selection process for awards.

Date and Time: November 15, 1995 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Anthropology Dissertation proposals as part of the selection process for awards.

Date and Time: November 17–18, 1995 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact Person: Dr. James W. Harrington, or Thomas Leinbach, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24997 Filed 10–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cognitive, Psychological & Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following three meetings.

Name: Advisory Panel for Cognitive, Psychological and Language Sciences (#1758).

Date and Time: October 19–20, 1995; 8:30 a.m.–6:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate linguistics proposals as part of the selection process for awards.

Date and Time: October 24–26, 1995; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. Joseph L. Young, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: To review and evaluate human cognition and perception proposals as part of the selection process for awards.

Date and Time: November 16–17, 1995; 8:00 a.m.–6:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: To review and evaluate social psychology proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (5) of the Government in the Sunshine Act.

Dated: October 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24998 Filed 10–6–95; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (# 1173).

Date and Time: October 25, 26 and possibly a half-day session on October 27, 1995; 8:30 to 5 each day.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Kay Rison, Staff Assistant, Office of the Director, Room 1205, NSF, 4201 Wilson Blvd., Arlington, VA 22230. Phone: (703) 306–1003.

Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda: To discuss national policy issues, including the importance of science, engineering to the national interest; overview of Engineering & Geosciences areas; discussion of recent workshop on NSF's Proposal Review Process; and future directions.

Dated: October 3, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24999 Filed 10–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

Name: Advisory Panel for Neuroscience (1158).

Date and Time: October 19–20, 1995, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Rm 320, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. James Koeing, Program Director, Neuroendocrinology; Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 20, 1995; 11:00 a.m. to 12:00 p.m., to discuss research trends and opportunities in Neuroendocrinology. Closed Session: October 19, 1995; 9:00 a.m. to 5:00 p.m; October 20, 1995, 9:00 a.m. to 11 a.m., 12:00 p.m. to 5:00 p.m. to review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 2, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24994 Filed 10–6–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–436, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1158).

Date and Time: October 25–27, 1995, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Rm 780, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. John Edwards, Program Director, Developmental Neuroscience; Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1424.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: October 26, 1995; 11:00 a.m. to 12:00 p.m., To discuss research trends and opportunities in Developmental Neuroscience. Closed Session: October 25, 1995; 9:00 a.m. to 5:00 p.m.; October 26, 1995, 9:00 a.m. to 11:00 a.m., 12:00 p.m. to 5:00 p.m.; October 27, 1995, 9:00 a.m. to 5:00 p.m. To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 2, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–24996 Filed 10–6–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Technical Position on the Disposition of Cesium-137 Contaminated Emission Control Dust and Other Incident-Related Materials, (10 CFR 30.41(b)(7)).

2. Current OMB approval number: 3150–0017.

3. How often the collection is required: Once for each licensee desiring to implement the disposition alternative described in the Technical Position.

4. Who is required or asked to report: Any licensee desiring to implement the disposition alternative described in the Position.

5. The number of annual respondents: Maximum of twelve initially—subsequently one per year.

6. The number of hours needed annually to complete the requirement or request: 8 hours per licensee.

7. Abstract: The Nuclear Regulatory Commission is proposing the subject branch technical position as one approach, that would be acceptable to the Commission, for the disposal of radiologically-contaminated hazardous waste that has been generated at steel-producing facilities from the inadvertent meltings of sealed radiation sources.

Submit, by December 11, 1995, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem within 30 days of the signature date of this notice on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem on FedWorld at 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 3rd day of October 1995.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 95–25008 Filed 10–6–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket 72–14]

Environmental Assessment and Finding of no Significant Impact; Toledo Edison Company, Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuing a schedular exemption from certain requirements of its regulations, to Toledo Edison Company, located in Toledo, Ohio. The requested schedular exemption would allow Toledo Edison to submit the report of preoperational test acceptance criteria and test results required by 10 CFR 72.82(e) at least 3 days (instead of 30 days) prior to the receipt of fuel at its independent spent fuel storage installation (ISFSI) at the Davis-Besse Nuclear Power Station (Docket 50–346) located in Oak Harbor, Ohio.

Environmental Assessment

Identification of the Proposed Action: By letter dated September 22, 1995, Toledo Edison requested an exemption from certain schedular requirements of

10 CFR 72.82(e), which states that ''A report of the preoperational test acceptance criteria and test results must be submitted * * * at least 30 days prior to the receipt of spent fuel or high-level radioactive waste.'' Toledo Edison proposed to submit this report three days prior to the receipt of spent fuel at its ISFSI. Granting this exemption at this time would enable Toledo Edison to proceed with activities in support of its operational schedule.

The Need for the Proposed Action: Toledo Edison's exemption request is to assure the availability of adequate storage space in Davis-Besse's spent fuel pool to support its scheduled refueling outage. A more complete discussion of the need for the exemption follows.

Davis-Besse plans to receive new fuel in February 1996 for the refueling outage, which is scheduled to begin April 1996. Subsequent to receipt, new fuel is transferred from the new fuel storage racks into the spent fuel pool in preparation for refueling activities. Because the Davis-Besse spent fuel pool is nearly full and a full core off-load is necessary for the upcoming outage, and because there is limited space in the spent fuel pool area, the multiple activities associated with storage canister loading and the refueling outage cannot be conducted at the same time. Therefore, the storage canisters must be loaded and transported to the ISFSI prior to the receipt of new fuel.

Davis-Besse will receive its canisters in early October 1995, for the Standardized NUHOMS Horizontal Modular System for dry storage of spent fuel. Upon receipt of the canisters, Davis-Besse plans to begin preoperational testing, which it expects to require approximately 5 days. Because a substantial amount of the fuel handling activities associated with the NUHOMS system occur outside of the fuel building, Toledo Edison plans to complete these activities before the weather becomes seasonally inclement. Conducting fuel loading activities during inclement weather would complicate fuel handling operations. Therefore, Davis-Besse plans to commence fuel loading operations in late October. In order to support these activities, Toledo Edison estimates that only 10 days will be available between the completion of preoperational testing and commencement of fuel loading.

The purpose of the 30-day period in Section 72.82(e), for the licensee to submit a report of the preoperational test acceptance criteria and test results, is to establish a sufficient hold point to assure that the NRC has sufficient time to inspect a new licensee's preparations and, if necessary, exercise its regulatory authority before fuel is received at an ISFSI. For example, an ISFSI located at an away-from-reactor site may not have a resident inspector; therefore, the full 30-day period may be necessary to provide enough time for the NRC to review the licensee's records and preoperational test results and, if needed, send inspectors to the site. The Davis-Besse ISFSI is located on a reactor site that already has two NRC resident inspectors, and at least one resident inspector and other NRC inspectors will be present at the ISFSI to observe portions of the preoperational testing activities while they are being conducted. The NRC inspectors will also have ongoing access to the licensee's test procedures and test results to be able to conduct an appropriate review. Thus, in view of the NRC's oversight presence during the preoperational testing phase at Davis-Besse, as well as the NRC's immediate access to the licensee's procedures and test results, the Commission believes that the full 30 days, provided for in the rule, will not be needed in order for NRC to complete its inspection activities and determine whether any further regulatory action is needed before spent fuel is received at the Davis-Besse ISFSI. Therefore, it is acceptable for the licensee to submit the report required by § 72.82(e) at least 3 days prior to receipt of fuel at the ISFSI instead of the full 30-day period. However, based on the inspector's ongoing observations of the preoperational tests, NRC may determine that more time than the 3-day period, requested by the licensee, is needed to review additional licensee records and preoperational test results. Therefore, in proposing to grant the requested exemption, NRC reserves the right to require additional time, if necessary, to complete its activities prior to receipt of fuel at the ISFSI.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts of the proposed action. The NRC reviewed the Safety Analysis Report (SAR) for the Standardized NUHOMS Horizontal Modular System (NUHOMS), and in December 1994, issued a Safety Evaluation Report (SER) approving the SAR, and on January 18, 1995, issued a Certificate of Compliance approving the use of the Standardized NUHOMS Horizontal Modular System under a general license. The environmental assessments for the Proposed Rule (54 FR 19379) and Final Rule (55 FR 29181), ''Storage of Spent Fuel in NRC-approved Storage Casks at Power Reactor Sites,'' considered the environmental impact associated with the use of NRC-approved dry storage systems and concluded that these activities would have no significant impact on the environment. Further, the environmental assessment for the Final Rule (59 FR 65898), ''List of Approved Spent Fuel Storage Casks: Addition'' evaluated the environmental impacts associated with the use of the Standardized NUHOMS Horizontal Modular Storage System, in particular, for storage of irradiated fuel and made a Finding of No Significant Impact. On the basis of these reviews, the NRC believes spent fuel can be stored in the ISFSI at Davis-Besse without significant environmental impact.

The proposed exemption would not alter or affect the impacts of operation of the NUHOMS system previously evaluated by NRC. Rather, it would merely allow Toledo Edison to submit the report of preoperational test acceptance criteria and test results required by § 72.82(e), at least 3 days prior to receipt of fuel at the ISFSI instead of the required 30-day period. As previously noted, the 30-day period is to provide the NRC sufficient opportunity to review the licensee's submittal. With inspectors on site, a shorter period will, in this case, provide the same, sufficient opportunity for NRC to carry out these oversight responsibilities. In addition, the exemption still allows the NRC to delay the receipt of fuel at the ISFSI if it is determined that additional review time is necessary. Further, the proposed exemption is administrative in nature and does not involve any change that (1) would increase the probability or consequences of accidents, (2) change the types of any effluents that may be released offsite, or (3) significantly increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed exemption would have no significant radiological or nonradiological environmental impacts.

Alternatives to the Proposed Action: Since the Commission has concluded there would be no measurable environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The staff considered the alternative of denying the requested exemption. Denial could result in fuel handling activities being conducted during inclement weather which could, in turn, unnecessarily complicate fuel handling operations. Denial also could result in the loss of full core off-load capability which,

while not required, is an advantageous condition.

Agencies and Persons Consulted: The Commission's staff reviewed Toledo Edison's request dated September 22, 1995, and did not consult other agencies or persons.

Finding of no Significant Impact:

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the request for exemption dated September 22, 1995, and other related documents are available for public inspection and for copying (for a fee) at the NRC Public Document Room at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located in the William Carlson Library, University of Toledo, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 29th day of September 1995.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–25007 Filed 10–6–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 78th meeting on October 24 and 25 (Room T–2B3) and 26 (Room T–2B1), 1995, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Tuesday, October 24, 1995—8:30 a.m. until 6 p.m.

Wednesday, October 25, 1995—8:30 a.m. until 6 p.m.

Thursday, October 26, 1995—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Reviewing NRC's Programmatic Approach to Low-Level Waste Management*—The Committee will review alternatives to the future course of NRC's Low-Level Radioactive Waste Disposal Program. Members of the Division of Waste Management will participate, as well as representatives from other organizations.

B. *Meet with Representatives of the Environmental Protection Agency*—The Committee will meet with representatives of the EPA and hear a status report on recent activities related to the report by the National Research Council's Committee on the Technical Bases for Yucca Mountain Standards.

C. *Residual Levels for Decontamination*—The Committee will be briefed by the NRC staff on this recent effort to determine acceptable radiation levels when a nuclear facility permanently shuts down and is released for other uses.

D. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including comments on the high-level waste hydrology research program, the staff's Low-Level Waste alternative paper, and the adequacy of data being collected at the Yucca Mountain site for a license application.

E. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs.

F. *Prepare for Meeting with the Commission*—The Committee will review topics for discussion with the Commission in preparation for its November 16, 1995 meeting with the Commission.

G. *ACNW Priorities*—The Committee will discuss issues that will be placed high on their safety review priorities list.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will also discuss ACNW-related activities of individual members.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8 a.m. and 5 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: October 3, 1995.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–25010 Filed 10–6–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York (Indian Point Nuclear Generating Unit No. 3); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64, which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Westchester County, New York.

II

By letter dated June 20, 1995, the licensee requested a one time schedular exemption from the Final Safety Analysis Report (FSAR) update submittal requirements of 10 CFR 50.71(e)(4) which requires that FSAR revisions must be submitted annually or 6 months after a refueling outage provided the interval between updates does not exceed 2 years. The licensee also requested a one time schedular exemption from 10 CFR 50.54(a)(3) which requires that changes to the quality assurance program description that do not reduce commitments must be submitted to the NRC in accordance with the FSAR update requirements of 10 CFR 50.71(e).

In February 1993, the licensee shut down IP3 for an extended performance improvement outage. The plant was recently restarted on June 27, 1995. Although this extended shutdown was not a refueling outage, the number of facility changes made by the licensee during the shutdown equates it to one. As such, a one time FSAR update schedular exemption was requested to enable the licensee to include most of the modifications, technical specifications amendments, and other changes completed during the extended shutdown in the next FSAR update. This would result in a more complete and accurate update. The requested schedular exemption would reschedule the required FSAR update from July 22, 1995, to 6 months after restart from the extended shutdown.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) when special circumstances are present as set forth in 10 CFR 50.12(a)(2).

The licensee has indicated that the requested exemption does not produce undue risk to the public health and safety since the exemption is an extension of reporting requirements. Other reporting requirements such as 10 CFR 50.59(b)(2), 50.72, 50.73, and the license amendment process ensure that the NRC will receive timely notifications concerning changes to the plant and its licensing basis. The common defense and security are not impacted by this exemption.

The licensee has also indicated that the 6-month schedular extension would provide only temporary relief from the applicable regulation and a good faith effort has been made to comply with the regulation.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that (1) the exemption as described in Section II is authorized by law, will not endanger life or property, and is otherwise in the public interest and (2) special circumstances exist pursuant to 10 CFR 50.12(a)(2)(v), in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the following one time schedular exemption:

(1) The Power Authority of the State of New York is exempt from the requirement of 10 CFR 50.71(e)(4), to the extent that the current FSAR update submittal due date has been extended from July 22, 1995, to December 27, 1995.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 48528). A specific one time schedular exemption from the reporting requirements of 10 CFR 50.54(a)(3) is not required since the 10 CFR 50.54(a)(3) reports are submitted in accordance with the requirements 50.71(e)(4), which has been authorized above for a one time schedular exemption.

This exemption is effective upon issuance.

Dated at Rockville, MD, this 28th day of September 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–25009 Filed 10–6–95; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Intent To Prepare an Environmental Impact Report/Environmental Impact Statement: Rincon Hill Sports and Entertainment Center, San Francisco, California

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: To comply with requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Postal Service intends to prepare a joint environmental impact report/environmental impact statement (EIR/EIS) for the proposed Rincon Hill Sports and Entertainment Center in San Francisco, California. The public is invited to participate in the project scoping process, to review and comment on the draft EIR/EIS, and to attend public meetings.

DATES: The public is invited to attend a scoping meeting scheduled for 7 p.m. on October 24, 1995, at the San Francisco Marriott, 55 Fourth Street, San Francisco, California.

ADDRESSES: Mail or deliver written comments to the Real Estate Specialist, Realty Asset Management, Facilities Service Office, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099–0300.

FOR FURTHER INFORMATION CONTACT: David Klement, (415) 794–6343.

SUPPLEMENTARY INFORMATION: A 21,000-seat sports arena with 450,000 square feet of associated entertainment and retail facilities is proposed at 101 and 201 Folsom Street in the Rincon Hill area of San Francisco, California. The proposed project would be developed by a private firm on real properties owned in part by the Postal Service. The proposed project would be considered a joint development and use. In addition to NEPA, 42 U.S.C. 4321 et seq. (1988), the proposed action would be subject to the requirements of CEQA, Cal. Health & Safety Code 25570 (West 1992). As a result, a joint EIR/EIS will be prepared to satisfy the requirements of both NEPA and CEQA.

As required by NEPA, 42 U.S.C. 4332(C)(iii), the EIR/EIS will evaluate alternatives to the proposed action. Potential alternatives that will be explored in the document include a no-action alternative, an arena with reduced retail, and no arena with a zoning change (residential and commercial). Off-site alternatives will also be examined.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–25176 Filed 10–6–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36326; File No. SR–Amex–95–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Updates to the Exchange's Company Guide

October 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, and on September 28, 1995, filed an Amendment No. 1 to the proposed rule change,[2] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing various updating revisions to the Exchange's *Company Guide.* The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

a. Preferred Stock

Section 103 of the *Company Guide* contains the listing guidelines for preferred stock and, as a general rule, only permits the listing of convertible preferred stock if the underlying common stock is listed on the Amex or the New York Stock Exchange, Inc. (''NYSE''). This however, dates from a time when there was no last sale reporting other than for stocks traded to the Amex or NYSE and, thus, it was difficult to trade convertible preferred stock without the availability of such last sale information on the underlying equity. In view of the advent of last sale reporting for Nasdaq securities, the Exchange proposes that Section 103 be amended to permit the listing of convertible preferred stock so long as the underlying common stock of the company is subject to real-time last sale reporting. This also would be consistent with Section 104 of the *Company Guide* which permits the listing of convertible bonds and debenture issues so long as current last sale information is available with respect to the underlying security.[3] In addition, the Exchange proposes that the references to ''aggregate market value'' in Section 103 be changed to read ''aggregate public market value'' to clarify that the particular numerical guidelines are applicable to the market value of publicly held shares only.

b. Warrants

The Exchange's listing guidelines for warrants are set forth in Section 105 of the *Company Guide.* The Exchange, however, also requires warrant issuers to execute a related agreement with the Exchange prior to listing, and this relating agreement is not referenced in Section 105. This agreement specifies the applicable notice provisions that warrant issuers must adhere to regarding changes with respect to the expiration date or call date of the warrants or both. In order to simplify the listing process, the Exchange proposes that these matters be incorporated into Section 105. In addition, the Exchange proposes that a new paragraph (e) be added to specify that the Amex must receive advance notice (preferably two months) of any extension of the expiration date of a warrant issue. The Exchange also proposes that Section 508 of the *Company Guide,* which requires under certain circumstances that warrants be split in the same proportion as the underlying common stock, be deleted and incorporated into Section 105. Further, the Exchange proposes to amend Section 105 to reference the guidelines applicable to redeemable (callable) issues that are contained in Section 902 of the *Company Guide.*

c. Conflicts of Interest

Section 120 of the *Company Guide* concerns conflicts of interest between companies and their officers, directors, or principal shareholders. In determining whether to approve a company's listing application, the Exchange reviews any such conflicts of interest. As specified in Section 120, all pertinent factors are considered and, in many cases, a company is able to eliminate a conflict situation prior to listing or within a reasonable period of time thereafter. Section 120 also authorizes the Exchange to require a company to enter into a special agreement designed to reduce the possibility of abuse of a conflicted situation that could not be terminated immediately or that may arise in the future.

This special agreement was utilized in the past by the Amex and the NYSE prior to the time when the exchanges required listed companies to establish and maintain an audit committee.[4] This provision is now obsolete because audit committees are responsible for reviewing transactions presenting potential conflicts of interest and, as a practical matter, the Exchange no longer utilizes it. Accordingly, the Exchange proposes that Section 120 be amended to delete such a reference. The NYSE previously deleted its similar provision[5] and, at the present time, neither the NYSE nor the NASD reference such agreements in their rules.

d. Original and Annual Listing Fees

Section 140 of the *Company Guide* specifies the original listing fees applicable to issuers listed on the Exchange. Due to an oversight by the Exchange, the schedule contained in Section 140 is unclear with respect to the original listing fee payable for exactly one million shares (*i.e.,* it refers only to the fee for less than one million

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Glen Barrentine, Team Leader, SEC (Sept. 28, 1995).

[3] *See* Securities Exchange Act Release No. 22714 (Dec. 20, 1985), 50 FR 51958 (permitting the listing of convertible bonds and debentures if the underlying issue into which the bond or debenture is convertible is subject to last sale reporting).

[4] *See* Amex Company Guide § 121 (requiring a listed company to maintain an audit committee).

[5] Securities Exchange Act Release No. 20767 (Mar. 20, 1984), 49 FR 11275 (approving File No. SR–NYSE–83–11).

and more than one million). Therefore, the Exchange proposes that the original listing fee schedule be amended to refer to ''one million—two million shares,'' clarifying that the appropriate fee for exactly one million shares is $10,000.

The Exchange also proposes that Section 141 of the *Company guide* be amended to clarify that the annual listing fee for a warrant issue is based on the number of warrants issued, not the number of shares underlying the warrants.

e. Opinion of Counsel

Section 213 of the *Company Guide* requires a company seeking to list stock on the Exchange to provide a opinion of counsel addressed to the Exchange that addresses a variety of issues, including (if applicable) the company's qualification to conduct business in jurisdictions other than that of its state of incorporation.[6] The American Bar Association (''ABA'') recently sponsored a study of third-party legal opinions that resulted in various recommendations as to the format and coverage of such opinions.[7] One of its recommendations was that an opinion as to a corporation's qualification to do business in jurisdictions other than that of incorporation was generally not cost effective or necessary. In view of the position taken by the ABA, and because this is essentially a factual rather than a legal issue, law firms are increasingly reluctant to provide this opinion. Therefore, the Exchange proposes that Section 213 be amended to delete this item from the opinion of counsel guidelines. The Exchange notes that the NYSE does not have a comparable guideline.

f. Listing Resolution

Section 213 of the *Company Guide* also requires the board of directors of a prospect company listing stock or warrants to provide a listing resolution authorizing the filing of the listing application. This requirement is often burdensome to comply with and can delay a listing if a prospect company's board of directors is not scheduled to meet for a month or more. The requirement to obtain a listing resolution is essentially ceremonial in nature and does not serve any significant purpose. Therefore, the Exchange proposes that this requirement be deleted. The Exchange also proposes that Section 330 of the *Company Guide* be amended similarly to delete this requirement with respect to additional listing applications.

g. ''Backdoor'' Listings

Section 341 of the *Company Guide* sets forth the Exchange's policy with respect to ''backdoor'' listings, *i.e.,* any plan of acquisition, merger, or consolidation, the net effect of which is that a listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Currently, the literal language of this section can be read to preclude the Exchange from listing the additional shares issued to effect such a combination unless the company resulting from the combination meets the Exchange's original listing guidelines in all respects.

The Exchange's longstanding practice, however, has been to evaluate a ''backdoor'' listing on the same basis that an original listing is reviewed, *i.e.,* an application may be approved even though the company does not meet all of the numerical guidelines.[8] To conform Section 341 to Exchange practices, the Exchange proposes that this section be amended to provide that the Exchange will apply its original listing guidelines when evaluating the listing eligibility of a ''backdoor'' listing.

h. Fractional Shares

Section 507 of the *Company Guide* outlines the procedures companies should follow to settle fractional share interests as a result of issuing stock dividend and urges companies to pay cash in lieu of fractional share interests. The Exchange's practice is to require companies that do not choose to settle such interests with a cash payment to ''round up'' to a full share in payment for the fractional amount. This practice is based on the premise that if the issuer were to ''round down'' the holder would essentially be deprived of assets due him or her. The Exchange proposes to amend Section 507 to conform to the Exchange's practice.

i. Listing Agreement

Companies seeking to list securities are required to execute a listing agreement with the Exchange. In its present form, the agreement specifies a number of obligations that a listed company is subject to by virtue of listing its securities on the Amex. Most of these matters, however, also are addressed by specific provisions in the *Company Guide*. This has proven to be confusing to company representatives. The Exchange, therefore, has reviewed and greatly simplified the listing agreement by eliminating all of the redundancies.[9] In order to ensure that all matters previously covered by the listing agreement are adequately reflected in the *Company Guide*, the Exchange also proposes that: Section 132 of the *Company Guide* be amended to require a listed company to furnish to the Exchange, upon request, such information concerning the company as the Exchange may require; Section 340 of the *Company Guide* be amended to clarify that a listed company must disclose promptly to the holders of listed securities any information with respect to the allotment of rights or benefits pertaining to the ownership of listed securities; Section 340 also be amended to require that listed companies issue all transferable rights or benefits pertaining to listed securities in a form approved by the Exchange and make them assignable, exercisable, and deliverable in the Borough of Manhattan, City of New York; Section 610 of the *Company Guide* be amended to clarify that a listed company's annual report must contain audited financial statements prepared in conformity with SEC requirements; Section 610 also be amended to require the company to disclose in its annual report to security holders, for the year covered by the report, the number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan and any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options; Section 623 of the *Company Guide* be amended to clarify that a listed company must publish quarterly statements of sales and earnings on the basis of the same degree of consolidation as the annual report, and such statements must disclose any substantial items of an unusual or

[6] The opinion of counsel also must express an opinion as to: the legality of organization and valid existence of the applicant; the validity of authorization and issuance (or proposed issuance) of the securities applied for; whether the securities are (or will be) fully paid and non-assessable, and whether the outstanding securities were registered or issued pursuant to an exemption under the Securities Act of 1933.

[7] *See* American Bar Association, *Third-Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law,* 47 Bus. Law. 167 (Nov. 1991).

[8] Conversely, the fact that an issuer may meet the numerical guidelines does not necessarily mean that its application will be approved.

[9] The listing agreement will now simply contain the company's agreement to ''comply with all Exchange rules, policies and procedures which apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the company's organization documents would allow for a different result.'' In addition, several other forms associated with the listing process also are being streamlined.

nonrecurrent nature and will show net income before and after federal income taxes; Section 920 of the *Company Guide* be amended to require a listed company to notify the Exchange, at least 20 days in advance, of any change in the form or nature of any of its listed securities or in the rights, benefits, and privileges of the holders of any such security; Section 1102 of the *Company Guide* be amended to require a listed company to file with the Exchange all proposed amendments to and certified copies of its Certificate of Incorporation, By-Laws, or other similar organization documents, all SEC filings, and all materials sent to shareholders or released to the press.

In addition, the *Company Guide* will be amended to delete references to Form SD–1, the old listing agreement.

j. Interim Reports

Section 623 of the *Company Guide* specifies that a company whose stock is listed on a national securities exchange is not required to send interim (usually quarterly) statements to its securities holders, but must disseminate such information in the form of a press release.[10] Some listed companies elect to send such reports to shareholders, but many send them to record holders (*i.e.*, ''street name'' (not beneficial) holders) only. In contrast, the Exchange requires that annual reports be mailed to both record and beneficial holders.[11]

Various groups, including the NYSE, the American Society of Corporate Secretaries, and the Securities Industry Association, have been reviewing this area in an attempt to achieve uniformity among listed companies with respect to their dissemination of interim earnings reports to shareholders. The NYSE recently amended its rules to provide that while a company could continue to elect not to mail interim reports to shareholders, if the company chose to make such a mailing, it should send the reports to both the record and the beneficial owners.[12] This change strikes an appropriate balance between the benefit of requiring that these reports be mailed to all shareholders against the high cost of doing so with respect to beneficial holders of securities held in ''street name.'' Therefore, the Exchange proposes that Section 623 be amended to conform to the NYSE change described above.

k. Legending Requirements

Section 980 of the *Company Guide* requires that listed securities that are issued in reliance upon an exemption from the registration requirements of Section 5 of the Securities Act of 1993[13] bear a legend specifying that sale or transfer restrictions apply to such securities. Issuers have occasionally complained that the Exchange requirement is unnecessary and, on occasion, more restrictive than the applicable laws. In order to avoid placing an undue burden on prospective listed companies, the Exchange proposes that the requirement be withdrawn. The Exchange notes that the NYSE does not impose an independent legending requirement on its listed companies.

l. Delisting

Section 1003 of the *Company Guide* specifies certain numerical guidelines that the Exchange will consider in determining whether to delist a particular security. It provides that the Exchange will normally consider delisting common stock ''if the total number of round lot shareholders of record is less than 300. . . .''[14] In recent years, the proportion of beneficial holders to record holders has increased dramatically because brokerage firms are increasingly holding securities for their customers in ''street name,'' and fewer customers are demanding physical delivery of their securities.[15] Notwithstanding the fact that a company may have well over 300 round-lot beneficial shareholders, the present guideline suggests that a company will be subject to delisting for failing to satisfy the requirement with respect to record holders. Accordingly, the Exchange proposes that Section 1003(b)(i)(B) will be amended to refer to ''public shareholders'' (or warrantholders, in the case of warrant securities). This term will include both shareholders of record and beneficial holders, but exclude officers, directors, controlling shareholders, and other concentrated (*i.e.,* 5% or greater), affiliated, or family holdings. In addition, the Exchange proposes that conforming changes be made to Sections 102, 103, 105, 106, 107, 110, and 118.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Act in general and furthers the objectives of Section 6(b)(5)[17] in particular in that it is designed to promote just and equitable principles of trade and facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W.,

[10] A company whose common stock is not listed on a national securities exchange, however, must send unaudited quarterly statements to holders of its Exchange-listed securities. Amex Company Guide § 623.

[11] Amex Company Guide § 610.

[12] Securities Exchange Act Release No. 35373 (Feb. 14, 1995), 60 FR 9709 (approving File No. SR–NYSE–94–42).

[13] 15 U.S.C. 77e.

[14] Amex Company Guide § 1003(b)(i)(B).

[15] This change in practice is in accordance with recommendations for increased safety and soundness in the securities industry made by the Bachmann Task Force. *See* Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement Reform in the U.S. Securities Markets 24–26 (May 1992) (recommending the reduction in use of physical certificates).

[16] U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR–Amex–95–28 and should be submitted by October 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25019 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36320; File No. SR–AMEX–95–15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Solicitation of Options Transactions

September 29, 1995.

I. Introduction and Background

On March 22, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 950(d), Commentary .03, to modify the manner in which members solicit other members to participate in options transactions. The Exchange filed Amendment No. 1 to the proposed rule change on May 30, 1995.[3] Notice of the proposal, as amended, appeared in the **Federal Register** on June 9, 1995.[4] No comments were received on the proposed rule change set forth in the Notice. This order approves the Exchange's proposal.

II. Description of the Proposal

In 1989, the Exchange adopted its solicitation rule[5] to govern the manner in which members may solicit other members and non-member broker dealers to participate in options transactions. Generally, members solicit participation in large size orders and orders that might contain complex terms and conditions, including orders involving both stocks and options. Currently, if the solicited party is a broker dealer other than a registered trader, the rule permits the solicitation of such a broker dealer to participate in trades without first attempting to determine whether the trading crowd wishes to participate. Generally, Rule 950(d) has sought to reconcile the growing practice of soliciting participation in orders outside of trading crowds with the rules and practices of the auction market.

Currently, the rule permits the solicitation of on-floor and off-floor members outside of a trading crowd to participate as the contra-side of an order so long as the trading crowd is given (1) the same information about the options order that is given to the solicited party; and (2) a reasonable opportunity to accept the bid or offer before the solicited party participates in the transaction. With respect to the solicitation of a registered options trader, however, the soliciting member must also disclose to the trading crowd, prior to the solicitation, the same terms and conditions that will be disclosed to the solicited registered options trader.

The Exchange proposal modifies the solicitations rule to eliminate the requirement that the terms and conditions of a solicitation be disclosed to the trading crowd prior to the solicitation of registered options traders. Thus, once other market participants in the trading crowd are given a reasonable opportunity to accept the bid or offer, the solicited party may accept all or any remaining part of such order, or the member may cross all or any remaining part of the originating order with the solicited party at such bid or offer by announcing that the member is crossing the orders and stating the quantity and price. In effect, registered traders will have the same standards apply to them as have broker dealers who are not registered traders.

The Exchange's proposal also adds language to Rule 950(d) that states explicitly that non-solicited market participants and floor brokers holding non-solicited discretionary orders in the trading crowd will have priority over the solicited party or the solicited order to trade with the original order at the best bid or offer price subject to the precedence rules set forth in Rule 155.[6]

Finally, the Exchange's proposal codifies its policy that the solicitations rule also applies to the solicitation of non-member broker dealers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[7] Specifically, the Commission finds that the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange's proposal seeks to eliminate the requirement that a soliciting member first disclose to a trading crowd the terms and conditions of the order prior to the solicitation of a registered trader, but requires that the trading crowds be given a reasonable opportunity to accept the bid or offer,[8] after the terms and conditions of the order are announced.

The Commission believes that the Amex's proposal strikes a proper balance of allowing members to solicit, in advance, the other side of an order, while ensuring at the same time that the order will be exposed to the trading crowd consistent with auction market principles. Specifically, the Amex's proposal addresses the concern that Amex members who solicit orders may at times find it difficult to determine prior to the solicitation whether the solicited party is a registered options trader by removing the distinction between broker dealers who are

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[18] 17 C.F.R. 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1994).

[3] Amendment No. 1 concerns the priority of non-solicited market participants and floor brokers in the trading crowd over solicited parties or solicited orders. In addition, Amendment No. 1 makes certain minor technical and clarifying modifications to the proposed changes to Amex Rule 950(d), Commentary .03. *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated May 26, 1995 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 35797, (June 1, 1995), 60 FR 30612.

[5] Securities Exchange Act Release No. 26947 (June 19, 1989), 54 FR 26869 (approving Amex Rule 950(d), Commentary .03).

[6] Amex Rule 155 generally provides that a specialist shall give precedence to orders entrusted to him as an agent in any stock in which he is registered before excuting at the same price any purchase or sale in the same stock for an account in which he has an interest.

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] Since the size and complexity of orders for options can vary widely, the phrase ''reasonable opportunity to accept the bid and offer'' has not been specifically defined. However, the Exchange has stated that the following factors should be considered when deciding whether a reasonable opportunity has been given: (1) size and complexity of the order; (2) ease of executing hedging transactions in the underlying stock; and (3) effect of the options order on the positions held by participants in the trading crowd.

registered options traders, and those who are not.

The Commission further finds that adding language to Rule 950(d) regarding the priority of non-solicited market participants and floor brokers holding non-solicited discretionary orders serves to make explicit a provision already implicit in the Exchange's solicitations rule. Again, this provision will ensure that solicited orders will be exposed to the trading crowd consistent with auction market principles and that such orders do not receive any special priority consistent with Amex Rule 155. For similar reasons, the Commission finds that codifying the Amex's policy that its solicitations rule applies to the solicitation of non-member broker dealers is consistent with the Act.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-95–15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25020 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36325; File No. SR–PSE–95–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Corporate Governance

October 2, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 2, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange pursuant to Rule 19b–4 of the Act submits this rule filing to amend Article II, Section 1(a), and Article III, Section 2(a) of the Constitution of the PSE, to provide for an additional public Governor on the Board of Governors. The text of the proposed rule change is available at the PSE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Article II of the Constitution of the PSE provides for eighteen (18) elected Governors, of whom five (5) are representatives of the public. The proposed rule change will provide for one additional public Governor, and will thereby increase the total number of elected Governors to nineteen (19).

When the Commission's Chairman, Arthur Levitt, met with the PSE Board of Governors (''Board'') at its December 14, 1994 meeting, he discussed the important role boards play at the securities exchanges in promoting the investing public's confidence in the integrity of U.S. securities markets. At its meeting on January 26, 1995, the Governors discussed Chairman Levitt's observation about the composition of the PSE Board and were in agreement with Chairman Levitt that public, non-industry representatives on exchange boards convey a message to public investors that their interests will be protected, as well as bring additional business expertise to the Exchange in areas other than securities. The Board also considered the major contributions of the five (5) current public Governors and their increased time commitments to Exchange matters (*e.g.,* technology, finance and banking). Therefore, the Board unanimously approved the addition of a public Governor, increasing the number of public representatives from five to six.

2. Statutory Basis

The proposed rule filing is consistent with Section 6(b)(3) and Section 6(b)(5) of the Act, in that it will assure a fair representation of the members in the selection of its Governors and administration of its affairs, and is designed to promote just and equitable principles of trade, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The amendments were approved by the PSE Membership in accordance with Article XVII of the PSE Constitution.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference

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[9] 15 U.S.C. 78f(b)(5) (1988).

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] *See* letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Glen Barrentine, Senior Counsel, SEC, dated October 2, 1995. In Amendment No. 1, the Exchange requests that the proposed rule change be considered under Section 19(b)(2), rather than Section 19(b)(3)(A) as originally filed, and approved on an accelerated basis.

Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–95–23 and should be submitted by October 31, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully PSE's proposed rule change and concludes that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Sections 6(b)(3) and 6(b)(5) of the Act. Section 6(b)(3) of the Act requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and that one or more directors represent issuers and investors and not be associated with a member of the exchange or a broker-dealer. Moreover, Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest.

The proposed rule change would alter the size and composition of the PSE's Board of Governors by providing for one additional public governor on the Board. Historically, the Commission has encouraged the exchanges to give credence to their quasi-public nature by fostering public representation on their governing boards.[2] Specifically, the Commission has noted previously that adding public directors to the boards of the exchanges may help ensure adequate public representation. The Commission continues to encourage self-regulatory organizations to include adequate public representation on their governing boards to protect the public interest.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of the notice of filing thereof. The PSE proposal is designed to achieve greater public representation on the Exchange's governing body that in turn will protect investors and the public interest. Accelerated approval thereof will allow these benefits to be realized as soon as possible.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[3] that the proposed rule change (SR–PSE–95–23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25021 Filed 10–6–95; 8:45 am]

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[2] *See* SEC Report of Special Study of Securities Markets, 88th Cong., 1st Sess. (Comm. Print 1963), pt. 4 at 763–65.

[3] 15 U.S.C. 78s(b)(2).

[4] 17 CFR 200.30–3(a)(12).

[File No. 1–9389]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Charter Power Systems, Inc., Common Stock, $.01 Par Value)

October 3, 1995.

Charter Power Systems, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors of the Company adopted resolutions on September 1, 1995 to withdraw the Security from listing on the Amex and instead, to list such Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/NMS'').

The decision of the Board followed an extensive exploration of means to enhance stockholder value, and was based upon the belief that the listing of the Security on the Nasdaq/NMS would be more beneficial to the Company's stockholders than the present listing on the Amex. The move was prompted by the perception that the multiple market maker system employed by the Nasdaq/NMS will increase visibility and liquidity of the Security. In addition, the Company believes that, given the increasing focus of the Company's business on telecommunications reserve power systems and power electronics, the Nasdaq/NMS will provide a more comparable peer group than the Amex.

Any interested person may, on or before October 25, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25024 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21386; 812–9748]

The Freedom Tax Credit Fund L.P., et al.; Notice of Application

October 2, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Freedom Tax Credit Fund L.P. (the ''Partnership'') and MCD Freedom Advisers, Inc. (the ''General Partner'').

RELEVANT ACT SECTION: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Partnership from all provisions of the Act. The order would permit the Partnership to invest in limited partnerships that engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on September 6, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, 800 Superior Avenue, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, 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.

Applicants' Representations

1. The Partnership was organized on July 13, 1995, under the Delaware Revised Uniform Limited Partnership Act. The Partnership is intended to serve as a vehicle for equity investment in real property eligible for low income housing tax credits under section 42 of the Internal Revenue Code of 1986, as amended (the ''Tax Credit Properties''). The General Partner is organized as a Delaware corporation. McDonald & Company Securities, Inc. and other selected soliciting dealers will act as selling agents for the offering of units of limited partnership interest (''Units'').

2. The Partnership will operate as a ''two-tier'' partnership and will invest in limited partnerships and limited liability companies (the ''Operating Partnerships'') which will acquire, operate and maintain Tax Credit Properties in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) (''Release No. 8456'').

3. The Partnership's investment objectives are to realize (a) certain tax benefits including low income housing tax credits, (b) potential capital appreciation through increases in value and amortization of the mortgage indebtedness of the Tax Credit Properties, (c) cash distributions from liquidation, sale or refinancing of the Tax Credit Properties (except with respect to certain non-profit operating partnerships), and (d) limited cash flow from operations.

4. On August 4, 1995, the Partnership filed a registration statement under the Securities Act of 1933 (the ''Prospectus'') for the sale of a maximum of 1,000,000 Units at $20.00 per Unit with a minimum investment of $10,000 per investor.

5. Subscriptions for Units will be made conditional upon representations as to suitability of the investment for each subscriber. The subscription agreement for Units provides that each subscriber will represent in writing that it meets the general investor suitability standards established by the Partnership. The Prospectus provides that each subscriber must meet the following requirements: (a) Minimum annual gross income for the current year of $60,000 and a net worth (exclusive of home, home furnishings and automobiles) of not less than $60,000 or (b) net worth (exclusive of home, home furnishings and automobiles) in excess of $200,000. Units will be sold in certain states only to persons who meet different standards which will be set forth in the Prospectus. In addition, the Partnership will allow corporate investors (subject to certain requirements and limitations) to purchase Units. In no event shall the Partnership employ any such suitability standards which are less restrictive than those set forth in the application.

6. The partnership agreement also provides that, in order to record a transfer on its books, counsel for the Partnership must be of the opinion that the transfer is not in violation of any applicable federal or state securities laws (including any investor suitability standards). The Partnership will invest in Units which are not readily marketable, and each such interest will have no value apart from the value of the Tax Credit Property owned by such Operating Partnership. Therefore, applicants assert that there will be no separate market for such interests.

7. All proceeds of the public offering of Units will initially be placed in an escrow account with the Star Bank, N.A. The offering of Units will terminate approximately 24 months from the date upon which the Partnership's registration statement is declared effective. If subscriptions for at least 100,000 Units have not been received by such date, no Units will be sold and funds paid by subscribers will be returned promptly, together with any accrued interest earned thereon. If subscriptions for at least 100,000 Units have been received by the effective date, and the Units are sold, purchasers of Units (the ''Limited Partners'') then will become limited partners in the Partnership. The Partnership intends to apply capital raised in its public offering to the acquisition of interests in Operating Partnerships as soon as practicable following the release of such funds from the escrow account. Prior to such use, the offering proceeds may be temporarily invested in bank time deposits, certificates of deposit, bank money market accounts and government securities.

8. The Partnership will be controlled by the General Partner. The Limited Partners, consistent with their status, will not be entitled to participate in the control of the Partnership's business. However, the majority in interest of the Limited Partners will have the right (subject to certain limitations) to amend the partnership agreement, dissolve the Partnership, remove the General Partner and consent to a successor General Partner. In addition, under the partnership agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

9. The partnership agreement provides that the General Partner shall not have any authority to: (a) Do any act required to be approved or ratified in writing by the Limited Partners under the Delaware Revised Uniform Limited Partnership Act, unless the right to do so is expressly otherwise given in the partnership agreement; (b) do any act which would make it impossible to carry on the ordinary business of the Partnership; (c) without the consent of the Limited Partners owning a majority of the Units, sell or otherwise dispose of all or substantially all of the assets of the Partnership in a single sale or disposition or in a series of contemporaneous sales or dispositions with a view towards distribution; (d) borrow from the Partnership; or (e) without the consent of the Limited Partners owning a majority of the Units, elect to dissolve the Partnership or change the investment objectives or policies of the Partnership.

10. The Partnership will attempt to acquire a 50% to 99% interest in the operating profits, losses, credits, and distributable cash flow of each Operating Partnership. In addition, the General Partner anticipates that the Partnership's share of liquidation, sale or refinancing proceeds of each Operating Partnership will be between 50% and 95%. Regardless of the percentage interest the Partnership has in an Operating Partnership, the Partnership will have certain rights under the terms of the operating partnership agreements, which will include the right to: (a) Approve or disapprove any sale or refinancing of the applicable Tax Credit Property; (b) replace the operating general partner; (c) approve or disapprove the dissolution of the Operating Partnership; (d) approve or disapprove amendments to the operating partnership agreement materially and adversely affecting the Partnership's investment in the Operating Partnership; and (e) direct the operating general partners to convene meetings and submit matters to a vote. The Partnership will have access to the books and records of each Operating

Partnership and to receive annual and quarterly reports. In addition, the Partnership will require that all Operating Partnerships provide to the Limited Partners substantially all of the rights required by section VII of certain guidelines adopted by the North American Securities Administrators Association, Inc.

11. McDonald & Company Securities, Inc., an affiliate of the General Partner, will receive commissions up to 6% of the aggregate gross proceeds on the sale of Units, an expense allowance of up to 1.5% of the gross proceeds to defray due diligence activities, and up to a 2% dealer-manager fee. The General Partner or its affiliates will receive an acquisition fee of up to 4.5%.

12. All compensation to be paid to the General Partner and its affiliates is specified in the partnership agreement and the Prospectus. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated through arms-length negotiations. The partnership agreement and the Prospectus will contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners.

Applicants' Arguments

1. Section 6(c) authorizes the SEC to grant an exemption from the Act to the extent ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' Applicants seek an order under section 6(c) exempting the Partnership and the General Partner from all provisions of the Act.

2. Applicants assert that the requested relief is consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert, among other things, that investment in low and moderate income housing is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. By investing in the Operating Partnerships, the Partnership is implementing the national policy enunciated by Congress in section 901 of Title IX of the Housing and Urban Development Act of 1968.

3. Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (a) ''interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable''; and (b) ''requirements for fair dealing by the General Partners of the issuer should be included in the basic organizational documents of the company.'' The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection. Applicants assert that interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. In order to insure that the Limited Partners receive extensive information about the Partnership, the Partnership will distribute to the Limited Partners certain reports concerning its business and operations. The Partnership believes that all potential conflicts of interest between the General Partner and the Limited Partners will be disclosed in the Prospectus, including the receipt of commissions, fees and other compensation by the General Partner and its affiliates.

4. Applicants believe that the contemplated arrangement of the Partnership is not susceptible to abuses of the sorts the Act was designed to remedy. The requirements for fair dealing provided by the Partnership's governing instruments and pertinent governmental regulations imposed on the Operating Partnerships by various federal, state and local agencies provide protection to investors comparable to, and in some respects greater than that provided by the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–25022 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21387; 811–7081]

MuniBond Income Fund, Inc.; Notice of Application for Deregistration

October 2, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: MuniBond Income Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on September 7, 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 October 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered closed-end investment company, incorporated in the state of Maryland on August 24, 1993. On September 2, 1993, applicant filed a Notification of Registration on Form N–8A and a registration statement on Form N–2 pursuant to section 8(b) of the Act and the Securities Act of 1933 to register 6,720,000 shares of common stock. The registration statement was declared effective on October 22, 1993 and applicant commenced its initial public offering on that date.

2. On July 13, 1994, applicant's board of directors approved an Agreement and Plan of Reorganization (the ''Agreement'') between MuniAssets Fund, Inc. (''MuniAssets'') and applicant. Pursuant to the agreement, MuniAssets would acquire substantially all of applicant's assets in exchange for shares of MuniAssets' common stock. The board approved the reorganization because the combined entity would

have lower expenses per share, greater efficiency and flexibility in portfolio management, and a more liquid trading market for its shares. On March 10, 1995, applicant's board set the valuation time for the reorganization at 4:00 p.m., Eastern time, on April 21, 1995 (the ''Valuation Time'') and the reorganization date as April 24, 1995 (the ''Reorganization Date'').

3. Applicant and MuniAssets have the same investment adviser, Fund Asset Management, L.P. Accordingly, applicant and MuniAssets may be deemed to be affiliated persons by reason of being under the common control of the same investment adviser. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction.[1] In accordance with the rule, the board of directors of applicant and of MuniAssets (including a majority of the directors who are not interested persons of applicant or MuniAssets) determined that participation in the Reorganization would be in the best interests of applicant and of MuniAssets, and the interests of existing stockholders of applicant and of MuniAssets would not be diluted as a result of their effecting the Reorganization.

4. On September 1, 1994 and November 18, 1994, preliminary copies of proxy materials were filed with the SEC. On February 7, 1995, definitive proxy materials were filed with the SEC and were distributed to shareholders on February 8, 1995. At a meeting held on April 7, 1995, applicant's shareholders approved the Reorganization.

5. At Valuation Time, applicant had 5,752,965 shares of common stock outstanding with an aggregate and per share net asset value of $75,866,609.45 and $13.19, respectively. On the Reorganization Date, applicant transferred all of its securities and cash to MuniAssets in exchange for 5,637,560 shares of common stock of MuniAssets.

6. Each of applicant's shareholders received, in exchange for his or her shares in applicant, shares of the corresponding series of MuniAssets having a net asset value equal to the aggregate net asset value of his or her shares in applicant as of the Valuation Time.

7. Total expenses of the reorganization were $200,000. Such expenses were for postage, legal, accounting, and printing fees. All expenses will be borne by MuniAssets.

8. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant will terminate its existence as a Maryland corporation.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23023 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request an extension for a new, and/or currently approved information collection.

DATES: Comments should be submitted by December 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629. Copies of this collection can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Service Corps of Retired Executives (SCORE) Application for Membership.

OMB Control Number: 3245–0092.

Expiration Date of Approval: January 31, 1996.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: Individuals seeking SCORE membership.

Burden Per Response: 30 minutes.

Annual Responses: 2,800.

Annual Burden: 1,400.

Comments: Send all comments regarding this information collection to Richard Ginsburg, Small Business Administration, Office of Business Initiatives, 409 3rd Street, SW., Suite 6100, Washington, DC 20416. Phone Number: 202–205–7429.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Georgia Greene,

Chief, Administrative Information Branch.

[FR Doc. 95–25066 Filed 10–6–95; 8:45 am]

BILLING CODE 8025–01–P

Pilot Export Working Capital Program

AGENCY: Small Business Administration.

ACTION: Notice of Continuation of Pilot.

SUMMARY: On September 21, 1994, the Small Business Administration (SBA) published a notice in the **Federal Register** (59 FR 48460) to advise the public of a pilot for its Export Working Capital Program (EWCP). The pilot is scheduled to end on September 30, 1995, but SBA is continuing the pilot until April 1, 1996. This notice is issued pursuant to § 120.1–2 of SBA's regulations (13 CFR 120.1–2).

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jean Z. Smith, Export Development Specialist, Office of International Trade, 202/205–7262.

SUPPLEMENTARY INFORMATION: Under EWCP, SBA guarantees short-term working capital loans made by participating lenders to exporters for the purpose of financing export transactions. EWCP is intended to replace SBA's Export Revolving Line of Credit (ERLC) Program. Accordingly, SBA's regulations for the ERLC Program (13 CFR 122.54) will not apply to EWCP loans.

The SBA and the Export-Import Bank of the United States (Exim Bank) are working to harmonize their export financing programs to facilitate small business access to either program. Accordingly, many features of SBA's EWCP will focus on assisting smaller businesses that need a guaranty of $750,000 or less and Exim Bank's Export Working Capital Guaranty Program (EWCG) will serve the credit needs of larger businesses and small businesses with credit needs beyond $750,000.

The details of SBA's EWCP pilot were spelled out in the earlier notice to which reference has been given. Under the harmonization program, SBA and Exim Bank have coordinated their programs to increase access and reduce redundancies in the delivery systems. Among the harmonization efforts undertaken to date are a common application, similar documentation requirements for application, greater standardization of interest rate and fee

policies, more direct involvement of the lending institutions through delegated authorities, and a coordinated promotion of the programs. These and other efforts enable small businesses and small business lenders to select the program best suited to their needs and to access either program without the need to meet differing documentation and application requirements. SBA's experience with the pilot has been excellent. During the first ten months of the program, 145 EWCP loans have been made, exceeding the last year's annual production for the ERLC program by 167%. However, the harmonization effort continues and is scheduled to be reviewed and assessed during Fiscal Year 96. For this reason SBA is extending the pilot for an additional six months during which time the Agency will evaluate which aspects of the program should be incorporated into permanent regulations.

During the continuation of the pilot, EWCP loans will not be eligible for sale in the secondary market that exists for 7(a) loans.

Dated: October 3, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–25065 Filed 10–6–95; 8:45 am]

BILLING CODE 8025–01–P

Wisconsin Capital Corp.; Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Eastern District of Wisconsin, dated August 7, 1995, the United States Small Business Administration hereby revokes the license of Wisconsin Capital Corporation, a Wisconsin corporation, to function as a small business investment company under the Small Business Investment Company License No. 05/07–0012 issued to Wisconsin Capital Corporation on January 5, 1960 and said license is hereby declared null and void as of September 14, 1995.

Dated: September 27, 1995.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–25064 Filed 10–6–95; 8:45 am]

BILLING CODE 8025–01–P

[License No 06/06–0290]

Houston Partners SBIP, Ltd.

Notice is hereby given that Houston Partners SBIP, Ltd. (HPSBIP), Capital Center Penthouse, 8th Floor, 401 Louisiana, Houston, TX 77002, a Federal licensee under the Small Business Investment Act of 1958, as amended (the Act), has financed a small concern in violation of section 312 of the Act and § 107.903 of the SBA rules and regulations (the regulations) governing Small Business Investment Companies (13 CFR 107.903 (1995)). An exemption may not be granted by SBA until Notices of this transaction have been published. HPSBIP provided financing to International Data Matrix, Inc. (I. D. Matrix), 28100 U.S. 19 North, Suite 200, Clearwater, FL 34621. Moreover, an additional financing to I.D. Matrix is under consideration.

The financing to I.D. Matrix is brought within the purview of Section 107.903 (b)(1) of the Regulations because Harvard Hill an Associate of Houston Venture Partners, Ltd., and HPSBIP, sits on the Board of I.D. Matrix, thus making I.D. Matrix an Associate of HPSBIP (§ 107.3 of the regulations). The financing provided expansion capital for I.D. Matrix.

Notice is further given that any person may, not later than 15 days from the date of the publication of the Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with § 107.903(e) of the regulations, in a newspaper of general circulation in Clearwater, FL.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 3, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–25063 Filed 10–6–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs, Overseas Citizen Services

[Public Notice 2266]

Eldorado International Airport, Bogota, Colombia; Lack of Effective Security Measures

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State issued a public announcement concerning the recent determination by the Secretary of the U.S. Department of Transportation that the international airport in Bogota, Colombia, does not administer nor maintain effective security measures.

FOR FURTHER INFORMATION CONTACT: Martha Melzow, American Citizens Services and Crisis Management, Department of State, 2201 C Street, NW, Room 4811, Washington D.C. 20520, 202–647–5226.

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 44908(a), on September 20, 1995, the Department of State issued the following public announcement:

On September 15, 1995, the United States Secretary of Transportation determined that the Eldorado International Airport, Bogota, Colombia, does not currently maintain security measures which are fully consistent with the standards established by the International Civil Aviation Organization (ICAO). The Department of Transportation believes that air service operations can be safely continued if proper precautions are carefully observed. Currently, U.S. air carriers and foreign air carriers who fly directly to the U.S. are providing additional security measures that counter the deficiencies identified at Eldorado International Airport.

Dated: September 26, 1995.

Georgia Rogers,

Managing Director, Overseas Citizens Services.

[FR Doc. 95–25068 Filed 10–6–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 9/30/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–686
Date filed: September 25, 1995
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1801 dated September 19, 1995, TC2 Reso/P 1802 dated September 19, 1995, TC2 Reso/P 1803 dated September 19, 1995, Europe-Middle East Expedited Resos r–1—r–31, Intended effective date: October 31, 1995

Docket Number: OST–95–687

Date filed: September 25, 1995

Parties: Members of the International Air Transport Association

Subject: TC23 Reso/P 0708 dated September 19, 1995, Europe-South Asian Subcontinent Expedited Resos, Intended effective date: expedited November 15, 1995

Docket Number: OST–95–688

Date filed: September 25, 1995

Parties: Members of the International Air Transport Association

Subject: COMP Telex Mail Vote 756, Amend Rounding Units for Chile, r–1—024d r–2—033d, Intended effective date: October 1, 1995

Docket Number: OST–95–690

Date filed: September 27, 1995

Parties: Members of the International Air Transport Association

Subject: TC23 Reso/P 0710 dated September 22, 1995 r–1 to r–15, TC23 Reso/P 0712 dated September 22, 1995 r–16 to r–24, Europe—Southeast Asia Expedited Resos, Earliest intended effective date: November 14, 1995

Docket Number: OST–95–693

Date filed: September 29, 1995

Parties: Members of the International Air Transport Association

Subject: TC1 Reso/C 0256 Dated June 16, 1995, TC1 Cargo Resolutions to/from USA/US Territories, TABLES—TC1 Rates 0073 dated June 27, 1995, CORRECTIONS—TC1 Rates 0074 dated July 28, 1995, Airline Economic Justifications, Intended effective date: October 1, 1995

Docket Number: OST–95–694

Date filed: September 29, 1995

Parties: Members of the International Air Transport Association

Subject: TC23 Telex Mail Vote 755, Specify Fares in Certain Middle East-TC3 Markets, r–1—010q, Intended effective date: October 29, 1995

Docket Number: OST–95–695

Date filed: September 29, 1995

Parties: Members of the International Air Transport Association

Subject: CAC/Reso/182 dated August 23, 1995, CAC Mail Vote A090, r–1—807 r-2–807e, Intended effective date: November 1, 1995

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–25037 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–62–P

Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 30,1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedure may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–689.

Date filed: September 26, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify: October 24, 1995.

Description: Application of Jet Aspen, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity to engage in Scheduled and Charter Interstate and Overseas air transportation of persons, property and mail.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–25038 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–078]

National Boating Safety Advisory Council Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet to discuss various issues related to recreational boating safety. Agenda items include, boating education, boat occupant protection, multiple use waterways, inflatable personal flotation devices, and U.S. Coast Guard Auxiliary direction. The meeting will be open to the public.

DATES: The meeting will be held on October 30 and 31, 1995, from 8:30 a.m. to 5 p.m. daily. Written material should be submitted not later than October 18, 1995.

ADDRESSES: The meeting will be held at the Days Inn/Days Suites Historic District, 201 West Bay Street, Savannah, GA 31401. Written material should be submitted to Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1077.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593–0001, telephone (202) 267–1077.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App.2, Section 1 *et seq.* The agenda will include discussion of the following topics:

1. Review of action taken at the 55th meeting of the Council.
2. Executive Director's Report.
3. Boat Occupant Protection Subcommittee Report.
4. Multiple Use Waterways Subcommittee Report.
5. Mandatory Education Subcommittee Report.
6. Report on Coast Guard Streamlining.
7. Recreational Boating Safety Program Update.
8. Report on the Development of the Multiple Use Waterways Management Guide.
9. Discussion on Inflatable Personal Flotation Device Rulemaking.
10. National Association of State Boating Law Administrators Report.
11. Report on U.S. Coast Guard Auxiliary Direction.
12. Report on Boating Industry Boating Safety Initiatives.
13. Report on Telecommunications Issues.
14. Report on Boating Safety Education: Re-Engineering and Reaching Out.
15. Chairman's Session.

Attendance is open to the public. With advance notice, members of the public may present oral presentations at the meeting. Persons wishing to present oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Council. However, to ensure advance distribution to each Council member, persons submitting written material are asked to provide 25 copies to the Executive Director no later than October 18, 1995.

Dated: October 3, 1995.

Capt. J.A. Creech,

United States Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–25049 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD–95–079]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, November 7, 1995, from 9:00 a.m. to 3:30 p.m. Written material should be submitted not later than October 24, 1995.

ADDRESSES: The meeting will be held in the Transco Tower Auditorium, Level 2, 2800 Post Oak Boulevard, Houston, Texas. Written material should be submitted to CAPT R. L. Skewes, Executive Director, Commandant (G–MOS), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CAPT R. L. Skewes, Executive Director, National Offshore Safety Advisory Committee (NOSAC), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593–0001, telephone (202) 267–0214.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda will include discussion of the following topics:

(1) IMO/ISO Issues;

(2) Survey of Self-Inspection of Fixed OCS Facilities;

(3) Revision of Subchapter ''N'' on OCS Facilities;

(4) Revision of Subchapter ''L'' on OSVs and Liftboats;

(5) Work Group Report on Draft Changes to Marine Investigation Regulations—Personnel Actions (46 CFR, Part 5);

(6) USCG Reorganization;

(7) Gulf of Mexico OCS Air Quality Study; and

(8) USCG Prevention Through People Initiative.

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES** no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director not later than October 24, 1995.

Dated: October 3, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–25051 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–077]

National Boating Safety Advisory Council Subcommittee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meetings.

SUMMARY: The National Boating Safety Advisory Council's Subcommittees on Boat Occupant Protection, Mandatory Education, and Multiple Use Waterways will meet to discuss various issues related to these topics. The meetings will be open to the public.

DATES: The meetings will be held on October 28 and 29, 1995, from 1:00 p.m. to 5 p.m. on October 28, and from 8:30 a.m. to 12:00 noon on October 29, 1995. Written material should be submitted not later than October 18, 1995.

ADDRESSES: The meetings will be held at the Days Inn/Days Suites Historic District, 201 West Bay Street and at the Old Food Court, City Market, 215 West St. Julian Street, Savannah, Georgia 31401. Written material should be submitted to Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593–0001, telephone (202) 267–1077.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street S.W., Washington, DC 20593–0001, telephone (202) 267–1077.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 1 et seq. The agenda for the meetings will be to discuss various issues related to the topics listed in the **SUMMARY**.

Attendance is open to the public. With advance notice, members of the public may present oral presentations at the meeting. Persons wishing to present oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 25 copies to the Executive Director no later than October 18, 1995.

Dated: October 3, 1995.

Capt. J. A. Creech, USCG,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 95–25050 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Intent To Prepare Environmental Impact Statement, Proposed Terminal Doppler Weather Radar To Serve John F. Kennedy International Airport (JFK) and LaGuardia Airport (LGA)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) intends to prepare an Environmental Impact Statement (EIS) to address the environmental impact of a proposal to construct and operate a terminal Doppler weather radar (TDWR) at a proposed site at Coast Guard Air Station Brooklyn (CGASB), New York. The proposed TDWR would serve both JFK and LGA Airports. The FAA has determined that it is critical to include the New York metropolitan area in the nationwide campaign to improve aviation safety. In addition to detecting wind shear for FAA reports to pilots, the TDWR would provide weather data to the Coast Guard for their search and rescue operations. The EIS will be prepared following FAA procedures for implementing the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), and consistent with the FAA's policy to facilitate public understanding and scrutiny of agency proposals. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), proposes to construct and operate a TDWR to serve both JFK and LGA Airports. The preferred site for this FAA

facility is at Coast Guard Air Station Brooklyn (CGASB).

TDWR is an automated weather radar system developed by the FAA. TDWR operates by sending out a radio frequency (RF) pulse. Then, the TDWR detects pulses reflected by weather conditions. TDWR detects conditions leading to hazardous wind shear at and in the vicinity of the airport and reports this to air traffic controllers. The only sure way to survive wind shear in the airport vicinity is to avoid it. With the assistance of the information provided by the TDWR, the air traffic controllers can then provide a timely warning to pilots. Improved wind shear detection provided by the TDWR reduces loss of life, injuries, property damage and air traffic delays that result from catastrophic airplane accidents caused by wind shear. The proposed TDWR facility would be part of a nationwide system of 47 radars strategically located near major airports.

The FAA has determined that it is critical to include the New York metropolitan area in the agency's efforts to improve aviation safety. There are 380,105 commercial carrier operations per year at JFK and 373,395 operations per year at LGA (March 1994-March 1995). Wind shear has been identified as a major cause of U.S. air carrier fatalities. The National Transportation Safety Board (NTSB) has recommended the installation of TDWR as a result of several crashes nationwide. One of the crashes was Eastern Airlines Flight 66 onto the Rockaway Parkway in June 1975 where 112 people died. TDWR is considered by NTSB as the best warning system for detecting wind shear conditions. In addition to preventing crashes, it will reduce weather-related delays. At JFK, 45% of delays are weather-related. At LaGuardia 39% of delays are weather-related.

Siting the proposed TDWR at the Coast Guard, Department of Transportation (DOT) property would be compatible with the continuing history of aviation facilities at this location. Additionally, it would be consistent with Coast Guard plans to install a weather radar for search and rescue helicopter operations. The proposed TDWR with an information feed to CGASB operations would satisfy this Coast Guard need, and for this reason, the Coast Guard supports the proposal. This would represent an important example of intermodal cooperation in satisfying multi-mission needs within the DOT.

The FAA anticipates that construction and operation of the proposed TDWR at CGASB would have little or no environmental impact. However, the agency anticipates significant public controversy concerning the perception of the potential adverse health effects of RF radiation. The FAA will hold public scoping meetings to assist in defining the focus of the EIS issues. A public notice issued at a later date will provide the dates, times and places of the scoping meetings. Further, the FAA will provide ample opportunity for public participation in defining the issues to be addressed in the EIS and in reviewing and commenting on the draft EIS.

The EIS will assess impacts and reasonable alternatives, including the ''no action'' alternative, following the National Environmental Policy Act of 1969 as amended, FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, DOT Order 5610.1C, Procedures for Considering Environmental Impacts, and the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508. Previous Environmental Assessments (EAs) for proposals to site individual TDWRs for JFK and LGA considered reasonable alternatives. Copies of these EAs are available by written request to the information contact designated below. Siting constraints for reasonable alternatives include strict siting criteria for radar coverage and the close proximity of densely populated communities in the metropolitan New York area. The FAA will address any reasonable alternatives presented during the scoping process and subsequent comment periods.

The final Programmatic Environmental Impact Statement (PEIS) for the TDWR Site Determination Program issued in September 1991, identified general conditions which might result in potentially significant impacts. RF radiation was one of the many environmental considerations addressed in this document. Copies of the PEIS may be obtained by written request to the information contact designated below.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Wind Shear Products Team, AND-420, 800 Independence Ave., SW., Washington, DC 20591. Telephone (202) 358–4946.

Issued in Washington, DC on October 3, 1995.

Steve Zaidman,

Deputy Director of Communications, Navigation, and Surveillance Systems, AND–2.

[FR Doc. 95–25056 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of rescheduled meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a rescheduled meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on October 24, 1995, at 1 p.m. Arrange for oral presentations by October 13, 1995. The meeting was originally scheduled for October 10, 1995.

ADDRESSES: The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–473; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on October 24, 1995, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m. The agenda will include:.

- A vote on the proposed recommendation developed by the Flight Data Recorder Working Group.
- Other business.

Copies of the proposed recommendation will be available to interested persons prior to the meeting. A copy may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by October 13, 1995, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 3, 1995.

Ida Klepper,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–25053 Filed 10–6–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 150–01]

Regional and District Offices of the Internal Revenue Service

Dated: September 28, 1995.

Under the authority given to the President to establish and alter internal revenue districts by Section 7621 of the Internal Revenue Code of 1986, as amended, and vested in the Secretary of the Treasury by Executive Order 10289 (approved September 17, 1951, as amended) as made applicable to Section 7621 of the Internal Revenue Code of 1986, as amended (as previously contained in the Internal Revenue Code of 1954) by Executive Order 10574 (approved November 5, 1954); under the authority vested in the Secretary of the Treasury by 31 U.S.C. 321 (a), (b) and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1986, as amended, by Section 7804(a) of such Code; and under the authority vested in the Secretary of the Treasury by Sections 7801(a) and 7803 of the Internal Revenue Code of 1986, as amended; the following internal revenue districts and regions are established or continued as described in this Order. When fully implemented, this Order establishes fewer internal revenue regions and districts than designated in previous Orders.

1. *Regions.* Four regions are established which shall be identified as Northeast Region, headquartered at New York, New York; Southeast Region, headquartered at Atlanta, Georgia; Midstates Region, headquartered at Dallas, Texas; and Western Region, headquartered at San Francisco, California. The head of each regional office shall bear the title ''Regional Commissioner'' identified by the region name. The geographic areas and internal revenue districts within each region are shown in the Attachment to this Order.

2. *Districts.* Thirty-three districts are established. Each shall be known as an internal revenue district and shall be identified by the names listed in the Attachment. The head of each district office shall be titled ''Director'' identified by the district name as specified in the Attachment. The geographic areas within each district are shown in the Attachment.

3. *U.S. Territories and Insular Possessions.* The Commissioner of Internal Revenue shall, to the extent of authority vested in the Commissioner, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other areas of the world.

4. *Implementation.* The district and regional organization described above shall be implemented on dates determined by the Commissioner of Internal Revenue. Until such dates, the existing offices are authorized to continue. Effective immediately, the Commissioner is authorized to effect such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this Order.

5. *Other Offices.* This Order affects only the regional and district offices subject to this Order and does not affect service centers or other offices in existence within the Internal Revenue Service.

6. *Effect On Prior Treasury Orders.* a. TO 150–01, ''Designation of Internal Revenue Districts,'' dated October 27, 1987, is superseded.

b. TO 150–03, ''Designation of Internal Revenue Regions and Regional Service Centers,'' dated January 24, 1986, is superseded.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 95–24987 Filed 10–6–95; 8:45 am]

BILLING CODE 4810–25–P

REGIONAL AND DISTRICT OFFICES OF THE INTERNAL REVENUE SERVICE

District name	Headquarters	Area covered
Southeast Region	Atlanta, Georgia	Alabama, Delaware, the District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia.
North Florida District	Jacksonville, Florida	Florida counties: Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton and Washington.
South Florida District	Fort Lauderdale, Florida.	Florida counties: Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Palm Beach, Sarasota and St. Lucie.
Georgia District	Atlanta, Georgia	Georgia.
Indiana District	Indianapolis, Indiana	Indiana.
Gulf Coast District	New Orleans, Louisiana.	Louisiana, Mississippi and Alabama.
Delaware-Maryland District.	Baltimore, Maryland	Delaware, Maryland and the District of Columbia.
North-South Carolina District.	Greensboro, North Carolina.	North Carolina and South Carolina.
Kentucky-Tennessee District.	Nashville, Tennessee	Kentucky and Tennessee.
Virginia-West Virginia District.	Richmond, Virginia	Virginia and West Virginia.
Northeast Region	New York, New York	Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont.
Connecticut-Rhode Island District.	Hartford, Connecticut	Connecticut and Rhode Island.
Ohio District	Cincinnati, Ohio	Ohio.
Michigan District	Detroit, Michigan	Michigan.
New England District	Boston, Massachusetts	Maine, Massachusetts, New Hampshire and Vermont.

REGIONAL AND DISTRICT OFFICES OF THE INTERNAL REVENUE SERVICE—Continued

District name	Headquarters	Area covered
New Jersey District	Newark, New Jersey	New Jersey.
Brooklyn District	Brooklyn, New York	New York counties: Kings, Nassau, Queens and Suffolk.
Upstate New York District.	Buffalo, New York	New York counties: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautaugua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, St. Lawrence, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates.
Manhattan District	New York, New York	New York counties: Bronx, New York, Richmond, Rockland and Westchester.
Pennsylvania District	Philadelphia, Pennsylvania.	Pennsylvania.
Midstates Region	Dallas, Texas	Arkansas, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wisconsin.
Illinois District	Chicago, Illinois	Illinois.
North Central District	St. Paul, Minnesota	Minnesota, North Dakota and South Dakota.
Midwest District	Milwaukee, Wisconsin	Iowa, Nebraska and Wisconsin.
Kansas-Missouri District	St. Louis, Missouri	Kansas and Missouri.
Arkansas-Oklahoma District.	Oklahoma City, Oklahoma.	Arkansas and Oklahoma.
North Texas District	Dallas, Texas	Texas counties: Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Borden, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lipscomb, Loving, Lubbock, Lynn, Marion, Martin, Menard, Midland, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Reagan, Red River, Roberts, Rockwall, Runnels, Rusk, Sabine, San Augustine, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Upshur, Upton, Van Zandt, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Wood, Yoakum and Young.
South Texas District	Austin, Texas	Texas counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Brazos, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, Culberson, DeWitt, Dimmitt, Duval, Edwards, El Paso, Falls, Fayette, Freestone, Frio, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hays, Hidalgo, Hill, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, McCulloch, McLennan, McMullen, Madison, Mason, Matagorda, Maverick, Medina, Milam, Nueces, Pecos, Presidio, Real, Reeves, Refugio, Robertson, San Patricio, San Saba, Somervell, Starr, Terrell, Travis, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata and Zavala.
Houston District	Houston, Texas	Texas counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler and Walker.
Western Region	San Francisco, California.	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming
Southwest District	Phoenix, Arizona	Arizona, Nevada and New Mexico
Rocky Mountain District	Denver, Colorado	Colorado, Idaho, Montana, Utah and Wyoming
Northern California District.	Oakland, California	Northern California counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba
Central California District.	San Jose, California	Mid-state California counties: Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne and Ventura
Los Angeles District	Los Angeles, California	County of Los Angeles, except for that portion served by the Southern California District
Southern California District.	Laguna Niguel, California.	Southern California counties: Imperial, Orange, Riverside, San Bernardino, San Diego, and that portion of Los Angeles County serviced by the Carson post of duty (the geographic area covered by 1995 U.S. Postal Service zip codes 90254, 90274, 90277, 90278, 90501, 90502, 90503, 90504, 90505, 90506, 90507, 90508, 90509, 90510, 90701, 90702, 90703, 90704, 90706, 90707, 90710, 90711, 90712, 90713, 90714, 90715, 90716, 90717, 90731, 90732, 90733, 90734, 90744, 90745, 90746, 90747, 90748, 90749, 90801, 90802, 90803, 90804, 90805, 90806, 90808, 90809, 90810, 90813, 90814, 90815, 90822, 90831, 90832, 90833, 90834, 90835, 90840, 90844, 90846, 90853)
Pacific Northwest District.	Seattle, Washington	Alaska, Hawaii, Oregon and Washington

[FR Doc. 95–24987 Filed 10–6–95; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on July 3, 1995 (60 FR 34577).

EFFECTIVE DATE: October 10, 1995.

FOR FURTHER INFORMATION CONTACT: Carol A. Kummer, Office of Human Resources Management (053), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–4937.

VA Performance Review Board (PRB)

Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration (Chairperson)
Raymond H. Avent, Deputy Under Secretary for Benefits
Shirley Carozza, Deputy Assistant Secretary for Budget
Julie D. Moravec, Ph.D., Associate Chief Medical Director for Operations (Alternate)
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity
Kathy E. Jurado, Assistant Secretary for Public and Intergovernmental Affairs
Mary Lou Keener, General Counsel
William T. Merriman, Deputy Inspector General
Roger R. Rapp, Director of Field Operations, National Cemetery System
Patricia A. Grysavage, Director, Executive Management and Communications, Veterans Benefits Administration (Alternate)

Veterans Benefits Administration PRB

Raymond H. Avent, Deputy Under Secretary for Benefits (Chairperson)
David Brigham, Director, Eastern Area
Celia Dollarhide, Director, Education Service
J. Gary Hickman, Director, Compensation and Pension Service
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
Jack McReymonds, Director, Western Area
Newell Quinton, Chief Information Officer

Veterans Health Administration PRB

Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health (Chairperson)
Jule D. Moravec, Ph.D., Associate Chief Medical Director for Operations (Co-Chairperson)
Sheila M. Cullen, Acting Regional Director, Western Region
Jim W. Delgado, Director, Voluntary Service
Barbara L. Gallagher, Regional Director, Eastern Region
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
W. Todd Grams, Chief Financial Officer
John R. Higgins, M.D., Regional Director, Southern Region
Thomas B. Horvath, M.D., Director, Mental Health and Behavioral Sciences Service
Michael J. Hughes, Chief of Staff to the Under Secretary for Health
David H. Law, M.D., Acting Associate Deputy CMD for Clinical Programs
Lydia B. Mavridis, Associate CMD for Administration
Robert A. Perreault, Director, Health Care Reform Office
Elizabeth M. Short, M.D., Associate CMD for Academic Affairs
David Whatley, Regional Director, Central Region
Charles V. Yarbrough, Associate CMD for Construction Management

Office of Inspector General PRB

David A. Brinkman, Assistant Inspector General for Analysis and Followup, Department of Defense (Chairperson)
Wilbur Daniels, Assistant Inspector General for Inspections and Evaluations, Department of Transportation
William Whyte, Assistant Inspector General for Auditing, General Services Administration

Dated: September 29, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–24986 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Cemeteries and Memorials, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials has been renewed for a 2-year period beginning August 23, 1995, through August 23, 1997.

Dated: September 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–24991 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Former Prisoners of War, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Former Prisoners of War has been renewed for a 2-year period beginning September 29, 1995, through September 29, 1997.

Dated: September 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–24990 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on the Readjustment of Vietnam and Other War Veterans; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on the Readjustment of Vietnam and Other War Veterans has been renewed for a 2-year period beginning September 1, 1995, through September 1, 1997.

Dated: September 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–24992 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Veterans Affairs Wage Committee, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Veterans Affairs Wage Committee has been renewed for a 2-year period beginning April 19, 1995, through April 19, 1997.

Dated: September 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–24988 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Women Veterans has been renewed for a 2-year period beginning September 26, 1995, through September 26, 1997.

Dated: September 28, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–24989 Filed 10–6–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 195

Tuesday, October 10, 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).

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 8:00 a.m. to 11:00 a.m., Wednesday, October 18, 1995.

PLACE: Eleanor Roosevelt Room, ANA Hotel, 2401 M Street, N.W., Washington, D.C.

STATUS: This entire meeting will be open to the public.

TOPICS OF DISCUSSION:

- The Mission of the FHLBank System;
- Legislative Outlook; and
- Program Regulations and Safety and Soundness Regulations.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–25217 Filed 10–5–95; 3:26 pm]

BILLING CODE 6725–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, October 11, 1995.

PLACE: Room 600, 1730 K Street N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Power Operating Co.,* Docket No. PENN 93–51 (Issues include whether the judge erred in finding that the operator's violation of 30 CFR § 77.1710(a) was not of a significant and substantial nature.)

Any person attending 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 INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: October 4, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–25202 Filed 10–5–95; 2:55 pm]

BILLING CODE 6735–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on October 2, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for November 6, 1995, in Washington, D.C. The members will consider a funding request for redesign of the Priority Mail service program.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider, and Winters, Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary of the Board Harris, and General Counsel Elcano.

The Board determines that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed management action.

The board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–25177 Filed 10–5–95; 1:33 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 195
Tuesday, October 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 489 and 498

[HSQ-156-CN]

RIN 0938-AD94

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

Correction

In rule document 95–23780 beginning on page 50115 in the issue of Thursday, September 28, 1995, make the following correction:

On page 50115, in the second column, in the **EFFECTIVE DATE** section, in the second line ''§§493.53 and 493.90'' should read ''§§489.53 and 498.90''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7155

[CO-935-1430-01; COC-55885]

Withdrawal of National Forest System Land for Steamboat Ski Area; Colorado

Correction

In rule document 95–21318 appearing on page 44763 in the issue of Tuesday, August 29, 1995, make the following corrections:

1. On page 44763, in the second column, in the third full paragraph, the first line is corrected to read:

''Thence N. 89°59′ E., 1014.00 ft.; N. 60° 45′''.

2. And on the same page, in the same column, in the seventh full paragraph, the fourth line is corrected to read:

''of 14°36′06″ and being subtended by a chord''.

BILLING CODE 1505–01–D

federal register

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October 10, 1995

Part II

Environmental Protection Agency

40 CFR Parts 51, 85 and 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Voluntary Standards for Light-Duty Vehicles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 85 and 86

[AMS–FRL–5311–2]

RIN 2060–AF75

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Voluntary Standards for Light-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Today EPA is proposing regulations to establish a National Low Emission Vehicle (National LEV) program. Under these regulations, auto manufacturers would be able to volunteer to comply with more stringent tailpipe standards for cars and light-duty trucks. Once a manufacturer opted into the program, the standards would be enforced in the same manner as any other federal motor vehicle pollution control requirement. EPA is proposing that this program would relieve the 13 states in the Northeastern part of the country (the Ozone Transport Region or OTR) of the December, 1994, regulatory obligation to adopt their own motor vehicle programs. Today's NPRM also proposes to harmonize federal and California motor vehicle standards and test procedures to enable manufacturers to design and test vehicles to one set of standards nationwide.

This NPRM is another step in an on-going process to achieve cleaner air in the OTR. The OTR States submitted a petition in February, 1993, requesting EPA to require all states in the OTR to adopt the more stringent California motor vehicle program. Since then, under EPA's leadership, the OTR States, auto manufacturers, environmental groups, fuel providers and other interested parties have worked together with EPA to develop a program that is agreeable to all parties, achieves equivalent or better emission reductions from motor vehicles in the OTR (compared to state-by-state adoption of the California program), reduces pollution nationwide, and does so in a cost-effective manner. If National LEV is implemented, it will demonstrate how cooperative, partnership efforts can produce a smarter, cheaper program that reduces regulatory burden while increasing protection of the environment and public health.

DATES: Written comments on this NPRM must be submitted by November 9, 1995. Please direct all correspondence to the address specified below. EPA will hold a public hearing on this NPRM on November 1, 1995 if one is requested by October 20, 1995. The public hearing, if requested, would begin at 9:00 a.m. and continue until 4:30 p.m. or until all commenters have the opportunity to testify.

ADDRESSES: Interested parties may submit written comments (in triplicate if possible) to Public Docket No. A–95–26, at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (Telephone 202–260–7548; FAX 202–260–4000). Materials relevant to this proposed rulemaking have been placed in Docket No. A–95–26. The docket is located at the above address in Room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and 5:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

Members of the public may call the contact person indicated below to find out whether a hearing will be held and, if so, the exact location. Requests for a public hearing should be directed to the contact person indicated below. The hearing, if requested, will be held in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone (202) 260–7757. FAX (202) 260–6011.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of the Regulatory Language

Electronic copies (on 3.5″ diskettes) of the proposed regulatory language may be obtained free of charge by visiting, calling, or writing the Environmental Protection Agency, Certification Division, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4384. Refer to Docket A–95–26. A copy is available for inspection in the docket (see Addresses).

The proposed regulatory language is also available electronically on the Technology Transfer Network (TTN). TTN is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Users are able to access and download TTN files on their first call. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit)
Voice help: 919–541–5384
Internet address: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00–12:00 Noon ET

1. Technology Transfer Network Top Menu: <T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards) (Command: T)
2. TTN TECHNICAL INFORMATION AREAS: <M> OMS—Mobile Sources Information (Command: M)
3. OMS BBS === MAIN MENU FILE TRANSFERS: <O> Other OMS Documents (Command: O)

At this stage, the system will list all available files in this area. To download a file, select a transfer protocol that will match the terminal software on your computer, then set your own software to receive the file using that same protocol. If unfamiliar with handling compressed (that is, ZIP'd) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

II. Outline and List of Acronyms

A. Outline

This proposed rule preamble is organized into the following sections:

I. Obtaining Electronic Copies of the Regulatory Language
II. Outline and List of Acronyms
A. Outline
B. List of Acronyms
III. Introduction and Background
A. Introduction
B. Benefits of National LEV Program
C. Background
1. Current Federal Motor Vehicle Emissions Control Program
2. California Low-Emission Vehicle Program
3. OTC LEV Decision
4. Public Process
D. National LEV Program
1. Agreement—A Necessary Predicate for the National LEV Program
2. Description of National LEV Program
IV. Provisions of National LEV Program
A. Program Structure
1. Opt-In to National LEV and In Effect Finding
2. Opt-Out From National LEV
a. Conditions Allowing Opt-Out
(1) Changes to Stable Standards
(2) OTC States' Failure to Meet or Keep Their Commitments
b. Effective Date of Opt-Out
3. Duration of Program
B. Voluntary Tailpipe and Related Standards and Phase-In
1. Emission Standards for Categories of National LEV Vehicles
a. Certification Standards
b. In-Use Standards

2. Non-Methane Organic Gases (NMOG) Fleet Average Standards
3. Fleet Average NMOG Credit Program
4. Five Percent Cap on Sale of Tier I Vehicles and TLEVs
5. Tailpipe Emissions Testing
a. California Phase II Reformulated Gasoline
b. NMOG vs. NMHC
6. On-Board Diagnostics Systems Requirements
7. Fuel Provisions and Reactivity Adjustment Factors
8. Hybrid Electric Vehicles (HEVs)
C. Low Volume and Small Volume Manufacturers
D. Legal Authority
E. Enforceability and Prohibited Acts
V. National LEV Deemed to Satisfy OTC LEV SIP Obligation
A. Acceptable LEV-Equivalent Program
1. Criteria for Finding Acceptable LEV-Equivalent Program
2. Application of Criteria to Voluntary Program
a. Emissions Reduction Equivalence Determination
b. Enforceability
c. Opportunities for Technology
B. Finding LEV-Equivalent Program in Effect
VI. Other Applicable Federal Requirements and Harmonization With California Requirements
A. Introduction
B. Harmonization of Federal and California Standards and Requirements
1. On-Board Refueling Vapor Recovery
2. Evaporative Emissions
3. Certification Short Test (CST)
4. Federal Test Procedure Revisions
5. High Altitude
C. Federal Compliance Requirements
1. Selective Enforcement Auditing and Quality Audit Programs
2. Imports
3. In-Use and Warranty Requirements
VII. Effective Date
VIII. Public Participation
A. Comments and the Public Docket
B. Public Hearing
IX. Administrative Requirements
A. Administrative Designation
B. Regulatory Flexibility Act
C. Unfunded Mandates Reform Act
D. Reporting and Recordkeeping Requirements

B. List of Acronyms

AAMA: American Automobile Manufacturers Association
AQL: Acceptable Quality Level
ATV(s): Advanced Technology Vehicle(s)
CAA: Clean Air Act
CAAA: Clean Air Act Amendments
CALLEV: California Low Emission Vehicle Program
CARB: California Air Resources Board
CFR: Code of Federal Regulations
CFV: Clean Fuel Vehicle
CO: Carbon Monoxide
CST: Certification Short Test
EPA: U.S. Environmental Protection Agency
EPAct: Energy Policy Act
FID: Flame Ionization Detector
FR: Federal Register
FTP: Federal Test Procedure
GVWR: Gross Vehicle Weight Rating
HC: Hydrocarbon
HCHO: Formaldehyde
HEV(s): Hybrid Electric Vehicle(s)
HLDT(s): Heavy Light-Duty Truck(s)
ICI(s): Independent Commercial Importer(s)
I/M: Inspection and Maintenance
LDT(s): Light-Duty Truck(s)
LDV(s): Light-Duty Vehicle(s)
LEV(s): Low Emission Vehicle(s)
LLDT(s): Light Light-Duty Truck(s)
LVW: Loaded Vehicle Weight
MIL: Malfunction Indicator Light
MY: Model Year
NAAQS: National Ambient Air Quality Standards
National LEV: National Low Emission Vehicle
NLEV: National Low Emission Vehicle
NMHC: Non-methane Hydrocarbons
NMOG: Non-methane Organic Gases
NO_X: Oxides of Nitrogen
NPRM: Notice of Proposed Rulemaking
OBD: On-Board Diagnostics
OBD II: On-Board Diagnostics Requirements
OEM(s): Original Engine Manufacturer(s)
ORVR: On-Board Refueling Vapor Recovery
OTC: Ozone Transport Commission
OTC LEV: Ozone Transport Commission Low Emission Vehicle
OTR: Ozone Transport Region
PM: Particulate Matter
RAF(s): Reactivity Adjustment Factor(s)
RIA: Regulatory Impact Analysis
RVP: Reid Vapor Pressure
SEA: Selective Enforcement Audit
SFTP: Supplemental Federal Test Procedure
SIP: State Implementation Plan
THC: Total Hydrocarbon
TLEV(s): Transitional Low Emission Vehicle(s)
ULEV(s): Ultra Low Emission Vehicle(s)
VOC(s): Volatile Organic Compounds
ZEV(s): Zero Emission Vehicle(s)

III. Introduction and Background

Today EPA is proposing regulations for the National Low Emission Vehicle (LEV) program—EPA believes this is a cleaner, smarter, cheaper pollution control program for new motor vehicles. Under the program, auto manufacturers would have the option of agreeing to comply with tighter tailpipe emission standards—standards that EPA does not have authority to impose now. Once manufacturers committed to the program, the standards would be enforceable—just as all other federal motor vehicle standards are enforceable. Manufacturers have indicated that they would be willing to volunteer to meet these tighter standards if EPA and the states in the northeastern part of the country (the OTR States) are willing to agree to a program that meets certain conditions, including providing manufacturers with regulatory stability, recognizing that establishing advanced technology vehicles in the Northeast is a shared responsibility (rather than the sole responsibility of auto manufacturers), and reducing regulatory burden by harmonizing federal and California motor vehicle standards.

The National LEV proposal is another step in an unprecedented, cooperative effort by the Ozone Transport Commission (OTC) States, auto manufacturers, environmentalists, fuel providers, EPA and other interested parties to improve air quality. The OTC States and environmentalists provided the opportunity for this cooperative effort by pushing for adoption of the California LEV program throughout the Ozone Transport Region (OTR). Under EPA's leadership, the states, auto manufacturers, environmentalists and other interested parties then embarked on a process that was marked by extensive public participation, a willingness to work with each other and to solve problems jointly, and the development of trust between the various participants. This working relationship is particularly remarkable given the adversarial and litigious nature of the interactions between the parties in the recent past. EPA applauds the efforts of these parties, particularly the leadership shown by the OTC States and the auto manufacturers.

Given statutory constraints, National LEV will be implemented only if it is agreed to by the OTC States and the auto manufacturers. EPA does not have authority to force either side to sign up to the program. Although the OTR States and the automobile industry have reached agreement on many aspects of a 49-state program, agreement has not yet been reached on all issues. However, because EPA believes agreement is close, and to allow National LEV to be implemented promptly once an agreement is reached, EPA today is proposing regulations that would provide the regulatory framework for the National LEV program.

National LEV benefits the environment by reducing air pollution nationwide. This program is designed to address air pollution problems and will produce public health and environmental benefits both inside and outside the OTR. This should assist states outside the OTR that were considering adopting the California program in meeting their obligations under the Clean Air Act (CAA).

EPA has determined that the National LEV program will result in emissions reductions in the Northeast OTR that are equivalent to or better than the emissions reductions that would be achieved by state-by-state adoption of the California LEV program (including Zero Emission Vehicle (ZEV) mandates). Thus, EPA is proposing that National LEV would relieve the OTR States of

their regulatory obligation to adopt and implement a state motor vehicle program. This obligation arose when the OTR States had requested that EPA require all the OTR States to adopt the more stringent California Low Emission Vehicle (LEV) program, and EPA granted the request in December, 1994, based on the finding that the region needed the emission reductions to achieve and maintain the ozone National Ambient Air Quality Standards (NAAQS). Not only will National LEV provide emissions reductions benefits to the OTC States, it will reduce states' costs of providing their citizens with healthy air by avoiding the costs of state programs that duplicated each others' and EPA's efforts.

National LEV would also provide important relief from certain regulatory requirements to the auto manufacturers. Rather than having a fleet of California vehicles that are designed and tested to California standards and a fleet of federal vehicles that are designed and tested to different federal standards, in most instances manufacturers will have harmonized standards that will allow them to sell most vehicles nationwide. Not only will this reduce testing and design costs, it should allow more efficient distribution and marketing of vehicles nationwide.

The cooperative nature of the program by itself should provide environmental benefits sooner and in a way that greatly reduces regulatory transaction costs from what would otherwise be the case. Focusing energy on implementing the program the parties helped jointly design will be a better use of resources than continued fighting over whether any program should be implemented at all.

A. Introduction

In this document, EPA is proposing a voluntary, National Low Emission Motor Vehicle (National LEV) program. The National LEV program would include a set of motor vehicle emission standards that would significantly reduce emissions of ozone-producing pollutants from new motor vehicles. The program would include a manufacturer fleet average standard for non-methane organic gases (NMOG) applicable in the Northeast OTR states [1] beginning in model year 1997, and applicable nationwide (except for California) beginning in model year 2001. Manufacturers would not be required to meet the standards in this program unless they choose to opt into the program. However, if a manufacturer were to opt into the program and EPA were to find that the program was in effect, then the manufacturer would be bound by the program's requirements. A manufacturer could opt out of the program in certain limited circumstances.

In this notice, EPA is also proposing that the National LEV program would relieve OTR States of an existing regulatory requirement. On December 19, 1994, EPA approved a petition submitted by the Northeast Ozone Transport Commission (OTC) to require OTR States to adopt the California Low Emission Vehicle (LEV) program (which it called the Ozone Transport Commission's Low Emission Vehicle (OTC LEV) program).[2] EPA found that the reduction of emissions from new motor vehicles throughout the OTR is necessary to mitigate the effects of air pollution transport in the region, and to bring ozone nonattainment areas in the OTR into attainment (including maintenance) by the dates specified in the Clean Air Act, as amended in 1990 (CAA, or the Act). 60 FR 4712 (January 24, 1995) (OTC LEV decision). Under the OTC's recommended program, all new motor vehicles sold in the OTR beginning in model year 1999 would be required to be certified by the California Air Resources Board (CARB) to any one of the California motor vehicle emissions standards (i.e., California Tier 1, Transitional Low-Emission Vehicle (TLEV), LEV, Ultra Low-Emission Vehicle (ULEV), or ZEV). Manufacturers could choose any mix of California-certified vehicles to comply with annual fleet average NMOG standards, which become increasingly stringent over time. Pursuant to the OTC recommendation, individual states in the OTR would be permitted (but not required) to adopt the ZEV mandate. *See* 60 FR 4712, 4724 (January 24, 1995).

EPA is proposing that National LEV is an acceptable alternative to OTC LEV.[3] National LEV would be an enforceable program that would achieve reductions in new motor vehicle emissions that are at least equivalent to the reductions that would be achieved through implementation of the OTC LEV program. Therefore, if EPA finds that the National LEV program is in effect, OTC States would not be required to adopt the OTC LEV program to meet the State Implementation Plan (SIP) call EPA issued in the OTC LEV decision.

EPA provided numerous opportunities for public participation in the decision-making process leading to OTC LEV and National LEV, as described more fully in Section C.4. EPA established a subcommittee of the Clean Air Act Advisory Committee, pursuant to the Federal Advisory Committee Act, to evaluate issues relating to obtaining reductions in emissions from motor vehicles in the OTR. The Subcommittee has also served as a public forum to discuss voluntary, 49-state motor vehicle standards, and provided comments to EPA regarding today's proposal.

B. Benefits of National LEV Program

The national motor vehicle emissions control program proposed today represents a significant step towards the goal of reducing smog in heavily populated urban areas, both in the northeastern United States and in the rest of the country. The National LEV program would also achieve reductions in emissions of other pollutants, including particulate matter (PM), and formaldehyde (HCHO).

Ground-level ozone, the principal harmful component in smog, is produced by a complex set of chemical reactions involving volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the presence of sunlight. Ground-level ozone causes health problems, including damaging lung tissue, reducing lung function, and sensitizing the lungs to other irritants. Scientific evidence indicates that the ambient levels of ozone affect healthy adults and children, as well as people with impaired respiratory systems, such as asthmatics. A reduction in lung function during periods of moderate exercise has been found following exposure to ozone for 6 to 7 hours at concentrations at or near the current standard. This decrease in lung function may be accompanied by symptoms such as chest pain, coughing, nausea, and pulmonary congestion. Studies, to date, indicate that the acute health effects of exposure to ozone at the level of the current national standard (such as coughing, chest pain, and shortness of breath) are reversible in most people when the exposure stops. However, the extent of such reversibility depends on factors such as the length of exposure and individual activity level. With repeated exposure to ozone over time, many of these symptoms attentuate but some indicators of cell damage suggest continued lung inflamation. Ground-

[1] The OTR is made up of: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, and the part of Virginia that is within the Consolidated Metropolitan Statistical Area that includes the District of Columbia (collectively OTR or OTC States).

[2] Under the OTC LEV decision, the States also have the option of submitting a ''shortfall'' SIP, as described in Section III.C.3. *See* 60 FR at 4730.

[3] In today's notice, EPA is proposing the criteria that must be met for an alternative program to qualify as an acceptable LEV-equivalent.

level ozone is also responsible for significant agricultural crop yield losses each year. Studies also indicate that the current ambient levels of ozone are responsible for damage to both terrestrial and aquatic ecosystems, including acidification of surface waters, reduction in fish populations, damage to forests and wildlife, soil degradation, and reduced visibility.

The National LEV program would result in significant environmental and public health benefits nationwide. There are 57 ozone nonattainment areas in the U.S. outside the OTR and California, including several areas classified as ''serious'' or ''severe'' for ozone. Houston and the upper Midwest, in particular, experience high levels of ground-level ozone pollution. The implementation of the National LEV program nationwide in 2001 will advance the goal of emissions reductions in those areas as well. A vehicle certified to the National LEV standards would, over its lifetime, emit 400 pounds less pollution than a Tier 1 vehicle. Implementation of National LEV is expected to achieve nationwide reductions of NO_X emissions of 400 tons/day in 2005 and 1200 tons/day in 2015, and nationwide reductions in NMOG emissions of 279 tons/day in 2005 and 778 tons/day in 2015.

In evaluating the OTC petition, EPA analyzed the level of emissions reductions that are needed throughout the OTR to attain (or maintain) the national ambient air quality standard for ozone, given the serious transport issue. The primary NAAQS for various pollutants, including ozone, are set by EPA on the basis of air quality criteria and allowing an adequate margin of safety, at a level that the Agency determines is necessary to protect public health. EPA concluded, based on its analysis in the context of the OTC LEV decision, that NO_X reductions of 50 to 75% from 1990 levels from every portion of the OTR lying to the south, southwest, west, and northwest of each serious or severe OTR nonattainment area, and VOC reductions of 50 to 75% from the portion of the OTR in or near (and upwind of) each serious and severe OTR nonattainment area, are necessary to bring each such nonattainment area into attainment by the applicable date.

Motor vehicles are a significant contributor to smog because of their emissions of VOCs and NO_X. EPA has projected that, without a program that achieves reductions in the northeastern United States equivalent to those achieved by OTC LEV, on-highway vehicles will account for approximately 38% of NO_X emissions and 22% of anthropogenic VOC emissions in 2005. More stringent motor vehicle standards outside the OTR, such as those proposed today, will help the OTR achieve necessary reductions (in addition to the benefits produced in those states outside the OTR). EPA estimated that migration into the OTR of non-LEV vehicles would result in a 16 ton/day increase in VOC emissions and a 28 ton/day increase in NO_X emissions in 2005 compared to EPA's estimates of highway vehicle emissions in the OTR under the OTC LEV program. The National LEV program, when implemented nationwide in 2001, would greatly reduce this migration effect.

As described in the OTC LEV decision, EPA's modelling analyses support the conclusion that no combination of potentially broadly practicable control measures in the OTR would be sufficient to achieve the necessary level of emissions reductions without more stringent new motor vehicle emission standards. Thus, EPA determined that all of the emissions reductions in the OTR associated with implementing the OTC LEV program, or a LEV-equivalent program, are necessary.

EPA has determined that the National LEV program proposed today would provide at least equivalent emissions reductions in the OTR as would OTC LEV, and do so in a more efficient and cost-effective manner. The National LEV program would result in equal or greater reductions in emissions of VOCs and NO_X in the OTR for two reasons. First, the National LEV program would provide for the introduction of transitional low emission vehicles (TLEVs) in the OTR in 1997, two years earlier than would be required under the OTC LEV program. Also, since the National LEV program would apply nationwide (except for California) in 2001, vehicles purchased outside the OTR that move into the region would be up to 70% cleaner than incoming vehicles (i.e., Tier 1 vehicles) would be under the OTC LEV program.

The National LEV program is also expected to achieve pollution reduction benefits from motor vehicles beyond those associated with ozone pollution. Under National LEV, motor vehicles across the nation will also be required to meet emissions standards for PM and formaldehyde (HCHO) that are more stringent than the comparable federal Tier 1 standards. All states, not just those in the OTR, will realize air quality benefits from implementation of these standards.

The National LEV program will require light-duty diesel motor vehicles and light-duty diesel trucks to meet standards for emissions of particulate matter that are more stringent than the comparable Tier 1 standards. Particulate matter (PM) is the generic term for a broad class of chemically and physically diverse substances that exist as discrete particles over a wide range of sizes. PM emissions have been associated with numerous serious health effects, including upper and lower respiratory illnesses such as pneumonia, chronic obstructive pulmonary disease, chronic bronchitis, aggravation of the respiratory system in children with preexisting illnesses, and premature mortality in sensitive individuals (such as those with cardiovascular diseases). In addition, studies have shown that PM emissions episodes can result in a short-term decrease in lung function in small children. PM emissions also contribute to impairment of visibility, acidic deposition, and potential modification of the climate.

As discussed more fully in the RIA for this rulemaking, EPA's modelling shows that implementation of the National LEV program will result in a 28.6 ton/day effective PM–10 (particulates less than 10 microns in diameter) emissions reduction in 2005 (compared to expected PM emissions in a situation where current Tier 1 standards apply outside the OTC and OTC LEV is implemented within the OTC). Furthermore, in western areas with a PM pollution problem caused by nitrates (such as Denver), the NO_X reductions achieved by the National LEV program would provide additional PM emissions benefits.

The National LEV program also includes standards for formaldehyde emissions from motor vehicles, unlike the current federal Tier 1 standards, which do not regulate emissions of formaldehyde.[4] In April 1993, pursuant to § 202(l) of the CAA, EPA released its assessment of the need for controlling emissions of toxic air pollutants from motor vehicles and motor vehicle fuels (EPA Motor Vehicle-Related Air Toxics Study). This study focused on the carcinogenic risk associated with such emissions, and discussed the health effects of the following specific toxic air pollutants: benzene, formaldehyde, 1,3-butadiene, acetaldehyde, and selected metals and motor vehicle-related pollutants identified as hazardous air pollutants in § 112(b) of the CAA. Interested readers should refer to this EPA study for more information

[4] If EPA promulgates standards for emissions of toxic air pollutants from new motor vehicles, including benzene and formaldehyde standards, pursuant to Section 202(l) of the Clean Air Act, those standards would apply to vehicles certified under the National LEV program.

regarding the health effects of toxic motor-vehicle-related air pollutants.

EPA has classified benzene as a Group A known human carcinogen, based on studies on workers showing that long-term exposure to high levels of benzene causes cancer. Exposure to benzene emissions has also been associated with non-cancer health effects, including blood disorders, adverse effects on the immune system, and damage to reproductive organs. EPA has classified formaldehyde as a probable human carcinogen, based on animal studies showing that long-term exposure to and inhalation of formaldehyde is associated with certain types of tumors. In addition, exposure to formaldehyde is associated with non-cancer health effects, including irritation of the eyes, nose, throat, and lower airway at low levels of exposure, and adverse effects on the liver and kidneys. As discussed more fully in the RIA for this rulemaking, EPA's modelling demonstrates that implementation of the National LEV program will result in reduced emissions of benzene (reduction of 7 tons/day) and formaldehyde (4 tons/day) nationwide in 2005.

EPA believes that the National LEV program is particularly promising because it would provide these nationwide health and environmental benefits while reducing some aspects of the auto manufacturers' regulatory burden and compliance costs. Currently, manufacturers design, test and produce two different types of vehicles (California and federal), each of which must meet different standards according to different test procedures. One of the goals of the National LEV program is to use a single test procedure and standard for each particular type of emission control requirement. Because of this harmonization with California's program,[5] implementation of the National LEV program will streamline the process for certifying a vehicle for sale, reduce auto manufacturers' design and testing costs, and provide other efficiencies in the marketing of automobiles.[6]

EPA also believes the National LEV program would be a preferable alternative to OTC LEV because it will use fewer regulatory, legislative and litigation resources than would OTC LEV since the implementation of the National LEV program would be premised on agreement reached by the OTR States, the auto manufacturers, and EPA. The OTR States, the auto manufacturers, and EPA, with input from environmental and public health groups, and other interested parties, have made significant efforts that resulted in a broad outline for a viable, cost-effective national low-emission vehicle program. EPA believes that cooperation among the various interested parties is the best way to achieve significant emissions reductions and to design a practical, enforceable, and efficient program. It allows the OTR States, EPA, auto manufacturers, other affected industry groups, environmental groups and other interested parties to spend resources making the program work instead of fighting each other on a state-by-state basis over adoption of OTC LEV. The National LEV program is a promising example of cooperation among state governments, the automobile manufacturers, public health and environmental groups, and the federal government, towards the goal of cleaner air in the northeast U.S. and the rest of the country.

EPA has also analyzed the costs of the National LEV program based on currently available information. The most recent detailed assessment of the cost of LEVs was produced by the California Air Resources Board (CARB) in 1994. CARB estimated the incremental cost of $114 per car for LEVs only in California. EPA believes that the incremental cost for National LEV will be considerably less expensive than the CARB estimate for a variety of reasons. First, automotive pollution control technology has advanced since CARB made its estimate. For example, Honda recently announced the introduction of new LEV technology that will add little or no cost to vehicles. Second, the national LEV program includes numerous provisions to harmonize federal and California motor vehicle requirements. The resulting cost-savings for auto manufacturers (in areas such as vehicle design, certification testing, mechanic training and inventory control) will be significant and offset at least a portion of the LEV production tests. Third, the nationwide production of LEVs will result in economics of scale for the manufacturers. Finally, auto industry experience has consistently demonstrated rapid price decreases in successive model years for newly-introduced technology. Analysis discussed in the RIA yields an annual incremental cost estimate compared to current regulatory obligations of $700 million for the national LEV program, although EPA believes these costs would actually be lower, as discussed above. The total expenditure for new cars in the United States in 1993 was approximately $225 billion.

C. Background

To provide a context for, and background to, the program proposed in today's notice, it is necessary to discuss briefly the federal and California motor vehicle programs and the circumstances leading to EPA's OTC LEV decision. As described more fully below, EPA provided extensive and numerous opportunities for public involvement in that decision and in developing the framework for a national voluntary low emission vehicle program.

1. Current Federal Motor Vehicle Emissions Control Program

The Clean Air Act prohibits the introduction into commerce of a new motor vehicle that is not covered by a certificate of conformity issued by EPA. To obtain such a certificate for a vehicle or engine family, manufacturers must demonstrate compliance with all federal emissions control standards and requirements that apply to new motor vehicles for that class or category of vehicles for the relevant model year. Emissions standards for model year (MY) 1994 new light-duty vehicles (LDVs) and light-duty trucks (LDTs) are codified at 40 CFR 86.094–8 and 86.094–9. EPA's current standards for control of exhaust emissions of non-methane hydrocarbon (NMHC), NO_X, CO, and PM from new light-duty vehicles and new light-duty trucks were established in June 1991, and became effective beginning in model year 1994. *See* 56 FR 25724 (June 5, 1991).

The current standards (hereinafter ''Tier 1 standards'') are applicable for the full useful life of the vehicle. Manufacturers must certify new motor vehicles and engines to the Tier 1 standards using the Federal Test Procedure. In model year 1996 and thereafter, all LDVs and LDTs must

[5] In addition to using the same tailpipe standards as California, this notice also proposes several changes to EPA standards and test procedures that will further harmonize the federal and California motor vehicle emission control programs. EPA expects that the California Air Resources Board will reassess its regulations shortly in order to further this harmonization.

Even if National LEV becomes effective, California will continue to have its own program. Manufacturers could decide to sell some vehicles (such as ULEVs or ZEVs) in California (or California and the OTR), but not nationwide.

[6] EPA recently received a letter from the Government of Canada, indicating that government's interest in adopting national motor vehicle emissions standards that are the same as those contained in any national low emission vehicle program adopted in the United States. Such harmonization of motor vehicle emission control standards in the United States and Canada would provide even greater efficiencies to the auto manufacturers, and would broaden the geographical range of the emissions benefits of such a program, including the specific benefit of reduced downwind pollution transport.

comply with the Tier 1 standards. Under section 207 of the Act, manufacturers must warrant the emissions performance of their new, certified motor vehicles for a portion of the vehicle's full useful life. EPA enforces the Tier 1 standards through its Selective Enforcement Audit program (assembly line testing) and through in-use compliance testing and recall programs.

The current federal motor vehicle emission control program also includes other standards and requirements that apply to new motor vehicles, such as evaporative emissions, cold temperature CO, on-board refueling vapor recovery, and on-board diagnostic equipment. The program proposed by EPA in today's action would continue to require new motor vehicles to comply with these requirements, but also proposes revisions to them to achieve greater harmonization with comparable California standards and requirements.

2. California Low Emission Vehicle Program

Section 209 of the Clean Air Act generally preempts states from adopting and enforcing standards relating to emissions from new motor vehicles and new motor vehicle engines.[7] However, the Act provides two exceptions. One allows EPA to waive preemption for the State of California, permitting that state to adopt and enforce its own motor vehicle emissions control program.[8] The second exception allows states other than California to adopt and enforce California's standards, if certain specified conditions are met.[9]

In 1990, California adopted the Low Emissions Vehicle (LEV) program, containing three basic components. First, manufacturers must certify new motor vehicles to one of the following five emissions categories, each characterized by an increasingly stringent set of emission standards: California Tier 1, Transitional Low Emission Vehicles (TLEVs), Low Emission Vehicles (LEVs), Ultra Low Emission Vehicles (ULEVs), and Zero Emission Vehicles (ZEVs). Second, manufacturers must comply with an overall NMOG fleet average standard. This requirement began in model year 1994 and becomes more stringent over time. The third element is a ZEV production mandate, which requires manufacturers to include a certain percentage of ZEVs each year in their light-duty vehicle fleet for sale in California. The ZEV mandate begins in model year 1998, when 2% of the light-duty fleet must be ZEVs, and increases to 10% in model year 2003 and beyond. EPA granted California a waiver of preemption for its LEV program in January 1993. *See* 58 FR 4166 (January 13, 1993).

The States of New York, Massachusetts, and Connecticut, all of which are members of the OTR, have adopted all or portions of the California LEV program pursuant to Section 177 of the Act. Massachusetts is currently implementing its LEV program, and New York is initiating implementation with model year 1996. Connecticut has also adopted the California LEV program. The automobile manufacturers have challenged the New York and Massachusetts LEV programs in federal court. Recent district and appellate court decisions have upheld the New York and Massachusetts LEV programs.[10]

3. OTC LEV Decision

A summary of the OTC LEV decision is provided here. Interested parties are referred to the OTC LEV decision Supplementary Notice of Proposed Rulemaking, and Notice of Final Rulemaking for additional information. 59 FR 48664 (September 22, 1994); and 60 FR 4712 (January 24, 1995).

In February, 1994, the OTC formally recommended, pursuant to section 184(c) of the CAA, that EPA require all OTR States to adopt an OTC LEV program in their State Implementation Plans (SIPs). The OTC LEV program recommended by the OTC would require that, beginning in model year 1999, all new light-duty vehicles and light-duty trucks sold or otherwise introduced into commerce in the OTR be certified to California LEV program standards. In addition, manufacturers would be required to meet California's NMOG fleet average standard for such vehicles. The OTC recommended that member states be allowed, but not required, to adopt California's ZEV mandate, unless EPA determined that the Clean Air Act required a state to adopt the ZEV mandate in order to adopt the NMOG average part of the LEV program. In addition, the OTC stated that it expected EPA to evaluate alternatives to OTC LEV.

On December 19, 1994, EPA approved the OTC recommendation. EPA found that the emissions reductions resulting from OTC LEV or a LEV-equivalent program are necessary for ozone nonattainment areas in the OTR to achieve attainment (and maintenance) by the applicable deadline, and that the OTC LEV program is consistent with the Clean Air Act. 60 FR 4712 (January 24, 1995). Based on that approval, EPA issued to each OTC State a finding that its SIP is substantially inadequate to meet certain requirements insofar as the SIP would not currently achieve those necessary emissions reductions. The States are required to submit a SIP revision on or before February 15, 1996, to cure this inadequacy.

In the OTC LEV decision, EPA found that states could satisfy the finding of SIP inadequacy by adopting OTC LEV, or by submitting a ''shortfall'' SIP.[11] The SIP inadequacy would also be satisfied if EPA were to determine through rulemaking that a federal 49-state motor vehicle emission control program was an acceptable LEV-equivalent program, and found that such program was in effect. Thus, if EPA were to find that auto manufacturers had opted into a LEV-equivalent federal motor vehicle emissions control program that is deemed acceptable by EPA through rulemaking action, then states would be relieved of the obligation under the OTC LEV decision to adopt the OTC LEV program in their SIPs.

4. Public Process

Given the serious and complicated issues raised by the OTC petition and the broad ramifications of these issues, EPA employed a public process designed to achieve quick resolution and to provide maximum opportunity for public participation in the decisionmaking process. Following receipt of the OTC petition, EPA published a notice of proposed rulemaking (NPRM) that detailed the Agency's analytic framework for a decision on the OTC's recommendation, identified the central issues EPA was considering, and proposed in the alternative to approve, disapprove, or partially approve and disapprove the recommendation. *See* 59 FR 21720 (April 26, 1994).

[7] 42 U.S.C. 7543(a).

[8] 42 U.S.C. 7543(b).

[9] Clean Air Act section 177; 42 U.S.C. 7507.

[10] *American Automobile Manufacturers Association (AAMA)* v. *Commissioner, Massachusetts Department of Environmental Protection*, 31 F.3d 18 (1st Cir. 1994); *Motor Vehicle Manufacturers Association* v. *New York State Department of Environmental Conservation,* 17 F.3d 521 (2nd Cir. 1994); *MVMA* v. *NYSDEC*, No. 92–CV–869 (D. Mass. Oct. 24, 1994); and *AAMA* v. *Greenbaum*, No. 93–10799–MA (D. Mass. Oct. 27, 1993).

[11] As described in the OTC LEV decision, a ''shortfall'' SIP program must contain adopted measures that make up the shortfall between (1) the emission reductions necessary to prevent adverse consequences on downwind nonattainment, as determined by EPA in the OTC LEV decision, and (2) the emission reductions that would be achieved by the measures mandated by the Clean Air Act and potentially broadly applicable measures, as identified by EPA in the OTC LEV decision. *See* 60 FR at 4730.

Following publication of the NPRM, EPA held a series of public ''roundtable'' meetings, in addition to a public hearing on the notice. These roundtable meetings were designed to provide specific, detailed analyses of the relevant issues through interactive discussion among the various interested parties and members of the public, including states, environmental and public health groups, automobile manufacturers, and representatives from other industries in the OTR. These discussions produced promising advances towards development of a 49-state motor vehicle emissions control program as an alternative to the OTC LEV program. Interested parties should refer to the NPRM and the Supplemental Notice of Proposed Rulemaking (SNPRM) for more information. 59 FR 48664 (September 22, 1994). The written public comments on the OTC LEV NPRM and SNPRM, and EPA's responses, are in the public docket for the OTC LEV decision (Docket no. A–94–11).

The public interest in the OTC LEV decision process, and especially in the development of a 49-state motor vehicle emissions control program, prompted EPA to establish the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States (hereinafter ''the Subcommittee'') of the Clean Air Act Advisory Committee in accordance with the Federal Advisory Committee Act. The Subcommittee was charged with evaluating the issues related to the petition and providing a public forum to discuss alternative motor vehicle standards that could apply in all states, except California. The Subcommittee members represent the spectrum of interests potentially affected by the OTC petition and any alternative programs. These interests include state and local governments within and outside the OTR, public health and environmental groups, automobile manufacturers and dealers, utilities, fuel providers, alternative fuel vehicle proponents and labor. In addition, the Subcommittee formed four working groups that allowed additional participants to focus on specific issues implicated by a 49-state motor vehicle emissions control program, including fuels, enforcement, incentives for the development of advanced technology vehicles, and emissions trading. The Subcommittee and the workgroups met frequently from September through November 1994. Possible program elements for this NPRM were discussed with the Subcommittee and Committee in June, 1995.

D. National LEV Program

1. Agreement—A Necessary Predicate for the National LEV Program

The National LEV program would be a voluntary program that could not be implemented without the agreement of the auto manufacturers and the OTC States. EPA cannot require the auto manufacturers to meet the National LEV exhaust standards, absent the manufacturers' consent, because Section 202(b)(1)(C) of the Clean Air Act prevents EPA from mandating new exhaust standards applicable before model year 2004. The auto manufacturers have said that they will not agree to be bound by the National LEV program unless the OTC States accept National LEV as an alternative to OTC LEV. EPA does not have authority to require the OTC States to accept the National LEV program. Thus, National LEV is dependent upon the auto manufacturers and the OTC States voluntarily committing to the program.

The OTC States and auto manufacturers are negotiating a voluntary, 49-state low emission motor vehicle program that would include committing to National LEV and to the introduction of advanced technology vehicles in the OTR. It is envisioned that, if an agreement is reached, it will be memorialized in a Memorandum of Understanding (MOU) to be signed by all OTR States and all auto manufacturers with sales in the United States. The National LEV program, which is the subject of today's notice, would be finalized as EPA regulations. The Advanced Technology Vehicle (ATV) component (which is discussed in more detail in Section V.A.2.c below) would be a separate agreement between the OTC States and auto manufacturers that would be contained in an attachment to the MOU. Although the OTC States and auto manufacturers have not yet reached final agreement, EPA believes it is appropriate to propose the National LEV program at this time. First, consensus has been reached on many of the elements to be proposed for the National LEV program. Where consensus has not been reached, EPA is soliciting comment on a broad range of issues and options raised by the proposed program, so that the Agency can resolve issues, in light of comments received on this notice, following signature of the MOU by the OTC States and the auto manufacturers. States and manufacturers are encouraged to provide comments on today's notice. Second, EPA does not want implementation of the MOU and the National LEV program to be delayed unnecessarily. The OTC States' obligations to submit OTC LEV SIP revisions on February 16,1996, creates a need for the OTC States to know soon whether the National LEV program will come into being.

Although several important issues are still under discussion, EPA understands that one of the primary unresolved issues between the OTC States and the auto manufacturers centers on the ZEV mandates that have been adopted or could be adopted in the future. EPA believes that this is a decision that must be left up to each individual OTC State. As EPA stated in the OTC LEV decision, 60 FR at 4724, states have the right to decide whether to adopt a ZEV mandate pursuant to Section 177 of the Clean Air Act, 42 U.S.C § 7507. EPA also believes that states have the right to decide to use other innovative approaches to increase the use of ZEVs and other advances in motor vehicle technology in their states. For example, states may develop programs such as cooperative efforts and other measures to advance infrastructure development and increase consumer demand for advanced technology vehicles to be used in conjunction with mandates measures or as stand alone programs. EPA understands that negotiations are continuing on this issue.

EPA also understands that another key area with important unresolved issues between the OTC States and the auto manufacturers is the area of state commitments. Specifically, full implementation of National LEV is premised on agreement on the content and form of state commitments regarding adoption or retention of a section 177 program that does not allow compliance with National LEV as a full alternative to compliance with the state program. Absent such an agreement, States retain their full rights under section 177.

EPA is hopeful that an agreement will be reached soon because of the many benefits of the National LEV program to the nation as a whole, the OTC States and the auto manufacturers. A set of uniform, more stringent standards that apply in 49 states is a more environmentally beneficial and economically efficient approach to achieving emissions reductions from new motor vehicles than a ''patchwork'' of California standards in some states and federal standards in others. The National LEV program would achieve at least the same level of emissions reductions in the OTR as would the OTC LEV program. The introduction of low emission vehicles nationwide would help alleviate pollution transport problems in the OTC and in other states and would eliminate concerns about

non-LEV vehicles being introduced into the OTR from states outside the region that have not adopted the California LEV program (CAL LEV). In addition, a 49-state program would impose less administrative burden on the OTC States and other states than would state-by-state adoption and enforcement of CAL LEV. Finally, it is beneficial to focus on implementation of a 49-state program that is supported by the OTC States, the auto manufacturers, and EPA, rather than expending resources litigating the OTC LEV decision and each OTC State's adoption of a LEV program.

2. Description of National LEV Program

In today's notice, EPA is proposing a set of national voluntary emissions standards (the National LEV program) to control emissions of ozone-forming pollutants from certain new motor vehicles. Under EPA's proposal, the program would apply to new light-duty vehicles (LDVs) and new light-duty trucks (LDTs) sold in the OTR beginning in model year 1997, and would expand to apply to all new LDVs and LDTs in the nation (except California) in model year 2001. Manufacturers that choose to opt into the National LEV program would be subject to this alternative set of federal exhaust emission standards in lieu of the federal Tier 1 exhaust emission standards. The National LEV program would require manufacturers to certify LDVs and LDTs to one of the following certification categories: Tier 1, TLEV, LEV, ULEV, or ZEV. Each certification category contains tailpipe emission standards for NMOG, CO, NO_X, HCHO, and PM.

The National LEV program would also require manufacturers to produce and deliver for sale a combination of vehicles that complies with an annual fleet average NMOG value. The National LEV program would require the implementation of an increasingly stringent NMOG fleet average standard in the OTR for light-duty vehicles and light-duty trucks from model years 1997 to 2001. Beginning with model year 2001, manufacturers would be required to comply with a nationwide NMOG fleet average standard for LDVs and LDTs sold outside the OTR (except California) that is equivalent to a 100% LEV fleet. An averaging, banking and trading program comparable to California's could be used in meeting the NMOG fleet average requirements. In addition, manufacturers would be required to install on-board diagnostic systems that comply with California's On-board Diagnostics Requirement (OBD II) regulations on all National LEV vehicles.

As part of EPA's effort to reinvent environmental regulations by reducing regulatory burden without sacrificing environmental benefits, EPA is also proposing changes to harmonize federal and California standards and test procedures. Vehicles in the proposed National LEV program would continue to be required to comply with all other federal requirements applicable to LDVs and LDTs for the appropriate model year, including emissions standards and requirements, test procedures, and compliance and enforcement provisions. EPA is committed to working with CARB to harmonize federal and California standards and test procedures to the extent possible. Thus, today's action proposes changes designed to harmonize certain federal and California standards and test procedures. This should reduce the regulatory burden on manufacturers by facilitating the design, certification, and production of the same vehicles to meet both the National LEV and the California LEV program requirements.

Once manufacturers have voluntarily opted into the National LEV program and the program becomes effective, manufacturers will be bound by the provisions of the program. National LEV standards would be enforced in the same manner as any other federal motor vehicle standard. Manufacturers would have the ability to opt out of the program only in certain limited circumstances: (1) if any OTC State does not meet or keep the commitments it agrees it will make regarding adoption of OTC LEV or ZEV mandates; or (2) if, over manufacturer objections, EPA makes certain specified requirements more stringent, except as needed to harmonize with corresponding California requirements.

IV. Provisions of National LEV Program

The proposed regulations establish a voluntary federal program of more stringent tailpipe emission standards for light-duty vehicles and light-duty trucks. As proposed, National LEV would include a set of new tailpipe emission standards and related requirements, which for most vehicles would effectively replace the otherwise applicable Tier 1 tailpipe standards and would not change for the duration of the program. The proposed National LEV standards and requirements would include: (1) tailpipe emissions standards for NMOG, NO_X, CO, HCHO, and PM; (2) fleet average NMOG values; (3) allowance for the use of California reformulated gasoline II as test fuel for the tailpipe standards; (4) California on-board diagnostic system requirements (OBD II); (5) averaging, banking and trading provisions; and (6) low volume manufacturer provisions.

In general, the National LEV standards and related requirements are patterned after California's more stringent tailpipe standards and NMOG fleet averages. As National LEV is voluntary, manufacturers would only have to comply with the National LEV standards if they chose to opt into the program. Once they have opted in, however, emissions equivalency and enforceability would be ensured by making continued compliance with the standards mandatory. Opt-out would be limited to certain triggering conditions which, if they occurred, would change the basic presumptions upon which the manufacturers opted into the program. Such conditions would be a change in one of the designated ''Stable Standards'' (as discussed below), or an OTC State's failure to meet or keep its commitment regarding adoption of a state motor vehicle program under section 177.

Any manufacturer that opts into the National LEV program would be fully subject to its requirements. Barring one of the limited and unlikely events that would allow manufacturers to opt out of the program, manufacturers would be required to meet the National LEV standards and requirements for all of the model years covered by the program. A manufacturer that failed to meet these requirements would be subject to the same enforcement measures as exist for mandatory federal programs.[12] Once manufacturers opted into National LEV, they would find administration and enforcement of its requirements indistinguishable from a traditional federal motor vehicle emissions program.

National LEV tailpipe emissions standards and related requirements would apply to manufacturers beginning in model year 1997, in the OTR, and extending at least through model year 2003. Manufacturers that opt into the program prior to model year 1997 would have to comply with the specified tailpipe emissions and related standards beginning in 1997 for light-duty vehicles and light-duty trucks offered for sale in the OTR, and beginning in 2001 for those same vehicle categories offered for sale in the rest of the country, except California. Any manufacturer that opts into the program after model year 1996 would have to comply with the standards beginning in the first model year after the model year in which that

[12] EPA would promulgate the voluntary standards under the authority of CAA sections 202 and 301.

manufacturer opted in.[13] The National LEV standards would continue to apply through model year 2003 or until the first model year for which manufacturers must meet federal standards promulgated under CAA § 202(i) (''Tier II'' standards) that are at least as stringent as the National LEV standards, if certain conditions are met. By statute, EPA could not promulgate Tier II standards applicable before model year 2004, so the National LEV standards would apply at least through model year 2003.

While manufacturers may opt into the voluntary tailpipe and other standards described above, other federal standards and requirements in the federal motor vehicle control program remain mandatory. EPA is proposing various changes to these other applicable federal motor vehicle standards, which are designed to harmonize them with the California standards. EPA expects these changes to reduce the burden on manufacturers of dual compliance while retaining current levels of emissions control. These standards would remain mandatory federal standards, however, and are discussed in section VI below.

A. Program Structure

This section discusses basic structural elements of the National LEV program: the process and timing for manufacturers to opt into the program and for EPA to find that the program is ''in effect;'' the conditions allowing, process for and ramifications of a manufacturer's decision to opt out of the program; and the duration of the program.

1. Opt-in to National LEV and In Effect Finding

The opt-in provisions are designed to provide a simple mechanism that allows EPA to determine readily when a manufacturer has opted in and become legally subject to the National LEV program requirements. EPA is proposing that a motor vehicle manufacturer would opt into the program by submitting a written notification that unambiguously and unconditionally states that the manufacturer is opting into the program, subject only to the condition that EPA subsequently find the program to be in effect by a certain date for purposes of satisfying the SIP call issued in the OTC LEV decision. The notification would also state that the manufacturer would not challenge EPA's authority to establish and enforce the National LEV program.[14] The proposed regulations specify language that manufacturers would have to include in the statement. The statement would have to be signed by a person or entity within the corporation with authority to bind the corporation to its choice. EPA requests comment on whether the regulations should specifically identify the person or entity with such authority by title or other means, and if so, who or what would have such authority. The opt-in would become binding upon EPA's receipt of the statement, except that if the Administrator fails to sign a finding that the program is in effect within 60 days of signature of the final National LEV rule, manufacturers could withdraw conditional opt-ins. EPA is proposing that the ''in effect'' finding would not require further rulemaking if all auto manufacturers with sales in the United States opted in.

EPA is requesting comment on whether it should establish time limits for EPA to determine whether National LEV is in effect for purposes of satisfying the OTC LEV SIP call. Early determination of the status of National LEV is needed so manufacturers can plan their production accordingly and the OTC States will have sufficient time to cure the SIP inadequacy if National LEV does not come into effect. The proposed regulations require EPA to make a finding on whether the National LEV program is in effect within 60 days of signature of the final National LEV regulations. (If signature is the start of the time period for opt-in, EPA would provide directly affected parties actual notice and make copies of the final rule available within a week of signature.) Alternatively, EPA could establish a longer or shorter period to make the finding, or key the time period off of publication, instead of signature, of the final rule. On a longer timeframe, one option would be for the regulations to set a deadline for an in effect finding based on the agreed date for OTC States to submit their commitments regarding adoption or retention of CAA section 177 programs.

EPA is also taking comment on whether it should establish a time limit for manufacturers to opt in. While EPA is not proposing an absolute deadline, the regulations commit the Agency to consider opt-in notifications received within 45 days of signature of the final rule. EPA is also taking comment on the following issues: Should the National LEV regulations require manufacturers to opt in by a specific date, and if so, by what date? Should the date be triggered by publication or signature of the final rule? How long should manufacturers have to opt-in? A short period (30–60 days) would give states and manufacturers certainty about their obligations, but a longer period (90–120 days) might be necessary to get requisite corporate sign-off. Should a specific date be set (e.g. December 31, 1995) so that OTC States will know prior to the start of state legislative sessions whether adoption of OTC LEV is necessary to cure the SIP inadequacy. In addition, EPA is requesting comment on whether manufacturers should be able to make their opt-ins conditional upon any other factors such as a condition that OTC States have made certain commitments regarding adoption or retention of section 177 programs by a given date.

2. Opt-Out From National LEV

For the National LEV program to be useful and beneficial, it must continue in effect for a substantial period of time stretching into the next decade. States seek certainty regarding emissions benefits over time, while motor vehicle manufacturers seek certainty regarding emission standards to plan future production. The opt-out provisions are structured to support the goal of program stability.

Once manufacturers have voluntarily chosen to opt into the program, EPA is proposing that they could opt out of the program only under a few specified circumstances, or ''offramps.'' As proposed, these offramps are limited to: (1) EPA modification of certain specified standards or requirements over the manufacturers' objection; or (2) an OTC State's failure to meet or keep its commitment regarding adoption or retention of a state motor vehicle program under section 177.

If a manufacturer were to opt out of the National LEV program, when that opt-out became effective the manufacturer would become subject to all standards that would apply if National LEV did not exist. The federal Tier 1 tailpipe emissions and related standards would apply, as would any state standards promulgated under section 177, regardless of whether those standards allowed the alternative of compliance with National LEV.

a. Conditions Allowing Opt-Out

(1) Changes to Stable Standards

EPA is proposing that certain specified standards and other requirements be classified as ''Stable

[13] EPA is also taking comment on whether, if National LEV were not found to be in effect until after model year 1997 had already begun, manufacturers should still comply with National LEV standards for the 1997 model year.

[14] EPA is requesting comment on whether, in light of potential changes in requirements for agency analyses prior to rulemaking, manufacturers should also include a commitment not to petition the Agency for any additional analyses of or revisions to the program, once it becomes effective.

Standards.'' With certain exceptions, any changes to the Stable Standards applicable to vehicles produced for model years covered by the National LEV rule would allow the auto manufacturers to opt out of the National LEV program. The types of changes to the Stable Standards that would *not* allow a manufacturer to opt out are changes that would harmonize comparable federal and California standards, changes that do not make a standard more stringent, and changes made without vehicle manufacturers' objections.

The Agency believes that the appropriate Stable Standards fall into two categories: (1) those core standards, procedures, and requirements of the National LEV program that manufacturers would not have to meet but for their voluntary commitment to comply with that program, and (2) certain additional standards and requirements where the technical indicators or the timing of candidate revisions make it unlikely EPA would act under its discretionary authority to increase program stringency. In balance, EPA believes that the low risk that EPA will act to increase stringency in these areas does not make the program unstable, while it gives the manufacturers greater clarity and certainty about their obligations once they have entered into the program, and the program is more stable as a result. The two categories of proposed Stable Standards will be discussed separately.

A manufacturer that voluntarily chooses to be bound by standards more stringent than EPA could impose (such as in the proposed National LEV standards) should, in all fairness, only be required to comply with future changes to these standards if it so chooses. If EPA does not have authority to impose more stringent requirements, EPA does not believe it would be appropriate for it to have unilateral authority to change such requirements. Therefore, to protect the reasonable expectations manufacturers will hold when they opt into the voluntary standards of the National LEV program, it is reasonable to allow manufacturers to opt out if there are changes in these voluntary standards.

Consistent with this principle, EPA proposes that the first category of Stable Standards includes the following core National LEV program elements: [1] the TLEV, LEV, ULEV and ZEV tailpipe emission standards (i.e., the ''LEV standards''); [2] use of the Federal Test Procedure (FTP), including California phase II gasoline, for determining compliance with the LEV standards; [3] the NMOG fleet average standards; [4] banking and trading provisions used to meet the NMOG average or the five percent cap on sales of TLEVs and Tier 1 vehicles in the OTR from model year 2001 on; and [5] requirements for on-board diagnostics systems that meet California's OBD phase II requirements.

Inclusion of the numerical standards in this category of Stable Standards is justified because the LEV standards and the NMOG fleet average standards (together with the associated banking and trading provisions) are more stringent than current federal Tier 1 tailpipe emission standards; the benefits associated with this greater stringency are the foundation on which both the OTC LEV and National LEV programs were built. The basis for including the OBD II requirements in the first category of Stable Standards is the greater stringency of California OBD II in the key areas of catalyst deterioration, engine misfire, and evaporative emission system leak detection.

The Agency proposes to include the FTP and the test fuel in the Stable Standards because they are necessary to determine compliance with the numerical standards. The Agency is conducting a parallel effort to review the FTP as required by Section 206(h) of the Clean Air Act, which has implications for the Stable Standards. On February 7, 1995, EPA published a notice proposing certain modifications to the ''conventional'' FTP, the addition of a new ''supplemental'' FTP (or SFTP) incorporating ''off-cycle'' driving conditions (driving not covered by the conventional FTP driving cycle), and new ''off-cycle'' emission standards (60 FR 7404). The proposal reflected an unprecedented level of resources and input by the vehicle manufacturers and the California Air Resources Board. The Agency is currently evaluating comments on the February proposal and anticipates taking final action to revise the FTP in October, 1995. EPA believes that CARB will take consistent and coordinated action shortly thereafter.

EPA believes that the appropriate test procedure for use in determining compliance of National LEV vehicles with the LEV standards (and thus, for inclusion as a Stable Standard) is the conventional FTP as modified by the imminent final revised FTP rulemaking. The Agency's understanding is that the vehicle manufacturers acknowledge and support this viewpoint. Thus, today's EPA proposal places the FTP among the Stable Standards, but with the clear exception that any modifications to the conventional FTP made under the statutory obligation of 42 U.S.C. § 7525(h) will not trigger an offramp opportunity for the vehicle manufacturers. Subsequent modifications to the conventional FTP executed under EPA's discretionary authority would afford the manufacturers an off-ramp, subject to the conditions stated elsewhere in this notice.

The final revised FTP rule may also include ''off-cycle'' emission standards or a Supplemental FTP. The Agency is proposing to include the off-cycle standards and SFTP in the set of Stable Standards, but in the second category of such standards, to be discussed next.

In addition to the core Stable Standards just described, EPA is proposing a second category of non-core Stable Standards consisting of the following elements of the federal motor vehicle emission control program: [1] any ''off-cycle'' emission standards, associated test procedures and implementation schedules promulgated by EPA under Section 206(h) of the Clean Air Act; [2] the existing federal program for control of on-board refueling vapor recovery (ORVR), including the test procedures, test fuel, standards, and implementation schedules; [3] the existing cold temperature carbon monoxide (Cold CO) program effective through model year 2000, including the Cold CO test procedure, test fuel, and standards; and [4] the existing federal evaporative emissions control program, including the emissions standards, test procedures, and implementation schedules. The Agency has independent authority to impose or modify these standards and requirements. Nevertheless, EPA believes it is appropriate to include them as Stable Standards. This would provide increased certainty for manufacturers that they can produce a single version of each vehicle nationwide to comply with all applicable requirements. This increased certainty should provide manufacturers added incentive to opt into the National LEV program without making the program unstable. In reaching this conclusion, EPA evaluated each program element on a case-by-case basis, both for the timing of potential future action to revise that program element and for the technical framework that might prompt EPA into such action.

As noted previously, EPA anticipates final action to promulgate off-cycle emission standards and an associated procedure by October 31, 1995. If adopted, this proposal would add a significant new set of tailpipe emission requirements, phased in over model years 1998 through 2001. Conforming vehicles, which could serve as the basis for evaluating the sufficiency of EPA's final off-cycle requirements, will not

penetrate the fleet in significant numbers until the end of the proposed National LEV program period. The Agency has no technical basis at this time to conclude that an identified source of off-cycle emissions will go unregulated as a consequence of the final off-cycle rule. In the limited case where some form of high-impact, unregulated off-cycle emissions behavior were to be subsequently identified, EPA could still choose to promulgate new off-cycle regulations; the leadtime required for promulgation of new rules might push the first year of feasible implementation for such revisions past the period of the National LEV rule. Even if an earlier rule seemed practical, EPA could nonetheless choose to proceed, recognizing the possibility that such action might prompt manufacturers to opt out of the National LEV program.

The Agency anticipates that CARB will act in the near future to finalize its own off-cycle requirements, consistent with EPA's actions except for the stringency of the off-cycle standards. EPA's understanding is that the vehicle manufacturers have volunteered to meet whatever off-cycle FTP requirements California adopts, even if they are of greater stringency than the federal requirements. On this basis, EPA would propose to amend the first (core) category of Stable Standards to include the new CARB off-cycle requirements, justified on the basis that the vehicle manufacturers would be volunteering to meet more stringent standards as part of the National LEV program.

The situation with the federal On-board Refueling Vapor Recovery (ORVR) program is similar to the off-cycle standards and procedures, except that this rule has been finalized (59 FR 16262). The ORVR phase-in for LDVs begins in model year 1998 and ends for LDTs in model year 2003, so the availability of technical information from conforming in-use vehicles will likewise occur, at best, near the end of the National LEV program. Agency staff finalized the recent ORVR rule based on the best currently available technical information, and with no indication of significant technical shortcomings or unregulated refueling emissions that would foreshadow the need for imminent, more stringent ORVR rulemaking.

For Cold CO, EPA has a statutory obligation to revisit the Cold CO standard under Section 202(j) of the Clean Air Act, and to make changes, if necessary, effective with model year 2001. Given the stringency of current standards, progress in reducing CO levels, and the leadtime required for promulgating new rules, EPA does not believe it will be necessary to revisit the Cold CO standard prior to the statutorily mandated time, at which point, Cold CO would no longer be included as a Stable Standard.

The final set of requirements proposed for inclusion in the second category of Stable Standards is the federal evaporative emissions control program, modified to specify California test fuel and test temperature as explained in Section VI.B.2. Final evaporative emission regulations were promulgated by EPA on March 24, 1993 (58 FR 16002). A direct final rule promulgating a set of technical amendments to that rule (including amendments designed to harmonize federal and CARB evaporative emissions requirements) was published on August 23, 1995 (60 FR 43880). Based on the March 1993 rule, the first new conforming vehicles have already been certified for model year 1996, and phase-in of the requirements will be completed in model year 1999. As with the ORVR final rule, EPA believes that the March 1993 evaporative emissions final rule, together with the recently published technical amendments, represents the best technical information available and an appropriate level of stringency for the federal requirements, and that short-term actions to increase the stringency of these requirements are not necessary.

With the proposed Stable Standards, EPA cannot and does not propose to forego any mandatory rulemaking activity, nor even to preclude discretionary activity, related to the listed program elements. Rather, EPA is proposing that if it takes discretionary action to increase the stringency of certain program elements and the change does not harmonize federal with California requirements, the manufacturers *may* take discretionary action to remove themselves from the voluntary program. The Agency believes that changes to the proposed Stable Standards applicable to the model years of the National LEV program are likely to be technical amendments that do not impact program stringency, actions to harmonize with California, or actions where the vehicle manufacturers agree with EPA's judgment that the change is appropriate. Thus, EPA finds it unlikely that the proposed Stable Standards would trigger an opportunity for manufacturers to opt out of the program or create instability in the program.

EPA seeks comment on whether each proposed Stable Standard is appropriate or whether one or more proposed Stable Standards should not be included as such. If EPA were likely to change a Stable Standard, then the National LEV program would probably be unstable and it would be difficult to find that OTC States did not need to adopt OTC LEV as a backstop. Thus, EPA also seeks comment on whether the proposed Stable Standards are justifiably considered stable on a technical basis.

Changes to those portions of the existing requirements not cited in the above itemization of the proposed Stable Standards (and the parallel list incorporated in Section 86.1705 of the proposed National LEV regulations) would not trigger an off-ramp opportunity for the manufacturers. For example, EPA believes it must have the option to guarantee attainment of the stringency of the requirements already in force (as opposed to increasing the stringency of those requirements) without providing manufacturers the opportunity to opt out of the National LEV program. Thus, the Agency believes that the emissions durability program and defeat device requirements, which are designed to ensure that vehicles actually comply with the emissions standards over their useful life, should not be included in the Stable Standards.

The importance of achieving the predicted stringency for elements of the program is particularly important where the standards or procedures have been newly promulgated. The Agency must have the ability to modify the durability program to detect deterioration or component durability shortcomings of new designs introduced by manufacturers to meet these new requirements, and to prevent devices that intentionally circumvent the intended emissions targeted by those new requirements. In the evaporative emissions area, for example, EPA noted in the March 1993 final rule that it could not yet anticipate the penetration of pressurized fuel tank designs in response to the new evaporative requirements; such systems present the possibility of failure modes in the evaporative control system that would be most efficiently addressed not through emissions recalls, but through changes to the component durability program. Such changes would not allow manufacturers to opt out of National LEV.

EPA is proposing that it could make the following types of changes to the Stable Standards without providing an opportunity for auto manufacturers to opt out of the program: changes to harmonize the federal standards with the comparable then-current California standard, changes that do not increase stringency, and changes to which manufacturers do not object. If manufacturers need changes to existing

regulations because of minor problems that arise during implementation, EPA could correct those problems either because the technical amendment would not affect stringency or because manufacturers did not object to the change. EPA also takes comment on whether the ability to make the specified types of changes would minimize some of the possible drawbacks of specifying non-core requirements as Stable Standards. For example, if it were determined later that additional environmental benefits could be achieved at minimal cost by modifying the ''off-cycle'' FTP standards for TLEVs, LEVs or ULEVs, EPA could add those environmental benefits to National LEV provided that California changed its regulations.

EPA is also taking comment on whether other types of changes should not provide an opportunity to opt out of the program, particularly if non-core standards are specified as Stable Standards. For example, rather than trying to determine whether stringency is affected by technical amendments necessary to make the implementation-related adjustments inevitably needed in a new regulatory program (if, for example, adjustments are needed for the recently promulgated ORVR regulations), perhaps EPA should be able to make any type of change for the first year or two that a new regulatory obligation is in effect. Another option might be to exclude specific program sub-elements from the Stable Standards because the Agency might subsequently conclude there are compelling reasons for EPA to increase the stringency of those sub-elements in the model years of the National LEV program. If the sub-elements were part of the broader list of Stable Standards, such action might destablize the program by allowing manufacturers to opt out. The Agency solicits comments on whether the proposed list of Stable Standards includes any such program sub-elements and whether EPA should act in a final National LEV rule to except them from the Stable Standards.

(2) OTC States' Failure to Meet or Keep Their Commitments

The second condition allowing manufacturers to opt out is a failure of any OTC State to meet its commitment (as finally agreed upon by the OTC States and auto manufacturers) regarding adoption or retention of a section 177 program that does not allow compliance with National LEV as a full alternative to compliance with the state program. The manufacturers and the states have not yet reached agreement on the exact content and form of such a state commitment. Details that have yet to be resolved concern what the OTC States will commit to do regarding adoption or retention of section 177 programs (both LEV and ZEV requirements) and the timing of any agreed upon actions. Possible instruments for such state commitments include a commitment in a SIP revision, a consent decree, a legislative resolution, a letter from the State Attorney General, an Executive Order from the Governor, signature of an MOU with the manufacturers, or any package of several of these instruments. Since National LEV is intended to provide an alternative to OTC LEV, manufacturers should not be bound to stay in the National LEV program if an OTC state requires them to comply with a section 177 program contrary to the terms of the final agreement. This offramp not only gives manufacturers recourse if a state does not fulfill its part of the bargain, but also encourages states to fulfill their commitments by setting a serious penalty for failure. EPA will provide further notice on state commitments when more information is available.

b. Effective Date of Opt-Out

To opt out of the program, a manufacturer would follow the same notification procedure used to opt in, additionally specifying the condition allowing opt-out. EPA is proposing that manufacturers would have to decide whether to exercise their option to opt out within 60 days of the occurrence of the condition triggering opt-out. This would provide greater program stability by ensuring that if no manufacturer takes an available opt-out within a certain period of time, that option expires and the program will continue, barring another offramp being triggered. EPA requests comment on whether an amount of time to allow for exercise of an opt-out option should be specified and, if so, what the length of time should be.

An opt-out would not become effective if, within 60 days of receipt of the opt-out statement, the Administrator were to find that the condition cited by the manufacturer had not actually occurred. Then, if a dispute between a manufacturer and EPA over the existence of a condition allowing opt-out had to be settled through litigation, EPA could continue to enforce the National LEV program while a court was in the process of resolving the dispute.

Unless EPA were to find that the opt-out condition had not occurred, the effective date of an opt-out would depend on the condition authorizing the opt-out. The effective date of the opt-out would determine when the manufacturer would no longer have to comply with the National LEV program and instead would become subject to Federal Tier 1 tailpipe emissions and related standards and state section 177 programs. EPA is considering three major factors in determining when opt-outs should become effective. The first factor is the burden that different effective dates place on manufacturers, in terms of complying with emissions standards. A second factor is the effect of different opt-out dates on emissions reductions. Third, EPA will consider the extent to which different effective dates provide program stability by providing disincentives for EPA or the OTC States to trigger an offramp.

If EPA were to modify one of the specified Stable Standards or requirements over the objection of a manufacturer, EPA is proposing that opt-out would be effective for the first model year to which the modified standard applied. Similarly, if after promulgation of the final rule an OTC State were to adopt a state motor vehicle program under section 177 in a way that violated a commitment it made, opt-out would be effective for the first model year to which the state regulations applied. EPA believes this approach achieves the best balance between preservation of emissions reductions and minimization of burden on manufacturers. This approach would ensure that there is no loss of emissions reductions before the condition triggering an opt-out actually imposed a compliance burden on the manufacturers. Also, depending upon the effective date of the regulatory change made by EPA or the state, delaying opt-out until that date may provide some additional time for states without backstops in place to adopt section 177 programs.[15] Yet this approach avoids placing any additional burden on the manufacturers because as soon as manufacturers would need to comply with the changed standard or the section 177 program, they would no longer have to comply with National LEV. While this approach does not provide an additional deterrent to triggering an offramp, EPA believes the dissolution of the program and need to adopt and/or implement section 177 programs is a very significant deterrent.

EPA is also requesting comment on a range of alternative approaches to establishing the effective date of opt-outs that are allowed by an EPA change to Stable Standards or an OTC State failure to keep its commitment regarding a section 177 program. On one

[15] ''Backstops'' refers to OTC LEV programs that have been adopted by states but do not become effective as long as National LEV is in effect.

end of the spectrum, opt-out could become effective immediately upon trigger of the offramp. At the other end, EPA could make opt-out effective only when all states had ample time to adopt OTC LEV, or even had actually adopted OTC LEV. Another alternative would be to make opt-out effective beginning in the first model year following the calendar year in which EPA or the state acted, regardless of when the changed federal or state standards would apply. While this approach would result in higher emissions, this loss of emissions reductions from all states without backstops would provide a greater disincentive for either EPA or the OTR States to change the requirements. Still another alternative would be to make opt-out effective for the first model year three years after the calendar year in which EPA or the state acted, or the first model year to which the changed regulations applied, whichever is sooner. This approach could give most states without backstops sufficient time to adopt OTC LEV and thereby provide greater assurance that emissions reductions would not be lost. The Agency requests comment on these or related approaches.

3. Duration of Program

If manufacturers do not opt out of the program, the proposed regulations set an end date for the National LEV program that is tied to the date of EPA's promulgation of future standards. EPA is also taking comment on alternative end dates.

Under the proposed regulations, National LEV standards would remain in place at least through model year 2003 and possibly through model year 2006. If, by December 15, 2000, EPA has signed a final rule establishing new, mandatory tailpipe standards at least as stringent as National LEV that become effective in model year 2004, 2005 or 2006, then National LEV would remain in effect until those new standards became effective. If EPA did not issue regulations meeting those conditions, then National LEV would end in model year 2003. In that event, manufacturers would be required to meet federal Tier 1 standards starting in model year 2004 in any state where they were not required to meet California or OTC LEV standards.

The OTC States and auto manufacturers have expressed support for this option. They believe it is important to have certainty regarding new federal standards sooner rather than later. This would enable manufacturers to design and plan future production and give states time to adopt OTC or California LEV if EPA did not act by the specified date. The OTC States and auto manufacturers believe that imposing a hammer (i.e., return to Tier 1 standards nationwide in model year 2004) will force EPA to act in the specified timeframe to give the parties the certainty they feel they need.

EPA is also taking comment on having the National LEV program extend until the first model year in which manufacturers must meet new, mandatory tailpipe standards at least as stringent as National LEV. This would not provide the incentive for EPA to issue such standards in the specified time period, but it would avoid the confusion and environmental harm that would occur if the nation were to go backwards from National LEV to Tier 1 standards in model year 2004. EPA also questions whether it is appropriate or necessary to address in this rulemaking the rulemaking schedule for Tier II standards, given that Congress has addressed this in section 202(i)(3) of the Clean Air Act, 42 U.S.C. § 7521(i)(3).

B. Voluntary Tailpipe and Related Standards and Phase-In

1. Emission Standards for Categories of National LEV Vehicles

The exhaust emission standards being proposed today for vehicle categories in the National LEV program are closely patterned after the California LEV emission standards. The proposed National LEV standards would apply to light-duty vehicles (LDVs), and the category of light-duty trucks under 6000 lbs Gross Vehicle Weight Rating (GVWR) (i.e., light light-duty trucks (LLDTs)).[16] Vehicles not in these categories would continue to be certified and tested under applicable federal regulations. Under the provisions of the proposed voluntary program, once in the program, manufacturers would have to certify all LDVs and LLDTs to one of five ''vehicle emission categories,'' each of which has a unique set of emission standards. The least stringent set of standards that vehicles could be certified to is the current set of federal Tier 1 tailpipe standards. The Tier 1 standards include standards for exhaust emissions of NMHC, CO, NO_X, and PM.

The remaining four sets of standards are as follows, in order of increasing stringency: TLEVs, LEVs, ULEVs, and ZEVs. Each of these four vehicle emission categories contains emission standards for NMOG, CO, NO_X, HCHO, and PM.

For the reason stated below, EPA is proposing that the following federal Tier 1 standards apply to National LEV vehicles, in addition to the California exhaust emission standards described above: total hydrocarbon (THC) standard, 50,000-mile PM standard, and 100,000-mile PM standard for non-diesel vehicles. The CAA requires that, beginning in MY 1996, 100% of a manufacturer's fleet of vehicles complies with the federal Tier 1 emissions standards. It is clear that a vehicle certified to California TLEV, LEV, ULEV, or ZEV standards will meet the applicable Tier 1 emission standards for NMHC, CO, and NO_X. However, the California program does not contain a THC emissions standard or a 50,000-mile PM standard, and the California 100,000-mile PM standard applies only to diesel vehicles.

Therefore, the California 100,000-mile PM standards, as adopted in the National LEV program, would apply to diesel vehicles only. Non-diesel vehicles covered by the National LEV program would be required to meet the Tier 1 100,000-mile PM emissions standard. In addition, all National LEV program vehicles would be required to meet the federal Tier 1 50,000-mile PM standard, and the federal Tier 1 THC emissions standard, since there are no comparable California standards.

The National LEV program would require compliance with these exhaust emissions standards, as well as compliance with a fleet average NMOG standard, which would be phased from MY 1997 through MY 2001. The program would initially apply to all vehicles produced and offered for sale in the OTR, beginning with MY 1997. Beginning in MY 2001, the program would apply to all vehicles produced and offered for sale in the rest of the nation (excluding California). Manufacturers would be allowed, but not required, to produce and offer for sale TLEVs, LEVs, ULEVs, and ZEVs outside the OTR prior to model year 2001.

The National LEV program would require manufacturers to comply with a fleet average NMOG standard, by producing and delivering for sale a combination of vehicle emission categories that, when averaged on a sales-weighted basis, meets a fleet average NMOG value for each model year that becomes increasingly stringent

[16] The federal definitions of ''light-duty vehicle'' and ''light light-duty truck'' (40 CFR § 86.094–2) correspond to the California definitions of ''passenger car'' and ''light-duty truck,'' respectively. In addition, both the federal and California regulations divide the truck emission standards into two categories based on identical loaded vehicle weights. Thus, California emission standards can be applied directly to the corresponding federal vehicle certification categories.

through MY 2001 in the OTR. After MY 2000, a manufacturer would also have to meet the average NMOG standard for its fleet of LDVs and LLDTs sold in states outside the OTR (excluding California). Only vehicles subject to the National LEV program sold in the OTR would be counted towards a manufacturer's fleet average NMOG calculation during the MY 1997–2001 phase-in period. The fleet average NMOG standards are described more fully in Section III.B.3 below.

a. Certification Standards

The proposed voluntary program would establish emission standards with a structure similar to current federal Tier 1 regulations, in that there would be separate emission standards for LDVs and for LDTs. Current federal regulations divide the LDT vehicle category into two subcategories, each of which is further divided into subcategories. Light light-duty trucks (LLDTs) are those LDTs less than or equal to 6000 lbs GVWR, and heavy light-duty trucks (HLDTs) are those LDTs greater than 6000 lbs but less than or equal to 8500 lbs GVWR. The National LEV program proposes standards only for the LLDTs, therefore the HLDT category would continue to be certified to the applicable Tier 1 standards. Emission standards proposed today that apply to LLDTs are divided into two sets. One set, which is identical to the standards for LDVs, would apply to LLDTs up through 3750 lbs loaded vehicle weight (LVW), and another slightly less stringent set would apply to LLDTs between 3750 and 5750 lbs LVW. Also consistent with current federal and California regulations, separate sets of standards are proposed for the vehicle's intermediate useful life (5 years or 50,000 miles, whichever occurs first) and full useful life (10 years or 100,000 miles, whichever occurs first).

As noted above, there would be five vehicle emission categories for vehicles under the voluntary program, ranging in stringency from the current federal Tier 1 vehicles to ZEVs. The Tier 1 standards have already been codified in the current federal regulations with a phase-in schedule that requires 100 percent of production of LDVs and LLDTs to meet the Tier 1 standards by the 1996 model year. The proposed TLEV, LEV, ULEV and ZEV certification standards for LDVs and LLDTs up through 3750 lbs LVW are shown in Table 1 and those proposed for LLDTs from 3750 to 5750 lbs LVW are shown in Table 2. As noted above, the National LEV particulate standards would apply only to diesel vehicles.

TABLE 1.—INTERMEDIATE AND FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS TO 3750 LBS LVW

Vehicle useful life (miles)	Vehicle emission category	NMOG	CO	NO_X	HCHO	PM (diesel only)
50,000	TLEV	0.125	3.4	0.4	0.015	.....
	LEV	0.075	3.4	0.2	0.015	.....
	ULEV	0.040	1.7	0.2	0.008	.....
100,000	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	0.090	4.2	0.3	0.018	0.08
	ULEV	0.055	2.1	0.3	0.011	0.04

TABLE 2.—INTERMEDIATE AND FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FROM 3751 LBS LVW TO 5750 LBS LVW

Vehicle useful life (miles)	Vehicle emission category	NMOG	CO	NO_X	HCHO	PM (diesel only)
50,000	TLEV	0.160	4.4	0.7	0.018	.....
	LEV	0.100	4.4	0.4	0.018	.....
	ULEV	0.050	2.2	0.4	0.009	.....
100,000	TLEV	0.200	5.5	0.9	0.023	0.08
	LEV	0.130	5.5	0.5	0.023	0.08
	ULEV	0.070	2.8	0.5	0.013	0.04

The proposed voluntary standards also include two-tiered NMOG standards for flexible-fuel and dual-fuel vehicles, based on California's approach to standards for these vehicle types.[17] Flexible- and dual-fuel vehicles would have to certify both on the alternative fuel and on gasoline. When certifying on an alternative fuel, these vehicles would have to meet the intermediate and full useful life emission standards for TLEVs, LEVs or ULEVs laid out above. Consistent with California's methodology, the measured NMOG mass emissions would be adjusted by a Reactivity Adjustment Factor (RAF) for the given type of alternative fuel before being compared to the applicable emission standard. Determination of the applicable RAF is discussed later in section III.B.5.

When certifying on gasoline, flexible-fuel and dual-fuel vehicles would have to meet the next higher (less stringent) category of NMOG standards than the standards the vehicle certified to on an alternative fuel. However, the vehicle would have to meet all other standards (NO_X, CO, etc.) when operated on gasoline that it certified to on an alternative fuel. For example, a flexible-fuel vehicle that certified to ULEV standards on an alternative fuel would have to certify to the LEV NMOG standard and ULEV CO, NO_X, PM, and HCHO standards when operated on gasoline. The same principle would hold true for determining applicable in-use standards for flexible-fuel and dual-fuel vehicles. This would allow manufacturers to optimize the emission control system for the alternative fuel rather than for gasoline. Consistent with California, for purposes of the NMOG fleet average standard discussed below, such vehicles would be included based on their NMOG certification levels on the alternative fuel. There is, however, no requirement that such vehicles

[17] Flexible-fuel vehicles are those that can operate on either of two different fuels or any combination of those fuels, while dual-fuel vehicles can operate on either of two different fuels but not on combinations of those fuels.

operate on alternative fuels in-use, except as is already provided for in the clean fuel fleet program.

b. In-Use Standards

The proposed National LEV program explicitly adopts California's intermediate in-use standards, including intermediate in-use compliance standards for LEVs and ULEVs for the 1997 and 1998 model years that are less stringent than the certification standards for such vehicles.[18] These less stringent standards apply for this short period after introduction of the certification standards to allow manufacturers to gain in-use experience with vehicles certified to LEV or ULEV standards. Starting with the 1999 model year, vehicles must comply in-use with the certification standards described above. Because California is in the midst of transition to a LEV program, a straight carryover of their in-use approach implies adoption of less stringent in-use standards for LEVs and ULEVs through the 1998 model year. These standards apply to the intermediate useful life of the vehicles; compliance with in-use standards beyond the intermediate useful life is not required for LEVs and ULEVs through the 1998 model year. The in-use standards for vehicles certified under the voluntary National LEV program would apply to vehicles sold both within and outside the OTR. The applicable in-use standards for TLEVs would be equivalent to the intermediate and full useful life certification standards starting with the 1997 model year, whereas for LEVs and ULEVs the certification standards would not apply in-use until after the 1998 model year. The proposed intermediate in-use standards for LDVs and LLDTs to 3750 lbs LVW are shown in Table 3 and the proposed intermediate in-use standards for LLDTs from 3751 to 5750 lbs LVW are shown in Table 4.

TABLE 3.—INTERMEDIATE USEFUL LIFE IN-USE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS TO 3750 LBS LVW

Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NO_X (g/mi)	HCHO (mg/mi)
LEV	0.100	3.4	0.3	0.015
ULEV	0.058	2.6	0.3	0.012

[18] California's less stringent in-use standards for TLEVs expired after the 1995 model year. TLEVs must therefore meet certification levels (intermediate and full useful life) in-use at the start of the proposed National LEV program.

TABLE 4.—INTERMEDIATE USEFUL LIFE IN-USE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FROM 3751 LBS LVW TO 5750 LBS LVW

Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NO_X (g/mi)	HCHO (mg/mi)
LEV	0.128	4.4	0.5	0.018
ULEV	0.075	3.3	0.5	0.014

2. Non-Methane Organic Gases (NMOG) Fleet Average Standards

As stated earlier, the proposed voluntary program would also require manufacturers to meet an increasingly stringent fleet average NMOG standard. The fleet average NMOG standards and schedule for LDVs and LLDTs in the OTR are shown in Table 5. The fleet average NMOG values shown in the table would apply, on a manufacturer-by-manufacturer basis, to vehicles sold in the OTR from MY 1997 until the end of the National LEV program. The NMOG values would also become applicable to vehicles sold in every state outside the OTR, except California, beginning with the 2001 model year. (Low volume manufacturers, as defined in this proposal, would be exempt until model year 2001, as discussed more fully in Section III.D below.)

TABLE 5.—FLEET AVERAGE NMOG EXHAUST EMISSION REQUIREMENTS (G/MI) FOR LDV AND LLDT SOLD IN THE OTR

Vehicle type	Model year	Fleet Average NMOG
LDV and LLDT (0–3750 LVW).	1997	0.200
	1998	0.200
	1999	0.148
	2000	0.095
	2001 and later .	0.075
LLDT (3751–5750 LVW).	1997	0.256
	1998	0.256
	1999	0.190
	2000	0.124
	2001 and later .	0.100

The decreasing fleet average values were derived by multiplying certification emissions levels for various categories of vehicles by achievable implementation rates for each vehicle category. The NMOG values specified are equivalent to the production of 40% TLEVs in MYs 1997–1998, 40% TLEVs and 30% LEVs in MY 1999, 40% TLEVs and 60% LEVs in MY 2000, and 100% LEVs in MY 2001. Manufacturers will be required to meet separate NMOG averages for each of the two vehicle groupings shown in Table 5, i.e., a fleet average will be calculated both for LDVs and LLDTs from 0–3750 LVW and also for LLDTs from 3751–5750 LVW. Also, as discussed below, beginning in MY 2001, manufacturers will have to meet separate NMOG averages for two regions: states within the OTR and states (except California) outside the OTR.

Manufacturers would be able to comply with the fleet average NMOG standards by producing and delivering for sale any combination of vehicles certified to the Tier 1, TLEV, LEV, ULEV, or ZEV levels such that the overall LDV and LLDT fleet met the required fleet average values. A sales-weighted fleet average would be calculated based on the intermediate useful life (5 years, 50,000 mile) certification NMOG standards of the vehicle categories. A manufacturer would multiply the NMOG emission standard for each certification category by the number of that type of vehicle that the manufacturer produced and delivered for sale, add these products to the Hybrid Electric Vehicle (HEV) contribution factor (discussed in section IV.C.8), and then divide by the total number of vehicles produced and delivered for sale by the manufacturer.

Because vehicles sold to locations in California and other countries, including Canada and Mexico, are excluded from the National LEV program, and because fleet average NMOG calculations are based on regional limits described in the following section, manufacturers are required to obtain data on the location of vehicle sales to demonstrate accurate fleet average NMOG calculations. However, to ease the burden on manufacturers of tracking vehicles to the end user, manufacturers need only track vehicles to the location where the completed vehicle or truck is purchased, otherwise known as the point of first retail sale. In most cases, this will be the sale from the manufacturer to the dealer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the location of the end user is the point of first retail sale. Vehicle sales data pertaining to vehicles already shipped to a point of first retail sale is also known as first delivery information.

An additional proposed limitation on the vehicles manufacturers may include in their fleet average NMOG calculations involves those vehicles sold in the OTR to meet the requirements of the Energy Policy Act (EPAct). EPA is including this proposal at the request of the OTC states and auto

manufacturers. As proposed, manufacturers would not include in their National LEV fleet calculations any alternative-fueled vehicles that have been purchased by OTR State governments pursuant to EPAct guidelines if the governments have reported their purchases of those vehicles to the respective manufacturers no later than February 1 of the calendar year following the end of a given model year. Reporting should consist of a letter from the government official responsible for the EPAct purchases to the manufacturer representative listed in that manufacturer' s application for certification. Failure of the government entities to report this data correctly would allow the manufacturers to include these vehicles in their fleet average NMOG requirements. EPA is taking comment on the method and timing for these government reports. EPA is also taking comment on whether Federal government EPAct purchases should also be excluded from manufacturers' NMOG fleet average calculations, whether it is feasible for information on Federal purchases to be reported to manufacturers, and if so, through what mechanism.

3. Fleet Average NMOG Credit Program

As part of this voluntary program, EPA is proposing to allow manufacturers to use a market-based approach to the fleet average NMOG requirements for LDVs and LLDTs through averaging, banking, and trading NMOG credits and debits. This would provide an incentive for early emission reductions and allow manufacturers greater flexibility in meeting the overall fleet average targets. Thus, manufacturers would produce the same level of emissions reductions at less cost. Both this overall approach and most of the specifics of program implementation are modelled on California's trading program.[19]

Fleet average NMOG credits and debits would be calculated in the same manner as under the California regulations. Credits and debits would be calculated in units of g/mi as the difference between the required fleet average NMOG and the fleet average NMOG achieved by the manufacturer, multiplied by the total number of vehicles the manufacturer produced in a given model year and delivered for sale in the applicable regions, including ZEVs and HEVs. A manufacturer would generate credits in a given year if its fleet average NMOG value was lower than the fleet average NMOG requirement for that model year. Debits would be incurred when a manufacturer achieved a fleet average NMOG above the NMOG required for that model year. A manufacturer's balance for the model year would equal the sum of the credits earned and debits incurred.

As under the California regulations, the separate fleet average NMOG standards for the two different vehicle classes would require that manufacturers make separate fleet average NMOG value calculations for each class. Class A represents the LDVs and LDTs 0–3750 lbs. LVW, and Class B represents the LDTs 3751–5750 lbs. LVW. However, once calculated, fleet average credits and debits are not specific to these classes.

EPA is also proposing to include geographic limits on both calculation of fleet average NMOG values and offset of debits with credits. Prior to MY 2001, the fleet average NMOG standard would apply only to vehicles produced and delivered for sale within the OTR. To ensure that the voluntary program continues to produce emissions reductions comparable to those that would be achieved by OTC LEV in the OTR, from MY 2001 on, credit and debit averaging would be conducted in two separate regions: the OTR and the remaining 37 States, excluding both California and the OTR.[20] The NMOG average, credits, and debits for a regional fleet would be based on vehicles produced and delivered for sale in each region, and each regional fleet average would have to meet the applicable NMOG standard independently.

Therefore, manufacturers would be required to calculate four separate fleet average NMOG values for four separate averaging sets: Class A in the OTR, Class A in the 37 States, Class B in the OTR, and Class B in the 37 States. Each manufacturer would have a separate balance for each of the two regions, which would be calculated by summing all of the manufacturers' credits and debits within that region.[21] Only credits remaining after calculating the manufacturer's balance for the region would be available for trading and they could be traded only in that region.

As under the California regulations, the proposed National LEV standards provide that manufacturers may incur a debit balance in a given region and model year, but the manufacturer must equalize any emission debits by the end of the following model year. Manufacturers would be able to offset debits by (1) using credits generated by that manufacturer in a previous year (discounted if appropriate), (2) earning an equal amount of emission credits the year after incurring the debit, or (3) presenting to EPA an equal amount of credits acquired from another manufacturer. However, a manufacturer would have to use any available banked credits to offset debits in the year those debits were generated, rather than carrying over to the next model year both credits and debits for the same region. The cause of action for failure to equalize debits would be deemed to accrue at the end of the time period for equalizing debits.

The voluntary standards would also incorporate the California approach for discounting unused credits over time. Discounting helps to protect the equivalency of credits earned and used in different years, to account for less stringent in-use requirements, and to prevent excessive accumulation. Over time, vehicles are likely to improve in their durability and performance due to a longer development period and experience gained from prior model years. Thus, emission reductions from earlier vehicles may be less than those from the same type of vehicle later on. Under the proposed regulations, unused credits that are available at the end of the second, third and fourth model year after the model year in which the credits were generated would be discounted to 50%, 25%, and 0% of the original value of the credits, respectively. For example, if a manufacturer generated 200 credits in MY 1997, those credits would retain their full value in MY 1998. However, in MY 1999, the credits would be discounted by 50%, so the manufacturer would hold only 100 credits. In MY 2000, the manufacturer would hold 50 credits, and in MY 2001, the credits would have no value.

EPA is proposing to allow manufacturers to generate credits in the 37 States prior to model year 2001 for use in the 37 States. This would provide manufacturers added flexibility. However, EPA is concerned about the possibility that this might generate windfall credits. Windfall credits are credits that are generated without real emission reductions being made by the manufacturer because the manufacturer

[19] The National LEV regulations would not preclude generation of excess credits under National LEV for use in broader trading programs if such programs are developed in the future. Excess credits would be those credits left after a manufacturer met the NMOG average.

[20] For administrative convenience, EPA is proposing to include the entire state of Virginia in the OTR trading region, even though only northern Virginia is in the OTR. EPA is taking comment on whether only the portion of Virginia in the OTR should be included in the OTR trading region.

[21] Credits or debits earned or incurred in the National LEV program would not be interchangeable with credits or debits earned or incurred in California because the National LEV and California LEV programs are separate.

would have made those production choices regardless of the incentive of earning credits. Given that such credits do not represent emission reduction benefits over the status quo, they should not be used to offset later deficits. EPA requests comment on these issues.

Compliance for vehicles subject to the fleet average NMOG standards proposed in this regulation will be evaluated in two ways. First, compliance of an individual vehicle with its certified NMOG tailpipe emissions levels would be determined and enforced in the same manner as compliance with any other emission standard. Each vehicle must meet its certified emission standards as determined and enforced through certification, Selective Enforcement Audit, in-use testing, and, for certain vehicles, testing performed under some California assembly-line and in-use testing programs. Second, manufacturers must show that they meet the applicable NMOG fleet average standards. Manufacturers could either report a fleet average NMOG level meeting the applicable fleet average NMOG standard or present to EPA enough credits to offset any debits by the end of the model year following the model year in which the debits were incurred.

The proposed fleet average NMOG credit program would be implemented and enforced through the certificate of conformity, which the manufacturer would be required to obtain under proposed section 86.1721–97 for all vehicles prior to their introduction into commerce. The certificate for each vehicle would be conditioned on each vehicle meeting the applicable National LEV tailpipe and related emission standards, and on the manufacturer demonstrating compliance with the applicable NMOG fleet average standard. If a manufacturer failed to meet both of these conditions, the vehicles causing the NMOG fleet average violation would be considered not covered by the certificate applicable to the engine family. EPA could then assess penalties on an individual vehicle basis for sale of vehicles not covered by a certificate.

If debits are not equalized within the specified time period, EPA would calculate the number of noncomplying vehicles by dividing the total amount of debits for the model year by the fleet average NMOG requirement applicable for the model year and averaging set in which the debits were first incurred. In the case where both averaging sets are in debit, any applicable credits would first be split between the sets. Then, noncompliance calculations would begin using the revised debit values. Each noncomplying vehicle would be deemed to be in violation of the conditions of its certificate. EPA would determine these vehicles by designating vehicles in those engine families with the highest certification NMOG emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. EPA may void *ab initio* the certificates of conformity for nonconforming vehicles.

If the Agency determines that an enforcement action is appropriate, EPA would have some discretion in choosing the appropriate penalties. The sale of vehicles not covered by a certificate is a violation under CAA section 203(a). Civil penalties in the amount up to $25,000 per vehicle are possible under section 205 of the Act. The applicable penalties are listed in section 205(a) of the Act. The Agency would consider appropriate mitigating factors.

EPA is taking comment on an additional enforcement requirement associated with this trading program. Specifically, if a manufacturer failed to equalize emission debits by the end of the year following the year the debits were generated, that manufacturer would not only be responsible for any of the appropriate penalties as discussed above, but would also be required to make up the debit balance, which represents emissions exceedances. Under the California program, once penalties are imposed for holding debits, those debits are wiped out and the manufacturer's credit balance returns to zero. However, requiring debits to be made up, notwithstanding penalties, would ensure that the environment is not harmed by an exceedance. EPA requests comment on whether making up emissions exceedances should be required automatically, whether EPA should have discretion to require that exceedances be made up, or whether emissions exceedances should not be required to be made up.

When credits are transferred between manufacturers, EPA proposes to make both the provider and receiver of credits potentially liable for any credit shortfall resulting from the trade, except in cases where fraud is involved. The certificates of both parties issued for vehicles involved in the violating trading transaction could be void *ab initio* if the manufacturers fleet average NMOG values exceed the federal standard as a result of the credits shortfall. This proposal differs from California's fleet average NMOG program, which focuses only on the party reporting a shortfall, reflecting California's confidence in the validity of reported credits. However, holding both parties potentially liable provides the same manufacturer accountability that is incorporated in the other federal mobile source credit programs. Such a policy would provide additional incentive for credit providers and receivers to take the necessary steps to ensure the integrity of the transactions, and to place contractual liability on the appropriate party. EPA is also taking comment on limiting potential liability in the same manner as California's program does.

Manufacturers would be required to prepare an annual report after the end of each model year to demonstrate compliance with the applicable fleet average NMOG standards. The report would have to be submitted no later than May 1 of the calendar year following the end of the given model year. Manufacturers would also be required to report any credit transactions for the year as part of the annual report. However, EPA is also taking comment on a modified approach to reporting credit transactions, which would require parties to report a trade within 30 days of the transaction. The California program requires immediate reporting of trades, but EPA believes a 30 day reporting period would be more practical. The purpose of a 30 day reporting requirement would be to allow a purchaser to contact EPA and verify that credits had not already been traded.

The integrity of the proposed fleet average NMOG credit program depends on accurate recordkeeping and reporting by manufacturers and effective tracking and auditing by EPA. If a manufacturer fails to maintain the required records, EPA could void the certificates for the affected vehicles *ab initio.* If a manufacturer violates reporting requirements, the manufacturer could be subject to penalties of up to $25,000 per day, as authorized by section 205 of the Clean Air Act.

EPA intends to develop an electronic reporting mechanism that is similar to California's format. The format for reporting fleet average NMOG data will be detailed in a Dear Manufacturer letter from EPA after the final regulations have been published.

4. Five Percent Cap on Sale of Tier 1 Vehicles and TLEVs

Today's proposal includes a limit on the number of Tier 1 vehicles and TLEVs produced and offered for sale in the OTR. Specifically, beginning in the 2001 model year, manufacturers would be able to offer Tier 1 vehicles or TLEVs for sale in the OTR only if the same engine families are certified and offered for sale in California in the same model

year. Additionally, the number of these vehicles would be limited on an industry-wide basis to 5% of the total number of new motor vehicles produced and offered for sale under the National LEV program in that model year in the OTR. This 5% cap would be administered and enforced using a credit trading system, which would allow manufacturers to redistribute the compliance burden between different manufacturers and over time, and thereby achieve industry-wide compliance at the least cost. The purpose of limiting the sales of Tier 1 vehicles and TLEVs is to give the OTR States additional assurance that the National LEV program will produce NO_X emissions reductions equivalent to those that would flow from the OTC LEV program.

The concern about the equivalency of NO_X emissions arises from the use of a fleet average NMOG standard. Manufacturers may meet the standard by producing and delivering for sale any combination of categories of vehicles resulting in a complying sales-weighted fleet average NMOG value. While this ensures that the fleet as a whole will meet a given NMOG value, it does not guarantee that the fleet will meet any particular average NO_X value. NO_X standards for the different certification categories do not vary in the same manner as the NMOG standards. While Tier 1 vehicles, TLEVs, LEVs and ULEVs all have different NMOG standards, Tier 1 vehicles and TLEVs have NO_X standards of 0.4 g/mi, and LEVs and ULEVs have NO_X standards of 0.2 g/mi. As a result, a fleet of Tier 1 vehicles, TLEVs, and ULEVs could have higher NO_X emissions than a fleet of LEVs, even if the two fleets had the same NMOG average. The NO_X emissions from Tier 1 vehicles and TLEVs, which are higher than from LEVs, would not be offset by lower NO_X emissions from ULEVs, which are the same as from LEVs.

Both National LEV and OTC LEV have the potential to produce a range of total NO_X emissions, depending on the vehicle mix chosen by the manufacturers. However, some parties have raised a concern that National LEV would present a greater potential for higher NO_X emissions than would OTC LEV. This is because the lower final NMOG average standard under OTC LEV may make it more difficult for manufacturers to produce and offset the sale of Tier 1 vehicles or TLEVs with ULEVs in the later years of the program.

EPA does not believe the effect of the lower NMOG standard under OTC LEV is likely to be sufficient to affect the NO_X equivalency of the two programs. Based on the manufacturers' production projections, EPA believes that the number of Tier 1 vehicles and TLEVs produced after 2001 will be extremely low under either program, yielding an insignificant difference in NO_X emissions compared to a fleet without those categories of vehicles.

Nevertheless, the OTC States and auto manufacturers have recommended the 5% cap provision to address the concern over NO_X emissions, and EPA is proposing to include this recommendation in the National LEV rule. Limiting sales of Tier 1 vehicles and TLEVs to those engine families that are concurrently offered for sale in California encourages the same sales mix under National LEV and OTC LEV, preserving the relative emissions levels. Setting an industry-wide 5% cap on the number of Tier 1 vehicles and TLEVs produced and offered for sale under National LEV limits the exposure to increased NO_X emissions on an absolute basis.

EPA analyses indicate that if manufacturers took full advantage of the 5% cap (i.e. they sold 5% Tier 1 vehicles every year), the passenger car and light-duty truck portion of the OTR emissions inventory in 2005 would increase by less than one half of one percent, which is not enough to change the conclusion that the National LEV program is equivalent to the OTC LEV program in the OTR.

EPA is taking comment on exempting low volume manufacturers, as defined in section IV.D, from meeting the 5% cap. EPA recognizes that these manufacturers may lack the flexibility in their product line that would allow them to adjust the makeup of their fleet to meet this requirement. EPA believes that the potential contribution of increased NO_X emissions from these manufacturers would be insignificant. EPA wishes to take comment on this proposed provision, including whether additional or no categories of manufacturers should be exempted from the 5% cap.

EPA proposes to implement the 5% cap through a market-based banking and trading program. This program could be structured in a number of different ways, four of which are described below. EPA is not at this time proposing regulatory language for any of these approaches, but is requesting comment on the preferable way to structure a 5% cap trading program through any of the described or other possible approaches.

The two basic types of trading systems that could be applied here are a credit and debit system, as used for the NMOG average, and an allowance trading system, similar to that established under Title IV of the Act for control of acid rain. In a credit and debit system, manufacturers generate credits or debits for vehicles according to whether their production is above or below a specified individual threshold number of vehicles. Thus, all reallocation of credits or debits (representing production quantities) is done through trading. In an allowance based system, the production limit is represented by a pool of allowances, each entitling the holder to produce a certain quantity of limited vehicles. The pool of allowances is distributed among the manufacturers on some equitable basis, producing individual limits, and manufacturers may conduct further adjustments in allocations through the market.

The structure of a trading system to implement the proposed 5% cap on Tier 1 vehicles and TLEVs is further complicated because the real target of the limitation is industry-wide production, not an individual 5% cap on each manufacturer's production. The first two approaches described below are the credit and debit approach and the allowance approach, both of these modified to ensure that enforcement would target only exceedances of the industry-wide 5% cap. The third approach is a straight allowance trading system, while the fourth is a straight allowance trading system with delayed implementation, linked to exceedance of the industry-wide 5% cap. Each of the described approaches would calculate vehicle production based on a manufacturer's entire National LEV fleet (passenger cars and LDTs 0–5750 lbs LVW), and calculations would only include vehicles delivered to a point of first retail sale in the OTR. None of these approaches would allow manufacturers to generate credits before the 2001 model year, although EPA is taking comment on whether early banking would be appropriate under any of these approaches.

Under the credit and debit approach, a manufacturer would generate credits or debits based upon the number of Tier 1 vehicles or TLEVs it produced and offered for sale in the OTR above or below a number equal to 5% of the total number of National LEV vehicles the manufacturer produced and offered for sale in the OTR. Credits and debits would be calculated in units of number of vehicles. As under the fleet average NMOG trading program, unused credits would be discounted over time.

In the instance where a debit situation arose, a manufacturer would have to equalize any debits by the end of the following model year. Offset of debits would be accomplished either through

earning an equal amount of credits in the model year after incurring the debit, or presenting to EPA an equal amount of credits acquired from another manufacturer. Credits and debits would not be generated until the end of the model year, but manufacturers would then have an opportunity to trade these credits prior to reporting annual totals as part of the annual compliance report due in May of each year.

This approach would be modified to target industry-wide exceedances or over-compliance, rather than individual limits. A manufacturer could only carry over to the next model year and would only be responsible for in the next model year, a balance of credits or debits that had been offset to account for credits or debits generated industry-wide. If EPA determines that the 5% industry-wide cap provision has been exceeded, then for enforcement purposes, a specific manufacturer's responsibility to make up debits in the next model year would be calculated based on that manufacturer's proportional responsibility for the industry-wide exceedance. Similarly, a manufacturer could only carry over to the next model year its proportionate share of the total credits generated industry-wide, after offset by any outstanding debits industry-wide.

Enforcement of exceedances would work in the following manner. An individual manufacturer's debits would be calculated based on the number of Tier 1 vehicles and TLEVs that the manufacturer produced and offered for sale in the OTR above a number equal to 5% of the total number of vehicles in that manufacturer's National LEV fleet produced and offered for sale in the OTR, plus any outstanding debits and minus any credits held. EPA would identify the industry-wide level of exceedance by determining the total number of Tier 1 vehicles and TLEVs produced and offered for sale in the OTR in excess of 5% of the OTR National LEV fleet (accounting for outstanding credits and debits), which would equal the sum of all individual manufacturers' credits and debits. Then, each manufacturer with debits would be responsible for a pro-rated share of the industry-wide exceedance calculated in the step above. This pro-rated share would be based on a manufacturer's number of debits relative to the total number of debits held by all manufacturers. For example, if the industry-wide production is 10,000, the industry-wide cap would be 500 Tier 1 vehicles and TLEVs. If the total number of Tier 1 vehicles and TLEVs produced and delivered for sale is 700, there are 200 net debits industry-wide. Assuming Manufacturers A, B, and C held 100, 200, and 300 debits, respectively, then A's pro-rated responsibility would be 100/600*200, or 33 debits, B's would be 200/600*200 or 67 debits, and C's would be 300/600*200, or 100 debits. This approach preserves the intent of the 5% cap by taking into account the industry-wide extent of any exceedance of the cap, rather than focusing on an individual manufacturer's exceedance, which may be partially offset elsewhere. However, this approach does entail a complicated enforcement scheme and may create some manufacturer uncertainty regarding the possible extent of their individual levels of liability in the event of an exceedance.

Similarly, in a year the industry-wide cap is not exceeded, a manufacturer would only be able to carry over credits that reflect the manufacturer's share of total credits available industry-wide, after offset by any outstanding debits. For example, if the industry-wide number of vehicles produced and offered for sale in the OTR is 10,000, the industry-wide cap would be 500 vehicles. If the total number of Tier 1 vehicles and TLEVs produced and offered for sale, after accounting for outstanding credits and debits is 400, there would be 100 credits available for carry-over. Assume Manufacturer A held 50 credits at the end of the model year, Manufacturer B held 100 credits, and Manufacturer C held 50 debits. Thus, the total number of credits produced is 150, and A's share of the available 100 credits would be $^{50}/_{150}$, or $^{1}/_{3}$, or 33, while B's share of the available 100 credits would be $^{100}/_{150}$, or $^{2}/_{3}$, or 67.

A variation on this approach would hold each manufacturer responsible for all of its excess vehicles above an individual 5% cap, whenever the industry-wide 5% cap is exceeded. Each manufacturer that produced and offered for sale Tier 1 vehicles and TLEVs in excess of 5% of its OTR fleet would be determined to be in violation for all of those vehicles above the individual 5% cap. Enforcing this method would be easier than the method described above. This approach would also create an additional incentive for manufacturers to limit their production of Tier 1 vehicles and TLEVs. However, it does operate against the intent of the 5% cap by holding each individual manufacturer to an individual 5% cap without taking into account the offsetting effect of some manufacturers producing well below the 5% cap.

Establishment of a revenue-neutral auction could facilitate credit trading under a credit and debit approach. An auction could reduce transaction costs by enabling buyers to identify a ready source of credits, and could promote competitive pricing of credits. Credits for an auction could be obtained in a number of ways. First, EPA could automatically withhold for auction the following year any credits generated in years that industry-wide sales were below the 5% cap, with proceeds distributed to the generators on a pro rata basis. Alternatively, EPA could withhold in this manner some set portion of credits generated, perhaps between 10% and 50%, leaving the rest to be traded or banked by the generating manufacturer. Finally, the auction could offer for sale only credits voluntarily contributed by manufacturers that preferred to sell their credits through the auction. EPA requests comment on the option of establishing a revenue-neutral auction and details of its operation, including the source of credits offered for sale.

The main alternative to a credit and debit trading system is an allowance based system. Under an allowance approach, each manufacturer would have to hold allowances equal to the number of Tier 1 vehicles and TLEVs that manufacturer produced and offered for sale in the OTR in that model year. The total pool of allowances distributed among manufacturers should equal 5% of the total number of National LEV vehicles produced and offered for sale in the OTR each model year. EPA would need to estimate this number beforehand, however, so it would be an approximation of vehicles actually produced and offered for sale.

EPA requests comment on how to project the number of vehicles that manufacturers will produce and offer for sale in a given model year. One way is to average the last three years' worth of the number of vehicles produced and offered for sale, and perhaps multiply this average by some number to account for possible growth and variability in market size. Over the past 20 years, vehicles sales quantities nationwide have generally fluctuated less than 15% from year to year, so EPA could choose some number between 0 and 15% as a growth factor.

The number of allowances available for distribution would be equal to 5% of the projected quantity of vehicles produced and offered for sale. EPA could distribute these allowances according to each manufacturer's pro rata share of total Tier 1 vehicles and TLEVs produced and offered for sale in the previous model year in the OTR. For example, a manufacturer that produced and offered for sale 15% of the total number of Tier 1 vehicles and TLEVs produced and offered for sale in the

OTR in the previous model year would receive 15% of the allowances to be allocated in the next model year.

At the end of the reporting period, each manufacturer would have to submit to EPA a quantity of allowances equal to the number of Tier 1 vehicles and TLEVs that manufacturer produced and offered for sale in the OTR in the previous model year. Manufacturers could trade allowances among themselves to make up for shortfalls. A manufacturer with insufficient allowances to cover vehicles would have to make up the shortfall in the subsequent model year, or be subject to penalties. Manufacturers could bank excess allowances for use in future years, but the allowances would be discounted over time. The discount factor could be the same as under the proposed NMOG trading system, or could be modified to reflect different circumstances here.

This allowance-based approach could be modified to better relate allowance quantities and enforcement procedures to the actual vehicle production and exceedance of the industry-wide 5% cap in a given model year. One possibility is to require EPA to adjust the allowance pool to account for actual quantities of vehicles produced and offered for sale at the end of a model year. Under this scenario, if EPA had projected production below the number of vehicles that manufacturers actually produced and offered for sale in the OTR in a given model year, and hence allocated an insufficient number of allowances, EPA could distribute the additional allowances on the same proportional basis as it had used for the initial allocation for that year. EPA probably would not readjust the allowance pool in model years where it had projected higher than actual production because this would seriously undermine certainty for individual manufacturers. However, the system could be structured to require EPA to compensate for such excess allocated allowances in calculating the following year's available pool.

Another possible refinement of an allowance system would provide that EPA would only enforce against individuals based on exceedance of the actual industry-wide cap, not just individual allowance allocations. Similar to the modified credit and debit approach described above, an individual manufacturer's exceedance of its own allowance allocation (after any trading) would not be a violation unless the industry-wide 5% cap were also exceeded. In such a situation where there is an individual exceedance but no industry-wide exceedance, the exceeding individual manufacturers are essentially implicitly using other manufacturer's excess allowances to offset their own shortfalls. Thus, any provision for banking excess allowances would have to account for the degree to which some apparently excess allowances have already been implicitly applied against other manufacturers' shortfalls. The number of excess allowances available industry-wide, after offset by any shortfalls, could be redistributed on a pro rata basis to all those manufacturers that held excess allowances, just as under the credit and debit approach. Manufacturers could bank allowances for use in future years only after offset.

Alternatively, instead of requiring a pro rata redistribution of allowances, EPA could allow manufacturers to bank all excess allowances, regardless of their implicit use to make up other manufacturers' shortfalls, but then impose more substantial depreciation of banked allowances. For example, EPA could impose a depreciation system under which banked allowances would be worth 50% of their value in the first year following the year in which they were initially allocated, 25% of their value in the second year, and would expire in the third year. This would be simpler to administer than a pro rata redistribution, but would still protect against double counting credits by providing automatic significant devaluation.

In a year where manufacturers exceed both individual allowance allocations (after any trading) and the industry-wide 5% cap, violations could be calculated based on exceedances of the industry-wide cap. Individual exceedances could again be implicitly offset by any available excess allowances held by other manufacturers. A manufacturer would only be responsible for its pro rata share of the industry-wide shortfall, which would equal the actual number of vehicles produced above the actual 5% cap after accounting for outstanding credits and debits. However, under an allowance based system, as opposed to a credit and debit system, there is also the possibility that the allowances allocated are not equal to 5% of the actual number of vehicles produced and offered for sale. Thus, in a year where EPA had overestimated projected production and the allowance pool is greater than the actual 5% cap, EPA should not apply allowances to offset shortfalls industry-wide if those allowances do not represent actual over compliance in terms of vehicle production.

Under this modified allowance-based approach, allocation of allowances provides substantial protection to manufacturers that will generally produce and offer for sale more than 5% of their own OTR fleets as Tier 1 vehicles and TLEVs. Such manufacturers would not have to purchase sufficient credits every year to cover all of their excess production. However, in any trading system that provides for end-of-year adjustments relative to a 5% cap on actual levels of vehicles produced and offered for sale in the previous year, manufacturers will experience substantial uncertainty regarding what number of Tier 1 vehicles and TLEVs would actually result in an exceedance. Manufacturers would be better able to project what production is necessary for compliance if they have as much information as possible regarding industry-wide production levels, and therefore the likely level of exceedance or compliance industry-wide. One way to provide such information would be to require manufacturers to report quarterly, perhaps in the trade press, on the numbers of Tier 1 vehicles and TLEVs and the total size of their fleets that they have produced and offered for sale in the OTR up to that time. This information may be of somewhat limited value, however, given substantial short term variation in vehicle sales. EPA requests comment on means of providing manufacturers more information to improve production and compliance decisions.

Another possible approach to implementing a 5% cap trading system is to establish a simple allowance-based system, in which EPA would enforce against individual manufacturers with insufficient allowances, regardless of the actual number of vehicles produced and offered for sale in a given model year. The industry-wide 5% cap would be incorporated in this approach through the initial calculation of available allowances and the provision for trading allowances. However, EPA would make no further adjustments to calculate industry-wide versus individual compliance. This approach would greatly simplify administration. It would also provide individual manufacturers certainty regarding what numbers and mixes of vehicles they would need to produce and offer for sale to avoid noncompliance, and it would enhance their ability to protect themselves through banking allowances. This would give manufacturers somewhat less leeway in compliance by not providing for adjustment with industry-wide offsets or recalibration of the available allowance pool based on actual production. Any such additional

burden could be reduced by means such as making depreciation of banked credits less rigorous or building in a greater safety factor for increased production in projecting production and offer for sale and calculating the initial allowance pool.

The final approach described here would be to promulgate regulations setting up a straightforward allowance trading system, but to delay its implementation until the year following a year in which manufacturers have actually exceeded the industry-wide 5% cap. A credit and debit approach could similarly be subject to trigger by an industry-wide exceedance. This approach would avoid the substantial administrative costs for EPA and transaction costs for the manufacturers of implementing a trading program in years when it would provide no environmental benefit, and perhaps avoid such costs altogether. The prospect of having to implement a trading program would also provide manufacturers a powerful incentive to avoid an exceedance of the industry-wide cap. This approach would not give manufacturers the opportunity to bank allowances in the early years of the program, but EPA has no reason to believe it would be easier for manufacturers to comply with the 5% cap in the early years, so this may not be a real disadvantage. While a basic allowance approach would sacrifice some precision in terms of meeting an actual 5% cap each year, as opposed to EPA's projected 5% cap, the degree of precision sacrificed depends on how much of a buffer for growth is built into the projection. If it were critical that the manufacturers meet an actual 5% number every year, the allowance pool could be calculated based on something less than 5% of the projected number of vehicles produced and offered for sale. Alternatively, if the greater concern is to ensure that the allowance pool is not less than 5% of the actual number of vehicles produced and offered for sale, EPA could apply a larger growth factor in projecting production, such as assuming the fleet produced and offered for sale will be 15% greater than the average of the previous three years. EPA requests comment on all of these basic trading approaches, details of their implementation, and any other variations.

Any of these approaches to the 5% cap trading program would be implemented and enforced through the certificate of conformity, as under the NMOG trading program. The certificate for each Tier 1 vehicle and TLEV produced and offered for sale in the OTR in the 2001 and later model years would be conditioned on demonstrating compliance with the 5% cap provisions, as well as any other applicable conditions imposed under other sections of the National LEV program. If a manufacturer did not equalize its debits or make up its allowance shortfall within the required time period, then each noncomplying vehicle would be deemed to be in violation of the certificate of conformity. The number of noncomplying vehicles would correspond to the number of outstanding debits or the quantity of the allowance shortfall, since both debits and allowances are in units of vehicles. EPA would determine these noncomplying vehicles by first designating Tier 1 vehicles and then TLEVs and continuing until a number equal to the calculated number of noncomplying vehicles as determined above is reached. EPA may void *ab initio* the certificates of conformity. As with the fleet average NMOG trading program, EPA would have some discretion in choosing the appropriate penalties and would consider mitigating factors.

EPA proposes to apply the same liability for credit or allowance transfers between manufacturers as is found in the fleet average NMOG trading program. This would preserve the similarity of the programs and reduce any potential confusion as to their operation.

Manufacturers would not be required to prepare an annual report demonstrating compliance with the 5% cap provision because all relevant data will be provided to EPA under the guidelines of the fleet average NMOG program. However, manufacturers would still be required to maintain accurate records and failure to do so could result in EPA voiding *ab initio* the certificates of the affected vehicles and imposing any other applicable penalties. As with the fleet average NMOG trading program, manufacturers would be required to report annually to EPA any credit or allowance transactions and the quantity of credits or allowances traded.

5. Tailpipe Emissions Testing

a. California Phase II Reformulated Gasoline

The Agency is proposing to allow manufacturers the option to show compliance with emission standards for TLEVs, LEVs and ULEVs using Phase II gasoline (the same option allowed by California in implementing its regulations). EPA believes it cannot allow the use of California Phase II gasoline to demonstrate compliance with Tier 1 standards because that would not demonstrate compliance with the mandatory federal standards. EPA takes comment on this issue. California allows the use of Phase II gasoline on emission data vehicles during official emission testing and, as a result, the OTC States would be accepting certifications using Phase II gasoline under OTC LEV.

The use of California Phase II reformulated gasoline has a direct impact on the stringency of the proposed emission standards. Data presented by California and others during the adoption of California's standards shows that the use of Phase II gasoline will reduce vehicle emission levels during exhaust and evaporative testing compared to testing using Federal Certification Fuel.

EPA promulgated a federal reformulated gasoline program in February 1994 (59 FR 7716, February 16, 1994). However, California Phase II gasoline is substantially different and will not be available nationwide. Consequently, testing performed using Phase II gasoline may not produce the same emission levels that will result in-use. The Agency has little data to evaluate the difference in in-use emission levels based on use of either federal reformulated gasoline or California phase II gasoline, and specifically invites commenters to supply data on this difference.

There are several good logistical reasons to use Phase II in the National LEV program. Using the same certification fuel in the California and federal programs will reduce the manufacturers' cost of demonstrating compliance. If they adopted the California LEV program, all the OTC States would use Phase II gasoline for emission compliance in any event. Consequently there is no emissions effect of using Phase II gasoline for certification demonstrations in OTC states.

EPA believes that the possible effect of using California Phase II reformulated fuel as certification fuel would have little impact on the overall benefits of the National LEV program and reflects a worthwhile savings in compliance demonstration costs.

Although EPA is proposing to allow use of California Phase II gasoline as the test fuel for certification, the Agency is not proposing any regulatory changes governing the fuel that is actually used in vehicles, nor is the Agency suggesting now that states adopt new fuel requirements. In-use fuels is one of the issues that was addressed by the Subcommittee. Prior to the June, 1995 Subcommittee meeting, EPA discussed the issues with representatives of the

auto industry, the oil industry and the OTC States, who agreed to the following principles:

- Adoption of the National LEV program does not impose unique gasoline requirements on any State. Gasoline specified for use by any State will have the same effect on the National LEV program as on the OTC LEV program.
- Testing is needed to evaluate the effects of non-California gasoline on emissions control systems.
- If testing results show a significant effect, EPA will conduct a multi-party process to resolve the issue without adversely affecting SIP credits or actual emission reductions when compared to OTC LEV using fuels available in the OTR or imposing obligations on manufacturers different from the obligations they would have had under OTC LEV.

These principles were presented to the Subcommittee at its June, 1995 meeting. Because of some parties' continuing concerns, the Agency intends to continue discussions on these issues with the relevant parties during the public comment period.

One area where discussions have already started relates to current auto and oil industry studies that address, among other things, the possibility that changes in the MIL illumination criteria for National LEV on-board diagnostics systems might be appropriate (see section IV.B.6., ''On-Board Diagnostics''). Provided the above principles were met and the manufacturers agreed, the National LEV program as proposed would not preclude a future EPA rulemaking to change the MIL illumination criteria for the OBD systems.

b. NMOG vs. NMHC

The proposed voluntary standards, like California's LEV program standards, have a slightly different method of measuring hydrocarbons than the current federal approach used for the Tier 1 standards. Under the current federal standards, NMHC mass is determined by measuring THC using a flame ionization detector (FID) and subtracting the methane, which is measured using a gas chromatograph. Under California's test procedures for the LEV program, the measurement of hydrocarbons includes separate procedures for measuring additional organic components, such as aldehydes and ketones, to account for differences in FID response. The term used for hydrocarbon (HC) measured in this way is nonmethane organic gas (NMOG). The measurement of oxygenated hydrocarbons is more accurate under the NMOG procedures as compared to the current FID method. Since there is currently no federal procedure in place for measuring NMOG, EPA proposes to adopt California's NMOG measurement procedure in its entirety for purposes of the National LEV program. The Agency previously adopted those procedures for the clean fuel vehicle (CFV) standards, where the applicable standards are also expressed in terms of NMOG rather than NMHC.[22]

6. On-Board Diagnostics Systems Requirements

The voluntary standards would require on-board emissions diagnostics systems that meet California's second phase OBD requirements (OBD II). The on-board diagnostic system monitors emission-related systems and components for proper operation, detecting malfunctions or deterioration that can cause emission increases above specific threshold levels. When a malfunction or deterioration is detected, the OBD system stores critical diagnostic information geared toward facilitating an accurate and efficiently performed repair. The OBD system also illuminates a dashboard malfunction indicator light (MIL) immediately informing the vehicle operator of the need for service and, should that warning be ignored or neglected, the illuminated MIL can serve to inform an inspection and maintenance (I/M) official of the need for service. Thus, an OBD system is capable of both detecting emission-related malfunctions and deterioration and aiding in their proper diagnosis and timely repair. Both of these factors should lead to significant emissions reductions for vehicles equipped with OBD II.

EPA promulgated federal OBD requirements on February 19, 1993.[23] The federal OBD rules apply to 1994 and later cars and light trucks. California adopted its OBD II requirements in November of 1992, applicable to 1994 and later cars, light trucks, and medium duty vehicles. The federal OBD regulations allow for optional compliance with the California OBD II requirements through the 1998 model year. The current federal OBD and California OBD II regulations achieve similar results in terms of the type of OBD systems manufacturers need to install, but have somewhat different approaches toward the OBD requirements. The federal malfunction thresholds (i.e., the emission levels above which a malfunction or deterioration must be flagged) are stated as an absolute emission increase above the vehicle's normal level. The California OBD II malfunction thresholds are stated as relative emission increases above applicable standards. As a result, as emission standards become more stringent, the California OBD II malfunction thresholds decrease accordingly, while the federal malfunction thresholds remain at the same absolute level. EPA expects that manufacturers will design essentially identical systems to comply with both federal and California regulations. However, the Agency recognizes that, for vehicles certified to the LEV and ULEV standards, the emission levels at which California OBD II must flag malfunctions is lower than the federal OBD malfunction thresholds, thereby providing the potential for more significant emission reductions from vehicles equipped with OBD II.

The voluntary standards would not require that vehicles comply with the tampering protection requirements of the California OBD II regulations. For reasons specified in the **Federal Register** notice of court decisions regarding Agency regulations[24] the Agency has vacated and subsequently deleted OBD-related tampering protection requirements from the federal OBD regulations. Likewise, the Agency has also determined that California OBD II tampering protection provisions[25] are not required for compliance with federal regulations.

7. Fuel Provisions and Reactivity Adjustment Factors

As described above, EPA is proposing to use California phase II reformulated gasoline as the test fuel for gasoline-fueled vehicles certifying to today's proposed tailpipe standards for TLEVs, LEVs, and ULEVs. EPA is also proposing to adopt California's fuel specifications for alternative fuels. In some cases California has certification fuel specifications for alternative fuels where there is no federal specification. In the cases where there are both federal and California specifications for a given alternative fuel, the California specifications are more stringent and fuels meeting the California specifications also comply with the federal specifications. Thus, the adoption of California's certification specifications for alternative fuels will not create a conflict with any current federal requirements. However, EPA also takes comment on retaining federal specifications (when they exist) rather

[22] 59 FR 50042, September 30, 1994.

[23] 40 CFR § 86.094–017; 58 FR 9468.

[24] 59 FR 51114, October 7, 1994.

[25] Title 13 California Code section 1968.1(d).

than adopting California's specifications.

The proposed voluntary standards follow California's approach, as described below, of adjusting the emission standard to reflect differences in the impact on ozone formation between an alternative-fueled vehicle and a vehicle fueled with conventional gasoline. The use of reactivity adjustment factors (RAFs) reflects the understanding that different hydrocarbons and mixes of hydrocarbons exhibit varying capacities for ozone formation, partially depending on whether the hydrocarbons are emitted by vehicles fueled with conventional gasoline or alternative-fueled vehicles.[26] In general, alternative-fueled vehicles tend to contribute less to ozone formation for a given mass of NMOG emissions than do gasoline-fueled vehicles. The primary goal of controlling vehicle emissions of HC and NO_X is to reduce ambient ozone levels. It is reasonable to adjust NMOG emission control levels expressed in terms of mass emissions amounts, to account for different alternative-fueled vehicles' relative potentials for ozone formation, rather than to simply control on the basis of mass emissions. Thus, the proposed voluntary program would adopt RAFs to allow equally stringent NMOG standards to be set for gasoline- and alternative-fueled vehicles, taking into account the different reactivities of their emissions in ozone formation. The RAF is defined as the ozone-forming potential of alternative-fueled vehicle exhaust divided by the ozone-forming potential of gasoline-fueled vehicles. The measured NMOG mass emissions from an alternative-fueled vehicle are multiplied by the applicable RAF before being compared to the applicable NMOG standard to determine compliance.

California has already developed RAFs for some fuel types and has a process in place for the development of RAFs for fuels that do not yet have them. Additionally, California allows manufacturers to use this process to develop their own engine family-specific RAFs and RAFs for fuel types for which California has not yet developed them. EPA proposes to use the RAFs already adopted by California for alternative-fueled vehicles certifying to the proposed voluntary standards. Further, EPA expects to accept the use of new RAFs that California develops for other fuels, as California develops and adopts them. Finally, EPA proposes to allow manufacturers certifying to the proposed voluntary standards to develop their own RAFs, subject to Agency approval, using the California process for RAF development. EPA requests comment on the adoption of California RAFs in the manner described here.

8. Hybrid Electric Vehicles (HEVs)

The proposed voluntary standards also adopt California's approach to regulating emissions from HEVs. HEVs are powered by batteries, but also use a small combustion engine for additional range. The emissions from HEVs range from none, when running off the battery, to levels similar to TLEVs, when using the combustion engine. For certification, HEVs would be tested with the engine operating at worst case conditions over the standard test cycle. An HEV would have to meet the emission standards for one of the vehicle categories, TLEV, LEV, or ULEV, based on emissions from its combustion engine. This ensures that in the worst case situation, HEVs will not exceed minimum emission control requirements. However, some HEVs would have to demonstrate compliance with different, somewhat less stringent, useful life standards for certification, depending upon the type of HEV being certified. In addition, an HEV's contribution to the manufacturer's NMOG fleet average would be calculated as described below to account for the emissions benefits of its battery-powered operations.

The voluntary standards would follow California in recognizing three different categories of HEVs based on a vehicle's battery-powered range. Under the proposed standards, a ''Type A HEV'' must achieve a minimum range of 60 miles over California's All-Electric Range Test, while a ''Type B HEV'' and a ''Type C HEV'' must achieve ranges of 40–59 miles and 0–39 miles, respectively over that test. For certification, Type A HEVs would only have to meet 50,000 mile emission standards. Type B HEVs would have to meet 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). Certification only to 50,000 miles and use of the lower mileage deterioration factors account for the portion of the mileage accumulated while running off of the battery. Finally, Type C HEVs would have to meet both 50,000 and 100,000 mile standards (using 50,000 and 100,000 mile deterioration factors, respectively). Deterioration factors would be based on the emissions and mileage accumulation of the vehicle's combustion engine.

An HEV contribution factor would account for the NMOG emission contribution of HEVs to the fleet average NMOG. The contribution factor would be calculated by taking the number of each type of HEV (A, B, or C) produced and delivered for sale in each certification category, multiplying each number by a value representing the expected emissions levels from that type of vehicle, and summing all of these products. This contribution factor is then incorporated into the equation used to calculate a manufacturer's NMOG fleet average, as described in Section IV.B.2. above.

C. Low Volume and Small Volume Manufacturers

The California LEV program has some special provisions for manufacturers of smaller quantities of vehicles. The Agency is proposing to adopt a new terminology, ''low volume'' manufacturer, to denote those manufacturers that California defines as ''small volume manufacturers.'' This definition would be used solely for purposes of determining the NMOG fleet average applicable to certain manufacturers. The Agency would continue to apply the federal small volume manufacturer provisions, which provide relief from emission-data and durability showings and reduce the amount of information required to be submitted, to small volume manufacturers (as defined in current federal regulations) under the National LEV program.

''Low volume'' manufacturers (as EPA proposes to define them) are provided flexibility in the California LEV program through special phase-in schedules for NMOG average standards. California provides this flexibility to each manufacturer with sales in California of no more than 3000 passenger cars, light-duty trucks, and medium duty vehicles per model year, based on the average annual sales over the last three model years. Under California regulations, such manufacturers are not subject to an NMOG average standard until model year 2001, when they must meet a fleet average NMOG standard for passenger cars and light-duty trucks of 0.075 g/mi.[27]

[26] Under the California LEV program, California phase II gasoline has been determined to have slightly lower ozone forming potential than conventional gasoline. Accordingly, RAFs have been adopted by CARB for phase II gasoline.

[27] In addition, California provides such manufacturers with reduced durability and emission testing requirements, as well as abbreviated requirements for submittal of information. EPA is not proposing to adopt these additional requirements as part of National LEV, but is taking comment on doing so. Instead, for all purposes other than determination of the applicable NMOG average, EPA would retain its existing

In this voluntary program, EPA believes it would be inappropriate to require low volume manufacturers to sell LEVs sooner nationwide than would be required in California or under OTC LEV. For that reason, the Agency is proposing that low volume manufacturers would not be subject to the NMOG average until model year 2001, at which time they would be subject to the same NMOG average standard applicable to them in California and applicable to other manufacturers in the National LEV program (0.075 g/mi).

EPA is concerned that defining a low volume manufacturer solely on the basis of sales in California could create an incentive for manufacturers with large nationwide sales to reduce their sales in California. To ensure no abuse of the low volume NMOG fleet average provisions, EPA is proposing to expand the definition of a low volume manufacturer to include an additional nationwide sales limit. Therefore, a low volume manufacturer would be defined as a manufacturer with no more than 3000 sales in California of passenger cars, light-duty trucks, and medium duty vehicles per model year, based on the average sales over the last three model years; and with no more than a specified amount of sales nationwide of passenger cars and light light-duty trucks per model year, based on the average sales over the last three model years. EPA takes comment on where to set this amount, and is specifically considering amounts in the range of 25,000 to 40,000.

D. Legal Authority

EPA has statutory authority to promulgate the voluntary standards under sections 202(a) and 301(a) of the Clean Air Act. Section 202(a)(1) directs the Administrator to prescribe standards for control of air pollutant emissions from motor vehicles. EPA's establishment of voluntary, as well as mandatory, standards is authorized by section 202(a)(1). Establishment of voluntary standards is not precluded by section 202(b)(1)(C), which states that it is the intent of Congress that the Administrator shall not modify the emissions standards established under section 202(g), prior to MY 2004. Section 202(g) provides mandatory standards for emissions of NMHC, CO, NO_X, and PM from light-duty vehicles and light-duty trucks up to 6000 lbs GVWR, and EPA is not proposing to modify those mandatory standards. In addition, section 301(a) authorizes the Administrator to promulgate regulations necessary to carry out her functions under the Act. The voluntary standards proposed here fall within the Administrator's duty to implement the broad air pollution reduction purposes of the Act, and specifically to control air pollution from motor vehicles. Because these standards would be promulgated under section 202, this is a section 307(d) rulemaking, subject to the procedural requirements specified in that section.

Section 202(a)(1) gives the Administrator authority to promulgate regulatory standards for emissions of air pollutants from motor vehicles. This subsection provides

> [t]he Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class * * * of new motor vehicles * * *, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

This is a broad grant of authority to the Administrator to prescribe standards to regulate emissions that contribute to air pollution. The National LEV program would regulate HCs, CO and NO_X. These three pollutants are among the most significant contributors to air pollution in the United States. The strong CAA focus on controlling these pollutants indicates Congress' concern about the harm they cause and the need for their reduction. As discussed more extensively in section II.B above, air pollution from HCs, CO and NO_X is known to have negative impacts on human health and the environment, and thus ''may reasonably be anticipated to endanger public health or welfare.'' The Administrator's authority under section 202(a)(1) is further limited only by the requirement that such standards be ''in accordance with the provisions of'' section 202. Nothing in section 202 bars EPA from adopting emission standards that would be binding if and only if a manufacturer were to opt into them. Nor is any provision of section 202 inconsistent with a voluntary approach, so as to implicitly bar EPA's proposed action.

The proposed voluntary standards comply with section 202(a)(2), which requires any regulation prescribed under section 202(a)(1) to provide leadtime for technology development. Section 202(a)(2) mandates that any regulation under section 202(a)(1) may only ''take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' The voluntary standards would not impose emissions limits until MY 1997. The technology required by the voluntary standards would already be in production on California vehicles before the voluntary standards applied. TLEVs went into production for California in MY 1994, compared to MY 1997 in the OTR; while manufacturers would likely produce LEVs for California starting in MY 1997 or 1998, rather than MY 1999. Also, in granting California a waiver of preemption for its LEV program, EPA found that the state standards are not inconsistent with section 202(a). *See* 58 FR 4166 (Jan. 13, 1993) (announcing availability of Waiver of Federal Preemption; California Low-Emission Vehicle Standards (Jan. 8, 1993)). In making this decision, EPA already found that the California LEV standards are technologically feasible, considering the costs of compliance within the timeframe established. The voluntary character of the standards would provide further evidence of their feasibility. By opting into the voluntary program the manufacturers themselves would be affirming that the standards were feasible and that no further time would be ''necessary'' for them to meet the standards.

The voluntary standards also do not conflict with section 202(b)(1)(C), which prohibits EPA from changing the Tier 1 emissions standards prior to MY 2004. Section 202(b)(1)(C) states that ''[i]t is the intent of Congress that the numerical emission standards specified in subsection (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator * * * for any model year before the model year 2004.'' This language shows a narrow intent to prohibit modification of the mandatory federal Tier 1 standards. The promulgation of voluntary standards would not modify the Tier 1 standards. The Tier 1 standards would stay in effect, but manufacturers could choose to meet them by opting into National LEV. For manufacturers that did not opt into National LEV, the Tier 1 standards would be fully applicable. Congress did not intend to prevent manufacturers from voluntarily agreeing to meet reduced emission standards. *See Implementation of Federal Low-Emission Vehicle Program*, Appendix to AAMA Comments on Legal Issues Raised by the OTC Recommendation, Docket A–94–11, Document No. IV–D–46, at 9–10.

Compliance with National LEV would ensure that vehicles would continue to

definition of ''small volume'' and the corresponding federal durability data and emission data requirements and other certification procedures that currently apply to small volume manufacturers. See 40 CFR 86.096–14 (b)(1).

meet the Tier 1 standards specified in CAA § 202(g). Federal Tier 1 is the vehicle emissions category with the highest allowable tailpipe emissions levels under National LEV. Due to the fleet average NMOG standard, however, the vast majority of covered vehicles under National LEV will certify to the tighter tailpipe emissions standards of the vehicle emissions categories of TLEV, LEV, ULEV, or ZEV. Intermediate and full useful life standards for these vehicle emissions categories are correspondingly more stringent as well. An individual vehicle certified to any of the allowable vehicle emissions categories under National LEV will necessarily also comply with the statutory Tier 1 standards.

Moreover, the voluntary standards approach does not violate the intent of section 202(b)(1)(C) because it would expand, not restrict, motor vehicle manufacturers' options. Congress passed section 202(b)(1)(C) to protect manufacturers from EPA actions mandating a more restrictive national motor vehicle emissions program. However, in the context of the OTC LEV recommendation, the voluntary regulations actually have the effect of allowing manufacturers more flexibility in meeting their legal requirements. Were the voluntary standards program not promulgated, manufacturers would have to meet the OTC LEV program in the northeast. The promulgation of the voluntary standards provides manufacturers with another method of meeting emission requirements in the northeast.

Section 301(a) provides a further source of EPA authority to promulgate the voluntary standards. Section 301(a) authorizes the Administrator ''to prescribe such regulations as are necessary to carry out his functions under this chapter.'' The primary purpose of the CAA is to protect and enhance the quality of the Nation's air resources by reducing air pollution. Controlling emissions from mobile sources is a key means for achieving the Act's purpose, and Congress recognized this in enacting the mobile source provisions. Congress also found that air pollution control is the primary responsibility of state and local governments. In addition, in numerous places throughout the Act, Congress demonstrated its concern that these goals be achieved in an efficient and cost-effective manner, minimizing the costs of air pollution control to the extent possible. In promulgating these voluntary standards, the Administrator would further the basic pollution reduction goals of the CAA in a manner that would support state efforts and would be relatively cost-effective compared to the OTC LEV recommendation. Because the decision to be subject to these standards would be voluntary, EPA would simply be providing an opportunity for an alternate means of compliance, rather than mandating new requirements for manufacturers. These actions are consistent with section 202 and the rest of the Act, and are well within the Agency's broad authority under section 301(a).

E. Enforceability and Prohibited Acts

Once manufacturers have opted into the voluntary program, the program would become fully enforceable against them.[28] Manufacturers would be liable for compliance with these regulations to the same extent they are liable for compliance with other federal motor vehicle regulations. The manufacturers would have to comply with virtually the same testing regime (certification, Selective Enforcement Audit (SEA), and in-use recall testing) and the same warranty requirements as for other standards.

Moreover, any manufacturer that has opted into the program and subsequently fails to comply with the requirements of the program would be subject to sanctions under sections 203, 204 and 205 of the Act. The proposed regulations contain specific language from section 203 indicating that a violation of these standards shall be considered a violation of section 203 (including violations regarding tampering) and shall subject manufacturers (or any other persons) to injunctive and monetary penalties under sections 204 and 205. Manufacturers and other violators would not have a defense regarding the applicability of these sections to the voluntary program because such applicability will be explicitly found in the regulations. Under section 307(b), any challenge to the National LEV provisions would have to be made within 60 days of publication of the final rule. Failure to challenge these regulations within the 60 day period for judicial review will prevent any person from subsequently challenging the enforceability of these regulations. In addition, in their opt-in notifications, manufacturers would have committed not to challenge EPA's legal authority to establish and enforce the National LEV program, and committed to seek to certify vehicles only in compliance with the National LEV requirements.

[28] Any challenges to the legality of these regulations must occur within sixty days after publication of the final regulations in the **Federal Register**. *See* Clean Air Act section 307(b), 42 U.S.C. § 7607(b).

V. National LEV Deemed to Satisfy OTC LEV SIP Obligation

In the OTC LEV decision, EPA required states to cure the SIP inadequacy by either adopting OTC LEV or a ''short-fall'' SIP. 60 FR 4712, 4716, 4736 (January 24, 1995). However, EPA provided that the SIP inadequacy would be deemed cured if EPA determined through rule-making that a national LEV-equivalent new motor vehicle emission control program is an acceptable alternative for OTC LEV, and EPA finds it is in effect. 40 CFR § 51.120(a). In this rulemaking, EPA proposes to find that National LEV is an acceptable LEV-equivalent program. Also, EPA is proposing criteria for a subsequent finding that National LEV is in effect for purposes of satisfying the OTC LEV SIP call. If these criteria are satisfied, EPA will find that the program is in effect and will publish that finding in a **Federal Register** notice. Such an effectiveness finding would be deemed to cure the SIP inadequacy found in the OTC LEV decision without the need for further rulemaking. The SIP inadequacy would be deemed cured for the period of time when National LEV remains in effect, or would be deemed permanently cured when National LEV is replaced by new mandatory Tier 2 standards that are at least as stringent as National LEV.

A. Acceptable LEV-Equivalent Program

1. Criteria for Finding Acceptable LEV-Equivalent Program

EPA recognizes two key criteria for approval as an acceptable LEV-equivalent program. One criterion is that the VOC and NO_X emissions reductions within the OTR produced by National LEV must be equivalent to or greater than the emissions reductions produced by OTC LEV. The other is that the alternative program must be enforceable.

These criteria arise from the legal standards guiding EPA's decision to approve the recommendation from the OTC. EPA approved the recommended measures under section 184 based on a determination that they were necessary for any area in the OTR to attain or maintain the ozone NAAQS. The same determination of necessity led EPA to issue a SIP call to address interstate pollutant transport, under section 110(k)(5). This finding of necessity was based on an analysis of the need for VOC and NO_X emissions reductions from new motor vehicles in the OTR. Since it is VOC and NO_X emissions reductions from new motor vehicles that

are actually necessary for attainment or maintenance, and to address interstate transport, an acceptable alternative must produce the equivalent emissions reductions from new motor vehicles.

The enforceability criterion is designed to ensure that the emissions reductions expected from the alternative program will occur or are so likely to occur that it is appropriate to credit a state with those expected emission reductions in its SIP. This stems from the statutory and regulatory requirement that SIP provisions and reductions relied on in the SIP must be enforceable in order for EPA to approve SIP credits for those provisions and reductions. OTC LEV would be implemented as such an enforceable SIP provision. An acceptable alternative to states adopting an enforceable state LEV program would likewise have to be enforceable and adequately assure that the expected emissions reductions will in fact occur.

A number of parties have suggested that advancing motor vehicle pollution control technology is an important benefit of OTC LEV and should be a criterion for determining whether National LEV is an acceptable LEV-equivalent program. Although EPA agrees that advancing technology is an important policy goal, EPA does not believe that it is or should be a legally-required criterion for approval of a LEV-equivalent program. EPA granted the OTC LEV petition and issued the SIP call under CAA sections 110 and 184, which allow EPA to require emission reductions, not to require advances in technology. Thus, a program could cure the SIP deficiency without advancing technology. As long as an alternative program will achieve emissions reductions equivalent to anticipated reductions under the OTC recommendation, EPA need not mandate that the states achieve those reductions by forcing development of advanced technology.

Although advancing technology is not a legal requirement, it is a practical one. EPA recognizes that including some advanced technology component is important for all the parties to find the alternative acceptable and could provide additional environmental benefits beyond emissions reduction equivalency. For example, the promotion of technology in this program may promote the long-term development of new control technologies that may be beneficial for reduction of emissions in the future. OTC LEV would advance technology by requiring the phase-in of cleaner vehicles (ULEVs and, possibly, ZEVs) over time. Thus, while promotion of advanced technology is not a necessary criterion for EPA to approve an alternative program, EPA recognizes that inclusion of such a component would enhance the long term environmental benefits of an alternative and its acceptability to all parties.

2. Application of Criteria to Voluntary Program

a. Emissions Reduction Equivalence Determination

EPA proposes to find that the National LEV program meets the criterion that emissions reductions within the OTR must be equivalent to those produced by the OTC LEV program, based on EPA's own modeling of the two programs. Data to support the contention that the two programs were equivalent in terms of emissions reductions were presented to the Subcommittee at a September 30, 1994 meeting and were included in the Notice of Data Availability. 59 FR 53396, 53401 (October 24, 1994). At that meeting, and during subsequent meetings in October and November of 1994, many questions were raised regarding factors that may have been left out of the analysis comparing the two programs which could affect the equivalency determination. These factors were addressed in subsequent memoranda to the Subcommittee. Memoranda from Gary Dolce, Office of Mobile Sources, USEPA to Subcommittee and Work Group Members on Mobile Source Emissions and Air Quality in the Northeast States, ''Analyses and Background Material Requested by the Subcommittee'', October 25, 1994, and ''Further Analyses and Background Material Requested by the Subcommittee'' (November 3, 1994), Docket No. A–94–11, IV–E–51, IV–E–56. In addition, EPA has since completed a more thorough analysis of the benefits of the two programs as part of the required Regulatory Impact Analysis for the OTC LEV Final Rule and for this proposed rule. All of EPA's analyses of this issue lead to the same conclusion: given current assumptions about future vehicle performance and given the best currently available information about the migration of people and vehicles, it is reasonable to conclude that the emissions benefits in the OTR of the National LEV program and the OTC LEV program are essentially equivalent.

The results of EPA's current analysis of the equivalency issue, as presented in the Regulatory Impact Analysis, are presented in the following table. This analysis includes the effects of vehicle migration as discussed below. The OTC LEV case shown here assumes that a ZEV sales mandate exists only in states that have already adopted this mandate. However, even if it is assumed that there are ZEV sales mandates throughout the OTR, it does not result in a change in EPA's conclusion that the emissions benefits of the OTC LEV, including ZEV mandates in all OTR States, and National LEV programs are essentially equivalent.

TABLE 6.—OZONE SEASON WEEKDAY EMISSIONS FOR HIGHWAY VEHICLES IN THE OTR (TONS/DAY)

Year	Pollutant	OTC LEV	National LEV
2005 ...	NMOG	1,491	1,483
	NO_X	2,385	2,389
2007 ...	NMOG	1,361	1,353
	NO_X	2,218	2,212
2015 ...	NMOG	1,152	1,144
	NO_X	1,943	1,894

EPA identified two factors that would clearly be most important to the equivalency determination. The National LEV program would begin in the OTR with the 1997 model year, two years earlier than the OTC LEV program. In addition, beginning with the 2001 model year, vehicles that migrate into the OTR from other states would be substantially cleaner under the National LEV program than under the OTC LEV program because the National LEV program applies nationally. In order for the National LEV program to show equivalent emissions reductions to the OTC LEV program, these two factors would have to outweigh the additional benefits attributable to the OTC LEV program due its lower fleet average NMOG standard.

EPA's analysis indicates that the impact of the earlier start date for the National LEV program is not enough by itself to compensate for the higher fleet average NMOG standard for this program, except in the earlier years of the program. This analysis is based on existing EPA models and standard assumptions about the future performance of vehicles under both programs.

The effects of vehicle migration are much more difficult to assess. Because actual state-by-state vehicle migration data were not available, EPA used human migration data as a surrogate. Using state-by-state human migration data from the Internal Revenue Service, EPA estimated the annual migration rate of people into and out of the OTR. Assuming that vehicles migrate at the same rate as people, EPA then constructed a simple model to determine what percentage of vehicles

in the OTR vehicle fleet in any year would have been originally sold outside the OTR, taking into account annual in and out migration rates as well as motor vehicle scrappage rates. Using this approach, EPA determined that approximately 6.5% of the motor vehicle fleet in the OTR originated outside the OTR. When the National LEV and OTC LEV programs are compared including this migration assumption, the emissions reductions associated with the two programs are essentially equivalent.

During the Subcommittee meetings in October and November of 1994, members of the Subcommittee raised questions about additional factors which might affect the conclusion that these two programs are equivalent. Subsequent EPA analysis, presented to the Subcommittee, indicates that none of the issues raised changes the estimated emissions benefits enough to change the conclusion that the two programs result in equivalent emissions reductions within the OTR. The results of this analysis are presented in the memoranda referenced above.

b. Enforceability

EPA also proposes to find that National LEV meets the criterion that it provide enforceable emissions reductions. There are two aspects of the enforceability criterion. First, the National LEV program emissions standards and requirements must be enforceable against those manufacturers that have opted into the program and are operating under its provisions. Second, the program itself must be sufficiently stable for EPA to conclude that offramps will not be triggered and the program will remain in effect for its expected lifetime, thus retaining the enforceability of the standards. EPA proposes to find that the manufacturers would be subject to the program until standards at least as stringent as National LEV are adopted as mandatory federal standards. EPA is also proposing that, if the program ends prior to adoption of mandatory federal standards at least as stringent as National LEV, then the SIP call would no longer be cured and the OTC States would be required to meet the SIP call contained in 40 CFR § 51.120.

EPA believes that National LEV is fully enforceable against those manufacturers that have bound themselves to comply with the program. Once a manufacturer opts into the National LEV program, compliance with the applicable standards is mandatory. Because the National LEV regulations would be promulgated under CAA sections 202 and 301, a manufacturer that chooses to be covered by these regulations would be subject to the same enforcement procedures as exist for the current mandatory federal motor vehicle program. For example, violations of the National LEV standards provisions would be subject to sanctions under CAA sections 204 and 205. The certification, selective enforcement audit (SEA), recall, and warranty provisions of the current federal motor vehicle program would also apply to the National LEV program, as well as all other federal motor vehicle requirements not explicitly superseded by National LEV requirements.[29] The applicability of federal enforcement provisions would ensure that National LEV is an enforceable program. As a result, as long as manufacturers continue to be subject to the National LEV program, the standards and requirements of the program will be clearly enforceable.

In addition to National LEV being legally enforceable, there will also be strong practical disincentives to manufacturers either challenging the enforceability of the standards or even taking advantage of a potential offramp, unless the triggering event is something the manufacturers consider a substantial burden. The manufacturers strongly support National LEV as an alternative to OTC LEV and as long as one or more states have the ability to swiftly require compliance with OTC LEV, in the absence of National LEV, manufacturers will be reluctant to destabilize National LEV. New York, Massachusetts and Connecticut have adopted LEV programs. One or more of these States is likely to keep its LEV program as a ''backstop,'' which would automatically apply to any manufacturer not subject to National LEV. This would ensure that if National LEV were not in effect, manufacturers would have to comply with OTC LEV, in one or more States, without the delay of those States having first to adopt OTC LEV. EPA believes that having OTC LEV as a backstop in one or more States that already have a LEV program would provide an important extra measure of program stability and would support EPA findings that National LEV is enforceable.

EPA is proposing to find that the National LEV program will remain in effect for the intended duration of the program (i.e., at least through model year 2003, and perhaps through model year 2004 or 2005) because the circumstances allowing the program to terminate prematurely are limited and unlikely to occur. The only circumstances allowing the program to terminate prematurely would be certain EPA changes to Stable Standards or an OTR State's failure to meet whatever commitments it makes regarding adoption of motor vehicle programs under section 177 of the Act. There are a variety of disincentives for either EPA or the OTR States to act in a manner that would trigger an offramp.

The Agency believes that it is unlikely to change any of the Stable Standards in a manner that would give the auto manufacturers the right to opt out of the program. In the case of the conventional tailpipe emission standards, the Clean Air Act explicitly prohibits the Agency from mandating greater stringency than the Tier 1 standards prior to model year 2004. The tailpipe standards proposed for the National LEV program are already more stringent than (or in some cases, equivalent to) those statutory standards; thus EPA is prohibited by statute from requiring manufacturers to comply with any more stringent standards that would trigger the offramp opportunity. The remaining program elements proposed for inclusion in the Stable Standards are those where EPA's technical analysis of the current Federal provisions reveals no significant shortcoming that will require new, more stringent rulemaking action applicable during the model years of the proposed NLEV program. A more detailed discussion of the Agency's rationale for the proposed set of Stable Standards may be found in Section IV.A.4.

EPA would retain substantial flexibility to make certain types of adjustments to requirements designated as Stable Standards without triggering an offramp. First, EPA would be able to make any changes to which manufacturers did not object. Nor could EPA unknowingly trigger an offramp under this provision, because a manufacturer would have had to have objected to a proposed change during the public comment period in order to use it as a basis for opt out. Second, EPA could make modifications that do not affect stringency, which would allow EPA to fine tune standards or other requirements without putting the program in jeopardy. Third, EPA would be able to make modifications that harmonize the federal standard with the California standard without triggering an offramp. This would allow further refinement of the program and allow EPA to make even major corrections if California similarly views the change as necessary.

[29] The certification procedures would be harmonized with California's certification procedures to the extent possible, as part of this rulemaking. See Section VI.B.

EPA will also need to find that the OTR States are unlikely to break their commitments regarding adoption or retention of motor vehicle programs under section 177 of the Act. To date, the OTR States and manufacturers have not yet decided the details of how the OTR States should commit themselves to the National LEV program, either in terms of the exact substance of what the States will commit to, or the legal instruments for such a commitment. EPA will incorporate in the final rule whatever the OTR States and manufacturers agree the States should commit to, and State violation of such commitments would allow manufacturers to opt out of the program. EPA believes the final agreement will contain sufficiently firm commitments that the Agency will be able to find in the final rule that the States are unlikely to break those commitments. EPA will provide an opportunity for comment on this issue once more is known about the OTR States' commitments.

Based on the ongoing discussions, the OTR States are likely to make some kind of commitment not to adopt a motor vehicle program under section 177 of the Act without allowing compliance with National LEV as a full alternative. In addition, States with section 177 programs already in place might agree to modify those programs within a certain timeframe to allow alternative compliance with National LEV. These commitments could be embodied in one or several legal instruments, including a memorandum of understanding, consent decrees, a SIP revision incorporating the State's commitment, letters of commitment from the Governor or Attorney General, and others. EPA will make information regarding the final agreement available to the public prior to promulgation of the final rule.

c. Opportunities for Technology

EPA believes that the 49 State LEV program, together with the agreement between the parties on which it is based, would provide important opportunities to promote ATVs. The regulatory portion of the National LEV program proposed here does not address ATVs, as they are not a legally necessary component of a substitute for OTC LEV. However, the agreement pursuant to which the States and manufacturers would implement the National LEV program includes an ''ATV component'' to meet the parties' interest in promoting the development of ATVs. EPA supports the thoughtful, innovative approach the OTR States and auto manufacturers are proposing to take to introduce and establish ATVs in the OTR.

The ATV component that the OTR States and auto manufacturers have been discussing would be a unique agreement that would use an on-going, cooperative relationship to focus on shared visions, commitments and responsibilities. The parties will identify and address the means to achieve a viable ATV market, including infrastructure development, vehicle technology improvements, and incentive programs. The ATV component would rely on California's laws to force technology development, and ensure that technology takes hold in the OTR by having all parties working together to establish and maintain a sustainable, viable market for ATVs at the retail level. The ATV component anticipates that OTR States, major motor vehicle manufacturers, other states, EPA, the Department of Energy, fuel providers, converters, fleet operators, and other manufacturers of specialty motor vehicles would each have roles to play to facilitate the introduction of ATVs. EPA strongly supports this innovative approach and looks forward to participating in this effort.

Under the ATV component, the OTR States and auto manufacturers are looking at defining advanced technology vehicles as vehicles that are certified for sale in California and that are (1) certified as ULEVs or ILEVs using any fuel, (2) dedicated or hybrid electric vehicles, or (3) other alternative fuel vehicles as defined by the Energy Policy Act (certification level and timing are not resolved on this category).

The ATV component, which would be based on and build upon the requirements of the Energy Policy Act, would outline a process to orchestrate introduction of ATVs. The parties would jointly identify vehicle sales estimates. Then there would be integrated development and execution of tasks necessary to create and maintain a viable, sustainable market for ATVs. The process would also include measurement and public reporting of the parties' performance towards achieving the goals and accomplishing the necessary tasks.

Three phases of ATV introduction would be suggested by the ATV component. First, from 1996 to 1998, the parties would focus on developing ATV markets for federal, state and fuel provider fleets. This phase would include marketing ATVs to fleets, beginning development of refueling infrastructure, and surveying the potential demand for ATVs from 1999 to 2001. Second, from 1999 to 2001, municipal and private ATV fleets would also be developed. This would include expanding product offerings, infrastructure, and incentives; surveying potential demand for 2002 to 2004, and identifying criteria needed to sustain retail sales. In the third phase, from 2002 to 2004, retail consumer offerings would be added.

The ATV component presents the parties with an important opportunity to show that government/industry partnerships can achieve important environmental benefits and do so in a way that provides the parties with greater flexibility, while still holding them responsible for achieving the end goal. EPA is aware that this approach involves risks that are not present in traditional regulatory approaches—the ATV component is not legally enforceable; no one can go to court if the parties do not follow through on their commitments. However, by focusing resources on cooperative efforts to make a market-oriented program work, this approach has great potential for benefits. EPA believes this is an appropriate opportunity to take the risk and try to use a different model to achieve environmental benefits.

EPA will work with each state individually to determine the appropriate SIP credit for the ATV component. Current uncertainty concerning the number and types of ATVs that will be introduced into each state precludes EPA from providing SIP credit now. However, EPA expects that SIP credits will become available as the program is implemented. As ATVs are bought in individual states, EPA and the state will be able to calculate the emissions benefits for the life of the ATVs. In addition, EPA will also work with states to determine whether and what SIP credit is appropriate for specific measures (such as commitments to buy a specified number of ATVs).

B. Finding LEV-Equivalent Program in Effect

EPA is proposing certain regulatory criteria for finding that the acceptable LEV-equivalent program described in these proposed regulations has come into effect for purposes of satisfying the OTC LEV SIP call. Upon EPA making such a finding, which would be published in the **Federal Register**, the SIP inadequacy found in the OTC LEV decision would be deemed cured without the need for further Agency rulemaking or state action.[30] In addition,

[30] Of course, OTC States would not be precluded from adopting OTC LEV, as long as the State allows compliance with National LEV as a full alternative to compliance with the State OTC LEV program.

States may need to take further action to commit to the National LEV program pursuant to their agreement with the auto manufacturers.

to the extent that manufacturers have conditioned their opt-ins upon EPA making such a finding, the opt-ins would become fully and unconditionally binding. The SIP inadequacy would remain cured as long as National LEV continued in effect or had been replaced by standards at least as stringent promulgated under section 202(i) of the Act.

EPA believes that the Agency could make a finding as to whether the National LEV program has come into effect for purposes of satisfying the OTC LEV SIP call, without the need for further notice-and-comment rulemaking. EPA is providing full opportunity for public comment on establishing the criteria for making an in effect finding. The proposed criteria for making this finding are that all manufacturers listed in the regulations have submitted opt-in notifications in accordance with the requirements specified in the regulations. The submission of such opt-in notifications is an easily verified objective criterion. The manufacturers that would need to have submitted opt-ins are listed in the proposed regulation. The regulation also specifies the operative text that would have to be present in an opt-in notification and the necessary legal authority of the person signing such a notification. Because the satisfaction of the criteria is so clear as to be virtually self-executing, EPA believes that conducting further notice-and-comment rulemaking on whether the criteria were satisfied would produce additional delay while serving no purpose.

All affected parties would benefit by a prompt determination of whether or not the National LEV program has come into effect as an acceptable alternative to OTC LEV. Thus, the proposed regulations direct EPA to find whether or not National LEV is in effect within 60 days of publication of the final rule establishing the National LEV program. EPA believes this would give the manufacturers sufficient time to evaluate the provisions of the final rule and make a final decision to opt in. It would also ensure that should EPA find that National LEV is not in effect, the States would still have time to adopt OTC LEV so that it would be effective for model year 1999. However, EPA is requesting comment on whether it should instead adopt a different timeline, or no deadline at all.

To achieve emissions equivalency with OTC LEV, EPA could find National LEV to be in effect if all existing original engine manufacturers (OEMs) opt in in compliance with the opt-in requirements proposed in this rule. For the purposes of the National LEV program only, EPA is proposing to refer to as ''existing'' OEMs, those manufacturers that have received a certificate of conformity for a light-duty engine family for the 1995 model year. EPA is proposing to list in the rule the manufacturers meeting this criteria.[31] If all listed manufacturers opt in, the opt-ins will be binding on the manufacturers and they will be subject to all of the provisions of the National LEV program. Each opt-in must take the form of a letter signed by a company official with clear authority to bind the company. The letter must unambiguously declare the manufacturer's intention to comply with and be bound by the terms of the National LEV program, subject only to the condition that EPA find by the date specified in the regulations for EPA to make an in effect finding that the program is in effect for purposes of satisfying the OTC LEV SIP call. All of these criteria are easily and objectively determined and there would be no need for EPA to engage in further rulemaking to determine whether the criteria were satisfied. Rather, EPA would make a straightforward, objective determination of whether or not the criteria were satisfied, and then would notify the public of a finding that National LEV is in effect through publication in the **Federal Register**.

EPA is proposing that the OTC LEV SIP call would be deemed cured as long as National LEV is in effect or deemed permanently cured once National LEV has been replaced by new motor vehicle emissions standards of at least equivalent stringency promulgated under § 202(i). Under the proposed provisions for program duration, if by December 15, 2000, EPA had not promulgated new, mandatory tailpipe standards at least as stringent as National LEV that took effect in model year 2004, 2005, or 2006; beginning in model year 2004, manufacturers would only have to meet Tier 1 tailpipe standards in the 49 States. In that event, the quantity of annual emissions reductions that would have been produced by OTC LEV would be lost unless the OTC LEV SIP call were still in effect. Similarly, in the highly unlikely event that the program does not continue for its full expected duration (at least until 2004), the lost emissions reductions from early program dissolution would need to be made up through OTC LEV. In addition, retention of the OTC LEV SIP call provides a further disincentive to program dissolution, as both the manufacturers and OTR States view National LEV as a more cost-effective and environmentally beneficial alternative to OTC LEV. Once EPA has promulgated mandatory new motor vehicle tailpipe standards of at least equivalent stringency under section 202(i) of the Act, these would achieve equivalent emissions reductions and replace the voluntary National LEV requirements. Consequently, the SIP deficiency would be deemed permanently cured. EPA requests comment on this approach to when the OTC LEV SIP call remains in effect and when it would be deemed permanently cured.

In the event that an offramp were triggered and one or more manufacturers opted out, National LEV would remain in effect for purposes of satisfying the OTC LEV SIP call until EPA determined through rulemaking that the program was no longer in effect. The criteria for such a determination would also be established in that later rulemaking.

VI. Other Applicable Federal Requirements and Harmonization With California Requirements

A. Introduction

Given the automobile manufacturers' commitment to National LEV, EPA has committed to work with CARB to harmonize federal and California motor vehicle standards and test procedures to the extent possible. This would allow manufacturers to design and test vehicles to one set of specifications for sale nationwide, rather than designing and testing to two sets (California's and EPA's). EPA believes that the National LEV program plus harmonization of federal and California standards is a smarter, cheaper way to regulate that increases environmental and public health benefits. Under today's proposal and existing regulations, EPA believes that manufacturers will have harmonized standards and test procedures in the following areas: tailpipe exhaust standards, revised Federal Test Procedure, on-board refueling vapor recovery, evaporative emissions, and cold CO.

Today's proposal would add a new Code of Federal Regulations (CFR) subpart (Subpart R of Title 40, Part 86) containing the essential, regulatory elements of the voluntary National LEV program. The core of the program is the set of proposed tailpipe emission standards, NMOG fleet average requirements, and OBD requirements contained in the Subpart R language just

[31] The list in the proposed regulations at § 51.121(d) will be updated, if necessary, in the final rule to reflect any manufacturers that receive a certificate for the 1995 model year after promulgation of this NPRM.

described. These core provisions, based on the California program, are intended to substitute for the OBD requirements and Tier 1 emission standards in the framework of the current Federal motor vehicle control program.

Beyond this core, the balance of the Federal motor vehicle emissions control program (including other standards and requirements, and both certification and compliance program elements) would continue to apply to vehicles produced and sold by manufacturers opting into the National LEV program. The relevant provisions would be amended as necessary to accommodate changes resulting from the National LEV program. Significant elements of the federal new motor vehicle certification program that would apply to National LEV vehicles include the cold temperature CO standards, on-board refueling vapor recovery requirements, and the certification short test. Similarly, the current federal compliance program, including the fees program, selective enforcement audit program, emissions recall program, the federal emissions warranties, and federal emissions defect reporting requirements, would be used to implement the National LEV program. EPA would retain the authority to add regulatory requirements to the motor vehicle program, (e.g., as may be required under section 202(l) of the Clean Air Act to address air toxics) or to modify existing requirements (e.g., as it has proposed to do for the Federal Test Procedure). By proposing the National LEV's Stable Standards, EPA is recognizing that it does not intend to use the authority to modify certain existing regulations except in limited circumstances.

In an effort to reduce duplicative testing burdens on the vehicle manufacturers, EPA has committed to harmonize certain elements of the federal motor vehicle regulations with the California counterparts. For example, EPA and CARB are working actively to harmonize the federal and California evaporative emission requirements of the respective parties. Today's proposal is consistent with these efforts. To further the objective of reducing duplicative testing and compliance requirements on the manufacturers, EPA will seek consistency with California in future regulatory actions where practicable.

B. Harmonization of Federal and California Standards and Requirements

Additional comments on the nature and status of harmonization efforts currently underway are provided below.

1. On-Board Refueling Vapor Recovery

EPA anticipates that the federal and California on-board refueling vapor recovery (ORVR) standards will be harmonized. As directed in the 1990 Clean Air Act Amendments (CAAA), EPA has set requirements for vehicle-mounted systems to control the emissions of HC vapors during refueling, called ORVR systems. 58 FR 16262 (April 6, 1994); 40 CFR §§ 86.001–9, 86.004–9, and 86.098–8. ORVR-equipped vehicles must meet a standard of 0.20 grams of HC per gallon of fuel pumped during a test described in the final ORVR rule. Although California currently has no ORVR requirements separate from the federal standards, CARB staff have expressed an intent to pursue the adoption of a program similar to EPA's. EPA expects that this CARB action will produce harmonized federal and California ORVR standards.

2. Evaporative Emissions

EPA and CARB are in the process of harmonizing the federal and California evaporative emissions standards and test procedures. The federal motor vehicle emissions requirements include standards for HC emissions emanating from sources other than the exhaust system or crankcase, called evaporative emissions. The effectiveness of these standards is strongly dependent on the test procedure by which the standards are measured. As required by the CAA, EPA finalized a new test procedure and standards for enhanced evaporative emissions control that will be phased in beginning with the 1996 model year 58 FR 16002 (March 24, 1993). CARB finalized a similar set of new standards and test procedures that is being implemented in California according to a somewhat earlier phase in schedule CARB mail-out #95–01, January 4, 1995.

EPA and CARB staff have in recent months made steady progress toward harmonizing the two sets of test procedures and reducing testing burden by enabling manufacturers to satisfy the certification test requirements of both agencies in a single test, without sacrificing air quality benefits. Both agencies are now in the process of promulgating technical amendments to their regulations that will largely achieve this goal. A direct final rule containing technical amendments to the EPA test procedure (including amendments designed to harmonize federal and CARB evaporative emissions requirements) was published on August 23, 1995 (60 FR 43880). CARB held a Board hearing regarding their technical amendments on June 29, 1995, and expects to finalize their actions no later than June, 1996. The one major area of difference remaining concerns test fuel volatility and temperature conditions, discussed below.

The CARB evaporative emissions test procedure requires the use of gasoline with a volatility of 7 psi Reid Vapor Pressure (RVP) and a test lab simulation of a 105° F day. These fuel and temperature specifications are appropriate for California because they are designed to simulate a very hot day in California and the use of California Phase II reformulated gasoline. EPA's test procedure specifies 9 psi RVP fuel and simulation of a 96° F day, reflecting the goal of complying with CAA requirements for evaporative emissions control across the varied conditions in the United States. Test fuel volatility and test temperatures can have a major impact on the relative stringency of the two procedures, but the differences in these factors directionally tend to cancel each other out. As a result, the magnitude, and even the direction, of the overall difference in stringency between the two procedures is not obvious and must be determined empirically.

Therefore, in an effort to minimize the regulatory burden on manufacturers while maintaining effective control of evaporative emissions, EPA and CARB have initiated an investigative program, with support from the auto manufacturers, to resolve this relative stringency issue. Data from this test program, as well as from other relevant sources, will be placed in the public docket for this rulemaking. If these investigations lead to a finding that one procedure is significantly more stringent, manufacturers may be able to use that procedure to satisfy both agencies' testing requirements, although both agencies would have to find the procedure acceptable. EPA expects this investigation to be completed by the end of September 1995.

EPA expects that the CARB and EPA evaporative emission requirements will be harmonized (except for test fuel and temperature specifications) before promulgation of the National LEV final rule. At this time, EPA has insufficient data to conclude that use of the California test conditions, as proposed in this notice, would represent a significant loss in stringency relative to testing with the federal fuel and test temperature. Therefore, EPA is proposing to conduct certification of vehicles under the National LEV program using the federal procedure contained in the CFR, modified to specify California test fuel and test temperatures. Use of the CARB test fuel

for evaporative emissions testing would allow manufacturers to run the evaporative test in sequence with the exhaust emission test, which requires the CARB fuel, without switching fuels. If manufacturers had to switch fuels between exhaust emissions testing and evaporative emissions testing, the resulting testing required for certification would be more complex and more costly to run. Therefore, the Agency solicits comments on how the CARB procedure might be retained for use in the National LEV program if EPA finds that the EPA procedure is significantly more stringent. EPA specifically seeks comment on whether use of federal fuel and test temperature should be required for vehicles certified under the National LEV Program. If EPA's test fuel and temperature conditions are found to be significantly more stringent than CARB's, EPA would examine the impact of this finding on the National LEV evaporative emissions requirements to ensure continued compliance with Clean Air Act requirements for control of evaporative emissions. Vehicles certified in the National LEV program will be subject to the federal standards and implementation schedules set in the evaporative emissions rule.

3. Certification Short Test (CST)

In November 1993, EPA promulgated the CST, based on Section 202(a) of the amended CAA (58 FR 58382). The CST requires manufacturers to demonstrate at the time of new-vehicle certification that their LDV and LDT designs, when properly used and maintained, will pass the emissions short test procedures approved by EPA for use in state and local I/M programs.[32] In addition to simulating the I/M test procedures themselves, the CST protocol includes test conditions reasonably expected to be encountered by vehicles in I/M programs, such as test fuel, test temperatures, and simulated vehicle queue or wait times. The Agency may revise the CST regulations as necessary to ensure the ability of future vehicle designs to pass new performance warranty procedures adopted under the authority of Section 207(b) of the Act.

[32] These short tests are commonly referred to as the ''emissions performance warranty'' or ''207(b)'' procedures. The Agency has promulgated a menu of these procedures based on the requirements of Section 207(b) of the Act that the procedures are available, consistent with good engineering practice, and show reasonable correlation to the Federal Test Procedure. 40 CFR part 85, subpart W. I/M programs must choose from among the 207(b) procedures if vehicle owners in their jurisdictions are to be eligible for Federal emissions performance warranty coverage.

California I/M regulations lack the menu of I/M test procedures that is available nationally, and CARB certification procedures do not require manufacturers to verify the ability of their vehicles to pass I/M tests across the range of I/M test conditions found nationwide. As a consequence, EPA finds that there is no adequate California counterpart to the Federal CST requirement. Thus, the National LEV program would subject all vehicles, including those certified under the National LEV program, to the Federal CST regulations.

4. Federal Test Procedure Revisions

On February 7, 1995, EPA proposed regulations under Section 206(h) of the CAA for additions and revisions to the FTP, the core procedure used for certification and compliance testing of LDVs and LDTs. 60 FR 7404 (February 7, 1995). The focus of this ''FTP Review'' proposal was the addition of a Supplemental Federal Test Procedure (SFTP) and associated emission standards. The current FTP only measures ''on-cycle'' emissions. The SFTP, as proposed, is designed to add coverage of ''off-cycle'' emissions to the FTP, including emissions arising from aggressive (high-speed and/or high-acceleration) driving, rapid speed fluctuations, driving behavior following startup, air conditioning, and intermediate-duration periods where the engine is turned off. The proposed FTP off-cycle emission standards took into consideration the vehicle technologies that would prevail under the current (Tier 1) Federal tailpipe emission standards. EPA is proposing that the National LEV program would be structured such that vehicles certified under the National LEV program would become subject to the revised FTP standards and procedures once those regulations are finalized.

The California Air Resources Board is considering adoption of similar FTP regulations applicable to the California light-duty fleet, but final action by CARB is not likely to occur before final action on the Federal FTP Review rulemaking. EPA and CARB have stated their intent to harmonize the revised FTP procedures to the maximum extent possible, and EPA anticipates that these efforts will be reflected both in EPA's final revised FTP rule and in subsequent CARB action.

One example of this harmonization concerns the test fuel for SFTP testing. As noted above in Section III.B.5, the fuel for conventional FTP testing of National LEV vehicles will be California Phase II reformulated test fuel. (The Agency anticipates that CARB will ultimately employ this fuel for SFTP testing in California as well.) In order to preclude the need for fuel switches between FTP and SFTP testing of National LEV vehicles, EPA expects to incorporate in the final FTP Review rulemaking the option for manufacturers who are certifying National LEV vehicles to employ California Phase II fuel during SFTP testing.

If CARB eventually adopts SFTP procedures that are harmonized with EPA's, but applies more stringent standards based on the cleaner technologies of California LEV and ULEV vehicles, EPA intends to amend the revised FTP regulations such that National LEV vehicles would be required to comply with the California off-cycle standards, rather than the federal off-cycle standards based on the use of prevailing federal (Tier 1) technologies.

5. High Altitude

Section 206(f) of the CAA requires that all LDVs manufactured after MY 1985, and all LDTs manufactured after MY 1995, comply with the requirements of section 202 regardless of the altitude at which they are sold. EPA promulgated regulations to implement this requirement as part of the Tier 1 tailpipe standards rulemaking (56 FR 25724) and the enhanced evaporative emissions requirement (58 FR 16002). To ensure that National LEV program vehicles comply with the mandatory section 202 emissions requirements at all altitudes, EPA is proposing to apply the current high altitude regulations to the National LEV program. Therefore, vehicles certifying to the National LEV program standards must demonstrate compliance with the requirements that EPA has mandated under section 202, including the Tier 1 tailpipe standards in sections 202 (g) and (h), the cold CO requirements in section 202(j), and the evaporative emissions requirement in section 202(k). The high altitude compliance requirements would require use of the appropriate federal certification test fuel for the given test procedure, as defined in 40 CFR § 86.113.

C. Federal Compliance Requirements

1. Selective Enforcement Auditing and Quality Audit Programs

Pursuant to CAA section 206(b), the Administrator is authorized to test new motor vehicles to determine whether vehicles being manufactured do, in fact, conform to the regulations with respect to which a certificate of conformity was issued. Therefore, vehicles certified to meet any of the National LEV emission

standards and requirements would be subject to those standards and requirements in a Selective Enforcement Audit (SEA). These vehicles would be additionally subject to all other federal emission standards and requirements, including cold CO standards, fuel dispensing spitback standards and/or on-board vapor recovery standards, and Certification Short Test standards in an SEA.

During an SEA, a manufacturer will conduct testing of an engine family configuration certified to the National LEV standards using the same test procedures, test fuel, and reactivity adjustment factors, if applicable, that were used in the certification process for that family. Selected SEA vehicles will be tested until a pass decision has been reached for all pollutants or a fail decision has been reached for one pollutant. The National LEV standards are subject to the same 40% Acceptable Quality Level (AQL) as conventional federal exhaust standards.

In the event of an audit failure of a configuration certified to the National LEV standards, the certificate of conformity for the selected configuration may be suspended, and depending on the required remedy for the nonconformity, revoked, as has historically occurred with audit failures of configurations certified to conventional federal standards.

EPA's authority to suspend and/or revoke certificates of conformity in the manner described above is found in § 206(b) (1) and (2) of the CAA, which states that EPA may suspend and/or revoke certificates in whole or in part (i.e., for a family or a configuration) if the Administrator determines that vehicles in a family or configuration do not conform with applicable regulations. This determination may be based on tests conducted by EPA directly, or by a manufacturer in accordance with conditions specified by EPA. Those conditions are described in 40 CFR part 86: subpart B and R, the Federal Test Procedure; subpart C, the Cold Temperature CO Test Procedure; and/or subpart O, the Certification Short Test Procedure.

EPA expects that the promulgation of National LEV standards and the harmonization of other federal and California requirements will allow manufacturers to certify an increasing number of engine families to both California and National LEV standards (50-state engine families). This provides an opportunity for EPA to utilize its enforcement resources more efficiently and reduce the testing burden on manufacturers by coupling the SEA and corresponding CARB requirements for 50-state families and configurations.

The California Assembly-Line Test Procedures for 1983 and subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles require manufacturers to perform Quality-Audits on each engine family in production. Engines are tested in a manner substantially similar to comparable federal requirements. The Assembly-Line Test Procedures also require manufacturers to perform an Inspection Test on all 1985 and subsequent model year vehicles. The Inspection Test consists of functionally testing the emission control components and systems on each vehicle. Any vehicle that passes the approved functional test is considered to be in compliance with the Inspection Test Procedures. In addition to the Assembly-Line Test Procedures, CARB has a program that is similar to EPA's SEA program. The California New Vehicle Compliance Test procedures allows CARB to order a manufacturer to deliver a reasonable number of vehicles for compliance testing or inspection. Vehicles are selected at random and if, based on the testing, CARB determines that an engine family or subgroup exceeds emission standards for one or more pollutants, CARB will require the manufacturer to bring the vehicles into compliance.

Historically, if manufacturer testing required by CARB led CARB to determine that a 50-state engine family or configuration is in non-compliance with an applicable standard, CARB would require the manufacturer to take remedial action to correct the problem. However, CARB may be concerned primarily about the vehicles that will be sold in California, and the required remedial action may only address those vehicles, possibly leaving the rest of the family in non-compliance. EPA's only recourse upon discovering 50-state non-compliance through CARB-required testing is to issue the manufacturer an SEA test order for the configuration. The manufacturer would then have to conduct duplicate testing for that configuration. If the configuration (which CARB had already determined to be in non-compliance) failed the audit, EPA would suspend and/or possibly revoke the certificate of conformity. The manufacturer would then have to develop a fix for the non-conformity and conduct and pass a re-audit to comply with EPA requirements, as well as comply with CARB's remedial action plan.

This notice proposes a process to reduce this duplicative testing and remediation. If CARB has determined that a 50-state engine family or configuration is in non-compliance, based on manufacturer testing required by CARB, EPA would be able to take appropriate action without requiring the manufacturer to conduct duplicate testing. EPA would evaluate test data received from CARB or directly from a manufacturer for a family or configuration that CARB has determined to be in non-compliance with any applicable standard. If testing was conducted in a manner substantially similar to comparable federal requirements, EPA would evaluate the test data with respect to the 40% AQL sampling plans found in Appendices X and XI to part 86 to determine compliance with applicable federal standards. EPA believes the random sampling manufacturers use to select vehicles for CARB-required testing will provide a representative family or configuration sample, which can be appropriately evaluated with respect to the 40% AQL criteria. If the test data for the family or configuration does not meet the 40% AQL, EPA would determine the family or configuration to be in non-compliance, and EPA would have authority to suspend and/or revoke the certificate of conformity for the 50-state family or configuration. Additionally, subsequent to a suspension or revocation, the proposal allows EPA to reinstate or reissue a certificate, upon a manufacturer's written request, after the manufacturer has agreed to comply with remedial action required by CARB, if EPA believes the action is an effective remedy for the entire family or configuration. The manufacturer would not have to conduct a re-audit of the suspended/revoked configuration.

Because EPA's authority to suspend or revoke certificates is based on testing conducted by EPA or the manufacturer in accordance with appropriate federal regulations, EPA will only suspend or revoke certificates in the manner described above if the manufacturer has conducted the testing. EPA will work cooperatively with CARB and manufacturers in considering all information provided by the manufacturer prior to suspending, revoking, and reissuing certificates of conformity in these instances. As with any suspension or revocation of a certificate of conformity, a manufacturer that disagrees with EPA's decision to suspend or revoke a certificate may request a public hearing within 15 days of EPA's suspension or revocation decision.

In the event these National LEV Standards are not promulgated, EPA is proposing still to promulgate the

necessary regulation changes to subparts G and K to enable EPA to suspend, revoke, and reinstate certificates of conformity for 50-state families as described above.

2. Imports

EPA requires that non-conforming motor vehicles (i.e., motor vehicles not covered by a certificate of conformity) being imported into the U.S. for use in any state, including California, meet the federal emission standards as well as all other certification requirements, such as labeling and warranty. EPA generally permits only independent commercial importers (ICIs) to import non-conforming vehicles, and those vehicles must meet the emission standards applicable to the year in which the vehicles are modified. Under section 216 of the Act, an ICI is deemed to be a manufacturer. However, ICIs do not generally build new vehicles, rather, they modify previously manufactured nonconforming vehicles to comply with federal emission standards. EPA does not expect that ICIs will opt into the National LEV program, due to the very limited number and wide range of model years of the annually imported vehicles.[33] Therefore, EPA proposes that vehicles imported under the imports program will not be covered vehicles under the National LEV program and need not meet the National LEV standards. However, EPA will allow ICIs to certify imported nonconforming vehicles to any applicable emissions standard, including the National LEV standards, if they so choose.

EPA regulates imported nonconforming vehicles under the authority of section 203(a)(1) and (b)(2). EPA's current imports regulations depend on the age of the vehicle. 40 CFR §§ 85.1503, 85.1509. EPA requires that vehicles less than six years old be covered by a certificate of conformity. EPA also requires that vehicles six years old or older be modified (if necessary) and meet the certification emission standards applicable to the year in which the vehicles are modified (rather than the year the vehicles were originally manufactured). EPA exempts non-conforming vehicles greater than 20 years old. 40 CFR § 1511(f).

The CARB import regulations similarly impose different emissions requirements depending on the age of the vehicles. Vehicles less than two years old must meet all the certification requirements applicable to manufacturers of new vehicles, while older vehicles are subject to other less stringent requirements. CARB does not consider modifiers of non-conforming vehicles to be manufacturers and indicates that no modifier has thus far obtained new vehicle certification. If a modifier of non-conforming vehicles does obtain new vehicle certification in the future, CARB has not yet determined whether those vehicles will be required to meet the weighted average NMOG standard for their model year ''production'', as manufacturers must, or the California Tier 1 standard for every vehicle.

In a separate notice, EPA has proposed a number of amendments to the federal importation requirements.[34] One of those amendments would allow imported non-conforming LDVs and LDTs to meet the emission standards applicable to the year they were originally manufactured (consistent with the CARB requirements), rather than the year they are modified. Another of those amendments would prohibit the ICIs from participating in the averaging, banking, and trading provisions of 40 CFR Part 86. EPA expects to promulgate these amendments later this year.

Given that ICIs do not generally build new motor vehicles, EPA believes it is not necessary for ICIs to opt into National LEV or likely that they will do so. While the National LEV standards are voluntary, they are potentially applicable standards. Therefore, EPA proposes that ICIs be allowed to certify imported vehicles to any of the applicable federal emissions standards, including the National LEV standards. The ICIs will not, however, be permitted to participate in averaging, banking or trading because ICIs do not control, nor can they predict, their yearly production, making potential compliance with the NMOG average unpredictable.

The imports provisions of the National LEV Program will depend on promulgation of the amendments to the imports regulations at 40 CFR Part 85, Subpart P proposed on March 24, 1994. If EPA promulgates the proposed amendments to the imports regulations, EPA proposes one additional change to the federal importation requirements to accommodate the National LEV Program. The March 24, 1994 proposal would require that each LDV and LDT originally manufactured in 1993 and earlier model years and subsequently imported by an ICI (regardless of the year of modification) be required to meet the emission standards of the new section 85.1516 and that each LDV and LDT originally manufactured after the 1993 model year be required to meet the emissions standards of Part 86 applicable to the year in which the vehicle was originally manufactured. Thus, non-conforming vehicles manufactured on or after 1996 (the model year in which federal Tier 1 emission standards are applicable to small volume manufacturers, such as ICIs) would be required to meet the federal Tier 1 emission standards. Today's proposal would amend that requirement to allow the ICIs to voluntarily certify or test vehicles to any of the federal emission standards applicable to the year the vehicles were originally manufactured, including National LEV emission standards. In all cases, the ICIs would be prohibited from participating in any averaging, banking or trading programs (see 40 CFR 85.1516(d) of the March 24, 1994 NPRM).

If EPA does not promulgate the proposed amendments to the imports regulations, EPA proposes two changes to the federal importation requirements to accommodate the National LEV Program. First, EPA is including in today's proposal the provision from the March 24, 1994 NPRM that proposes that ICIs be prohibited from participating in averaging, banking, and trading. Second, this proposal would allow the ICIs to voluntarily certify or test vehicles to any of the federal emission standards, including the National LEV standards, applicable for the year in which the vehicles are modified, regardless of the year they were originally manufactured.

3. In-Use and Warranty Requirements

The in-use testing and recall provisions of the federal program would not be changed by the terms of the voluntary agreement. EPA would continue to follow its procedures in conducting in-use testing to determine vehicle compliance with the relevant certified emissions standards. California would continue to implement its in-use testing and recall program unaffected by the voluntary agreement. While the operation of both recall programs is substantially similar, each program has different enforcement goals necessitated by differing statutory authority as well as considerations attributed to running a state-wide versus a nationwide enforcement program. However, there is no additional burden on the manufacturers attributed to operation of two enforcement programs because vehicles will be tested using the same procedures used in certification, thereby removing the need for manufacturers to comply with two different sets of enforcement testing procedures.

[33] ICIs generally account for approximately 200 vehicles per year in total sales.

[34] 59 FR 13912, March 24, 1994.

Similarly, the federal warranty requirements under section 207 would continue to apply to vehicles produced under the voluntary standards program. California warranty requirements would apply only to vehicles produced for California. EPA will also continue using its own defect reporting requirements which, unlike California's regulations, do not mandate different levels of reporting based on certain numbers of warranty claims on specified emission control components.

VII. Effective Date

EPA is proposing to make these regulations effective upon signature of the final rule. If EPA adopts this approach, it would make the final rule available to interested parties upon signature. Although EPA generally makes rules effective 30 days after date of publication, it is not bound to do so. See section 307(d)(1) of the Clean Air Act, 42 U.S.C. 7607(d), and the Administrative Procedure Act, 5 U.S.C. 553(d).

EPA believes that it would be impracticable, unnecessary, and contrary to the public interest to delay the effective date until 30 days after publication. States in the OTR that need to adopt OTC LEV in the absence of the National LEV program must cure their SIP deficiencies by February 15, 1996. Thus, the OTR States need to know before then whether the motor vehicle manufacturers will opt in, which would enable EPA to find National LEV to be in effect and be deemed to satisfy the OTC LEV SIP call. In addition, these regulations will not impose any immediate burden on affected parties requiring lead time for compliance. Rather, the regulations will merely allow manufacturers to voluntarily opt into the program. Moreover, once a manufacturer has opted in, there would be significant leadtime before it must comply with the National LEV tailpipe emissions standards.

EPA is also taking comment on making the rule effective upon publication in the **Federal Register** or 30 days after such publication.

VIII. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in triplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–95–26 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- labeling proprietary information ''Confidential Business Information'' and
- sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing, should one be requested, (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

IX. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of annual impacts on the economy that are likely to exceed $100 million. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

The Agency has determined that this action will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles, a group which does not contain a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.,* I certify that this regulation does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state,

local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. For rules subject to section 202, under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

EPA has determined that the above requirements do not apply to the rule proposed here, and thus do not require EPA to conduct further analyses pursuant to those requirements. These unfunded mandates provisions only apply to federal mandates. National LEV is a voluntary program, which would implement an agreement reached between the OTR States and the motor vehicle manufacturers. Because National LEV would not impose a federal mandate on any party, and in fact would relieve certain states of a regulatory obligation, these unfunded mandates provisions do not apply to this proposed rule. Even if these unfunded mandates provisions did apply to this proposal, they are met by the Regulatory Impact Analysis prepared pursuant to E.O. 12866 and contained in the docket.

Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has not prepared such a plan because small governments would not be significantly or uniquely impacted by the rule.

D. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1761.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

The proposed information collection would be conducted to support the averaging, banking and trading provisions included in the National LEV program. These averaging, banking and trading provisions would give automobile manufacturers a measure of flexibility in meeting the fleet average NMOG standards and the five-percent cap on Tier 1 vehicles and TLEVs in the OTR. EPA would use the reported data to calculate credits and debits and otherwise ensure compliance with the applicable production levels. When a manufacturer has opted into the voluntary National LEV program, reporting would be mandatory as per the proposed regulations included in this rulemaking. This rulemaking would not change the requirements regarding confidentiality claims for submitted information, which are generally set out in 40 CFR part 2.

The information collection burden associated with this rule (testing, recordkeeping and reporting requirements) is estimated to average 183.3 hours annually for a typical manufacturer. It is expected that approximately 60 manufacturers will provide an annual report to EPA. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. The burden estimate includes such things as reviewing instructions, searching existing data sources, setting up and maintaining equipment, gathering and maintaining data, performing analyses, and reviewing and submitting information.

This estimate also includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 10, 1995, a comment to OMB is best assured of having its full effect if OMB receives it by November 9, 1995. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Environmental protection, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Administrative practice and procedure, Confidential Business Information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 27, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—[Amended]

2. Section 51.121 is proposed to be added to subpart G, to read as follows:

§ 51.121 National LEV program as alternative to OTC LEV.

(a) The voluntary national low emission vehicle (National LEV or NLEV) program for the control of emissions from new motor vehicles described in 40 CFR part 86, subpart R, is an acceptable alternative for OTC LEV. If EPA finds that the NLEV program is in effect, then the inadequacy of State Implementation Plans found in § 51.120(a) shall be

deemed cured until such time as the Administrator determines that the NLEV program is no longer in effect.

(b)(1) EPA shall find that the NLEV program is in effect if the following conditions have been met:

(i) All manufacturers listed in paragraph (d) of this section have lawfully opted in pursuant to 40 CFR 86.1705–97;

(ii) No manufacturer has lawfully opted out or no opt-out has become effective pursuant to 40 CFR 86.1705–97; and

(iii) The NLEV program has not terminated pursuant to 40 CFR 86.1701–97(c).

(2) On or before [date 60 days from date of signature of final rule], EPA shall determine whether the NLEV program is in effect, and shall subsequently publish this determination.

(3) In determining whether the NLEV program is in effect under paragraph (b) of this section, EPA shall consider opt-in submissions received by [date 45 days from signature of final rule], although subsequent opt-in submissions may be considered at the Agency's discretion.

(4) A finding pursuant to paragraph (b)(1) of this section shall become effective at time of promulgation.

(c) Upon either a manufacturer's opt-out that has become effective pursuant to 40 CFR 86.1705–97, or entry into the market by a motor vehicle manufacturer not listed in paragraph (d) of this section, EPA may reevaluate whether the NLEV program is still in effect for purposes of curing the § 51.120(a) State Implementation Plan inadequacy. If EPA determines that the NLEV program is no longer in effect, the inadequacy of State Implementation Plans found in § 51.120(a) would no longer be deemed cured.

(d) List of manufacturers of light-duty vehicles and light-duty trucks:

Audi
Baker Equipment
BMW of North America
Chrysler Corporation
Diamond Star Motors
Ferrari
Fiat Auto S.p.A.
Ford Motor Company
Fuji Heavy Industries Ltd.
General Motors Corporation
Grumman Allied Industries
American Honda Motor Company, Inc.
Hyundai Motor Corporation
Isis Imports Ltd.
Isuzu Motors Ltd.
Jaguar Cars Inc.
Kia Motors Corporation
Lamborghini
Lotus Cars Ltd.
Mazda Motor Corporation
Mercedes-Benz of North America, Inc.
Mitsubishi Motors Australia Ltd.
Mitsubishi Motors Corporation
New United Motors Manufacturing, Inc.
Nissan Motor Company, Ltd.
Panoz Auto-Development Corporation
Dr.Ing.H.C.Porsche AG
Rolls-Royce Motor Cars Ltd.
Rover Group Ltd.
Saab
American Suzuki Motor Corporation
Toyota Motor Corporation
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.

PART 85—CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

3. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7546, and 7601(a).

Subpart P—[Amended]

4. Section 85.1505 is proposed to be amended by revising paragraph (b) to read as follows:

§ 85.1505 Final admission of certified vehicles.

* * * * *

(b) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle has not been properly modified to be in conformity in all material respects with the description in the application for certification or has not complied with the provisions of paragraph (a)(2) of this section or its final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards. The emissions standards of 40 CFR part 86, subpart R, may be considered applicable emission standards at the option of the ICI, except that emissions averaging, banking and trading under 40 CFR part 86, subpart R, are prohibited.

* * * * *

5. Section 85.1509 is proposed to be amended by revising paragraph (h) to read as follows:

§ 85.1509 Final admission of modification and test vehicles.

* * * * *

(h) EPA approval for final admission of a vehicle or engine under this section shall be presumed not to have been granted if a vehicle's final FTP results, adjusted by the deterioration factor, if applicable, do not comply with applicable emission standards. The emissions standards of 40 CFR part 86, subpart R, may be considered applicable emissions standards at the option of the ICI, except that emissions averaging, banking and trading under 40 CFR part 86, subpart R, are prohibited.

* * * * *

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

6. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

7. Section 86.1 is proposed to be amended by revising the entry for ASTM E29–90 in the table in paragraph (b)(1) and by adding paragraph (b)(5) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document no. and name	40 CFR part 85 reference
* * * * *	
ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	89.609–84; 86.609–96; 86.609–97; 86.609–98; 86.1009–84; 86.1009–96; 86.1442; 86.1708–97; 86.1709–97; 86.1710–97

* * * * *

(5) *California Air Resources Board Test Procedures.* The following table sets forth material from Title 13, California Code of Regulations, Sections 1900–2317, as amended by California Air Resources Board Resolution 94–67 and published in California Air Resources Board mail out #95–03'' which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 86.1, in which the material is referenced. The second column is presented for information only and may not be all-inclusive.

Document no. and name	40 CFR part 86 reference
State of California; Air Resources Board: California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as amended September 22, 1993.	86.1702–97, 86.1703–97, 86.1708–97, 86.1709–97, 86.1713–97, 86.1716–97, 86.1721–97, 86.1723–97, 86.1724–97, 86.1725–97, 86.1726–97, 86.1728–97, 86.1734–97, 86.1738–97, 86.1739–97, 86.1771–97, 86.1772–97, 86.1773–97, 86.1775–97, 86.1776–97, 86.1777–97
State of California; Air Resources Board: California Motor Vehicle Emission Control Label Specifications.	86.1735–97
State of California; Air Resources Board: California Non-Methane Organic Gas Test Procedures.	86.1702–97, 86.1708–97, 86.1709–97, 86.1772–97, 86.1774–97, 86.1775–97, 86.1776–97
State of California; Air Resources Board: Amendments to Regulations Regarding On-Board Diagnostic System Requirements for 1994 and Later Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II).	86.1717–97

Subpart A—[Amended]

8. Section 86.090–2 is proposed to be amended by revising the definition for ''Flexible fuel vehicle (or engine)'' and adding a new definition in alphabetical order for ''Dual fuel vehicle (or engine),'' to read as follows:

§ 86.090–2 Definitions.

* * * * *

Dual fuel vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on two different fuels, but not on a mixture of fuels.

* * * * *

Flexible fuel vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

* * * * *

9. A new § 86.097–1 is proposed to be added to subpart A to read as follows:

§ 86.097–1 General applicability.

Section 86.097–1 includes text that specifies requirements that differ from those specified in § 86.094–1. Where a paragraph in § 86.094–1 is identical and applicable to § 86.097–1, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.094–1.''

(a) through (b) [Reserved]. For guidance see § 86.094–1.

(c) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 1997 and later model year light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those manufacturers that opt into the National Low Emission Vehicle Program, under the provisions of that subpart. All provisions of this subpart A are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

(d) [Reserved].

(e) through (f) [Reserved]. For guidance see § 86.094–1.

Subpart B—[Amended]

10. Section 86.101 is proposed to be amended by adding a paragraph (c) to read as follows:

§ 86.101 General applicability.

* * * * *

(c) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 1997 and later model year light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those manufacturers that opt into the National Low Emission Vehicle Program, under the provisions of subpart R of this part. All provisions of this subpart B are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

Subpart G—[Amended]

11. Section 86.602–97 is proposed to be added to subpart G to read as follows:

§ 86.602–97 Definitions.

Section 86.602–97 includes text that specifies requirements that differ from those specified in § 86.602–84. Where a paragraph in § 86.602–84 is identical and applicable to § 86.602–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.602–84.''

(a) through (b)(8) [Reserved]. For guidance see § 86.602–84.

(b)(9) *Executive Officer* means the Executive Officer of the California Air Resources Board or his or her authorized representative.

(10) *Executive Order* means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

(11) *50-state engine family* means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

12. Section 86.602–98 is proposed to be amended by adding paragraphs (b)(9) through (b)(11) to read as follows:

§ 86.602–98 Definitions.

* * * * *

(b) * * *

(9) *Executive Officer* means the Executive Officer of the California Air Resources Board or his or her authorized representative.

(10) *Executive Order* means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

(11) *50-state engine family* means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

13. Section 86.603–97 is proposed to be added to subpart G to read as follows:

§ 86.603–97 Test orders.

Section 86.603–97 includes text that specifies requirements that differ from those specified in § 86.603–88. Where a paragraph in § 86.603–88 is identical and applicable to § 86.603–97, this may be indicated by specifying the corresponding paragraph and the

statement ''[Reserved]. For guidance see § 86.603–88.''

(a) through (e) [Reserved]. For guidance see § 86.603–88.

(f) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

14. Section 86.603–98 is proposed to be amended by adding paragraph (f) to read as follows:

§ 86.603–98 Test orders.

* * * * *

(f) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

15. Section 86.608–97 is proposed to be added to subpart G to read as follows:

§ 86.608–97 Test procedures.

Section 86.608–97 includes text that specifies requirements that differ from those specified in §§ 86.608–90 and 86.608–96. Where a paragraph in § 86.608–90 or § 86.608–96 is identical and applicable to § 86.608–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.608–90,'' or ''[Reserved]. For guidance see § 86.608–96.''

(a) The prescribed test procedures are the Federal Test Procedure, as described in subpart B and/or subpart R of this part, whichever is applicable, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part. For purposes of Selective Enforcement Audit testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(2) of this section.

(1) [Reserved]. For guidance see § 86.608–96.

(2) The following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94, or for vehicles certified to the National LEV standards, the specifications of § 86.1771–97. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) [Reserved]. For guidance see § 86.608–90.

(iii) The manufacturer may perform additional preconditioning on Selective Enforcement Audit test vehicles other than the preconditioning specified in § 86.132–96, or § 86.1773–97 for vehicles certified to the National LEV standards, only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(a)(2)(iv) through (a)(2)(vii) [Reserved]. For guidance see § 86.608–90.

(viii) The manufacturer need not comply with § 86.142–90, or § 86.1775–97, since the records required therein are provided under other provisions of this subpart G.

(a)(2)(ix) through (a)(3) [Reserved]. For guidance see § 86.608–90.

(a)(4) [Reserved]. For guidance see § 86.608–96.

(b) through (i) [Reserved]. For guidance see § 86.608–90.

16. Section 86.608–98 is proposed to be amended by revising paragraphs (a) introductory text, (a)(2) introductory text, (a)(2)(i), (a)(2)(iii), and (a)(2)(viii) to read as follows:

§ 86.608–98 Test procedures.

(a) The prescribed test procedures are the Federal Test Procedure, as described in subpart B and/or subpart R of this part, whichever is applicable, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part. For purposes of Selective Enforcement Audit testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, other than refueling emissions testing, except as specified in paragraph (a)(2) of this section.

* * * * *

(2) The following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94, or for vehicles certified to the National LEV standards, the specifications of § 86.1771–97. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

* * * * *

(iii) The manufacturer may perform additional preconditioning on Selective Enforcement Audit test vehicles other than the preconditioning specified in § 86.132–96, or § 86.1773–97, for vehicles certified to the National LEV standards only if the additional preconditioning was performed on certification test vehicles of the same configuration.

* * * * *

(viii) The manufacturer need not comply with § 86.142–90, § 86.155–98, or § 86.1775–97, since the records required therein are provided under other provisions of this subpart G.

* * * * *

17. Section 86.609–97 is proposed to be added to subpart G to read as follows:

§ 86.609–97 Calculation and reporting of test results.

Section 86.609–97 includes text that specifies requirements that differ from those specified in §§ 86.609–84 and 86.609–96. Where a paragraph in § 86.609–84 or § 86.609–96 is identical and applicable to § 86.609–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.609–84,'' or ''[Reserved]. For guidance see § 86.609–96.''

(a) through (b) [Reserved]. For guidance see § 86.609–96.

(c) Final deteriorated test results—(1) *For each test vehicle.* The final deteriorated test results for each test vehicle tested according to subpart B, subpart C, or subpart R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs, and then by multiplying the appropriate reactivity adjustment factor, if applicable, and rounding to the same number of decimal places contained in the applicable emission standard. Rounding is done in accordance with the Rounding-Off Method specified in ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1). For the purpose of paragraph (c) of this section, if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor is one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(c)(2) [Reserved]. For guidance see § 86.609–96.

(d) [Reserved]. For guidance see § 86.609–84.

18. Section 86.609–98 is proposed to be amended by revising paragraph (c)(1) to read as follows:

§ 86.609–98 Calculation and reporting of test results.

* * * * *

(c) Final deteriorated test results—(1) *For each test vehicle.* The final deteriorated test results for each light-duty vehicle tested for exhaust emissions and/or refueling emissions according to subpart B, subpart C, or subpart R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs, and then by multiplying the appropriate reactivity adjustment factor, if applicable, and rounding to the same number of decimal places contained in the applicable emission standard. Rounding is done in accordance with the Rounding-Off Method specified in ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications. This procedure has been incorporated by reference (see § 86.1). For the purpose of paragraph (c) of this section, if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor is one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

* * * * *

19. Section 86.612–97 is proposed to be added to subpart G to read as follows:

§ 86.612–97 Suspension and revocation of certificates of conformity.

Section 86.612–97 includes text that specifies requirements that differ from those specified in § 86.612–84. Where a paragraph in § 86.612–84 is identical and applicable to § 86.612–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.612–84.''

(a) The certificate of conformity is immediately suspended with respect to any vehicle failing pursuant to § 86.610–96(b) effective from the time that testing of that vehicle is completed.

(b)(1) *Selective Enforcement Audits.* The Administrator may suspend the certificate of conformity for a configuration that does not pass a Selective Enforcement Audit pursuant to § 86.610–96(c) based on the first test, or all tests, conducted on each vehicle. This suspension will not occur before ten days after failure to pass the audit.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may suspend the certificate of conformity for a 50-state family or configuration that the Executive Officer has determined to be in non-compliance with one or more applicable pollutants based on the ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles,'' if the results of vehicle testing conducted by the manufacturer do not meet the acceptable quality level criteria pursuant to § 86.610–96. The ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' are incorporated by reference. See § 86.1. A vehicle that is tested by the manufacturer pursuant to California Assembly-Line Quality Audit Test Procedures and determined to be a failing vehicle will be treated as a failed vehicle described in § 86.610–96(b), unless the manufacturer can show that the vehicle would not be considered a failed vehicle using the test procedures specified in § 86.608. This suspension will not occur before ten days after the manufacturer receives written notification that the Administrator has determined the 50-state family or configuration exceeds one or more applicable federal standards.

(c)(1) *Selective Enforcement Audits.* If the results of vehicle testing pursuant to the requirements of this subpart indicates the vehicles of a particular configuration produced at more than one plant do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for vehicles manufactured by the manufacturer in other plants of the manufacturer.

(2) *California Assembly-Line Quality Audit Testing.* If the Administrator determines that the results of vehicle testing pursuant to the ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' indicate the vehicles of a particular 50-state engine family or configuration produced at more than one plant do not conform to applicable federal regulations with respect to which a certificate of conformity was issued, the Administrator may suspend, pursuant to paragraph (b)(2) of this section, the certificate of conformity with respect to that engine family or configuration for vehicles manufactured in other plants of the manufacturer. The ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' are incorporated by reference. See § 86.1.

(d) The Administrator will notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: Except, that the certificate of conformity is immediately suspended with respect to any vehicle failing pursuant to § 86.610–96(b) and as provided for in paragraph (a) of this section.

(e)(1) *Selective Enforcement Audits.* The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b)(1) or (c)(1) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may revoke a certificate of conformity for an engine family or configuration when the certificate has been suspended pursuant to paragraph (b)(2) or (c)(2) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Executive Officer and/or the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected engine family or configuration.

(f) Once a certificate has been suspended for a failed vehicle as provided for in paragraph (a) of this section, the manufacturer must take the following actions:

(1) Before the certificate is reinstated for that failed vehicle—

(i) Remedy the nonconformity; and

(ii) Demonstrate that the vehicle's final deteriorated test results conform to the applicable emission standards or family particulate emission limits, as defined in this part 86 by retesting the vehicle in accordance with the requirements of this subpart.

(2) Submit a written report to the Administrator within thirty days after successful completion of testing on the failed vehicle, which contains a description of the remedy and test results for the vehicle in addition to

other information that may be required by this subpart.

(g) Once a certificate has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating such certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family or configuration for which the certificate of conformity has been suspended does in fact comply with the requirements of this subpart by testing vehicles selected from normal production runs of that engine family or configuration at the plant(s) or the facilities specified by the Administrator, in accordance with:

(i) The conditions specified in the initial test order pursuant to § 86.603–97 for a configuration suspended pursuant to paragraph (b)(1) or (c)(1) of this section; or

(ii) The conditions specified in a test order pursuant to § 86.603–97 for an engine family or configuration suspended pursuant to paragraph (b)(2) or (c)(2) of this section.

(3) If the Administrator has not revoked the certificate pursuant to paragraph (e) of this section and if the manufacturer elects to continue testing individual vehicles after suspension of a certificate, the certificate is reinstated for any vehicle actually determined to have its final deteriorated test results in conformance with the applicable standards through testing in accordance with the applicable test procedures.

(4) In cases where the Administrator has suspended a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (b)(2) or (c)(2) of this section, manufacturers may request in writing that the Administrator reinstate the certificate of an engine family or configuration when, in lieu of the actions described in (g) (1) and (2) of this section, the manufacturer has agreed to comply with section 2108, section 2109, and/or section 2110 of Title 13, Division 3, of the California Code of Regulations, provided an Executive Order is in place for the engine family or configuration. Title 13, Division 3, of the California Code of Regulations is incorporated by reference. See § 86.1.

(h) Once a certificate for a failed engine family or configuration has been revoked under paragraph (e) (1) or (2) of this section and the manufacturer desires to introduce into commerce a modified version of that engine family or configuration, the following actions will be taken before the Administrator may issue a certificate for the new engine family or configuration:

(1) If the Administrator determines that the proposed change(s) in vehicle design may have an effect on emission performance deterioration and/or fuel economy, he/she shall notify the manufacturer within five working days after receipt of the report in paragraph (g)(1) of this section or after receipt of information pursuant to paragraph (g)(4) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change(s) or whether additional testing will be required.

(2) After implementing the change(s) intended to remedy the nonconformity, the manufacturer shall demonstrate:

(i) If the certificate was revoked pursuant to paragraph (e)(1) of this section, that the modified vehicle configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified vehicle configuration in accordance with the conditions specified in the initial test order pursuant to § 86.603–97. The Administrator shall consider this testing to satisfy the testing requirements of § 86.079–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to the criteria in § 86.610–96(c), the Administrator shall reissue or amend the certificate, if necessary, to include that configuration: *Provided*, that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent audit results in a fail decision pursuant to the criteria in § 86.610–96(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the configuration specified by the test order.

(ii) If the certificate was revoked pursuant to paragraph (e)(2) of this section, that the modified engine family or configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified engine family or configuration in accordance with the conditions specified in a test order pursuant to § 86.603–97. The Administrator shall consider this testing to satisfy the testing requirements of § 86.079–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to § 86.610–96(c), the Administrator shall reissue or amend the certificate as necessary: *Provided*, that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent testing results in a fail decision pursuant to § 86.610–96(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of engine family or configuration specified by the test order.

(3) In cases where the Administrator has revoked a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (e)(2) of this section, manufacturers may request in writing that the Administrator reissue the certificate of an engine family or configuration when, in lieu of the actions described in paragraphs (h)(1) and (2) of this section, the manufacturer has complied with section 2108, section 2109, and/or section 2110 of Title 13, Division 3, of the California Code of Regulations, provided an Executive Order is in place for the engine family or configuration. Title 13, Division 3, of the California Code of Regulations is incorporated by reference. See § 86.1.

(i) and (j) [Reserved]. For guidance see § 86.612–84.

(k) To permit a manufacturer to avoid storing non-test vehicles when conducting testing of an engine family or configuration subsequent to suspension or revocation of the certificate of conformity for that engine family or configuration pursuant to paragraph (b), (c), or (e) of this section, the manufacturer may request that the Administrator conditionally reinstate the certificate for that engine family or configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all vehicles of that engine family or configuration produced from the time the certificate is conditionally reinstated if the engine family or configuration fails the subsequent testing and to remedy any nonconformity at no expense to the owner.

20. Section 86.614–84 is proposed to be amended by revising paragraph (c)(2)(ii)(A) to read as follows:

§ 86.614–84 Hearings on suspension, revocation, and voiding of certificates of conformity.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) Whether tests were conducted in accordance with applicable regulations;

* * * * *

Subpart K—[Amended]

21. Section 86.1002–97 is proposed to be added to subpart K to read as follows:

§ 86.1002–97 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined in this section have the meaning given them in the Act.

Acceptable quality level (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

Axle ratio means all ratios within <3% of the axle ratio specified in the configuration in the test order.

Compliance level means an emission level determined during a Production Compliance Audit pursuant to subpart L of this part.

Configuration means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, and other parameters which may be designated by the Administrator, or a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear rations, axle ratio, and other parameters which may be designated by the Administrator.

Executive Officer means the Executive Officer of the California Air Resources Board or his or her authorized representative.

Executive Order means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

50-state engine family means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

Inspection criteria means the pass and fail numbers associated with a particular sampling plan.

Test engine means an engine in a test sample.

Test sample means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive exhaust emission testing.

Test vehicle means a vehicle in a test sample.

22. Section 86.1002–2001 is proposed to be amended by adding paragraphs (b)(8) through (b)(11) to read as follows:

§ 86.1002–2001 Definitions.

* * * * *

(b) * * *

(8) *Axle ratio* means all ratios within <3% of the axle ratio specified in the configuration in the test order.

(9) *Executive Officer* means the Executive Officer of the California Air Resources Board or his or her authorized representative.

(10) *Executive Order* means the document the Executive Officer grants a manufacturer for an engine family that certifies the manufacturer has verified the engine family complies with all applicable standards and requirements pursuant to Title 13 of the California Code of Regulations.

(11) *50-state engine family* means an engine family that meets both federal and California Air Resources Board motor vehicle emission control regulations and has received a federal certificate of conformity as well as an Executive Order.

23. Section 86.1003–97 is proposed to be added to subpart K to read as follows:

§ 86.1003–97 Test orders.

Section 86.1003–97 includes text that specifies requirements that differ from those specified in § 86.1003–90. Where a paragraph in § 86.1003–90 is identical and applicable to § 86.1003–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1003–90.''

(a) through (f) [Reserved]. For guidance see § 86.1003–90.

(g) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

24. Section 86.1003–2001 is proposed to be amended by adding paragraph (g) to read as follows:

§ 86.1003–2001 Test orders.

* * * * *

(g) In the event evidence exists indicating an engine family is in noncompliance, the Administrator may, in addition to other powers provided by this section, issue a test order specifying the engine family the manufacturer is required to test.

25. Section 86.1008–97 is proposed to be added to subpart K to read as follows:

§ 86.1008–97 Test procedures.

Section 86.1008–97 includes text that specifies requirements that differ from those specified in §§ 86.1008–90 and 86.1008–96. Where a paragraph in § 86.1008–90 or § 86.1008–96 is identical and applicable to § 86.1008–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1008–90,'' or ''[Reserved]. For guidance see § 86.1008–96.''

(a)(1) [Reserved]. For guidance see § 86.1008–96.

(2) For light-duty trucks, the prescribed test procedures are the Federal Test Procedure, as described in subpart B and/or subpart R of this part, whichever is applicable, the idle CO test procedure as described in subpart P of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part. For purposes of Selective Enforcement Audit testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, except as specified in paragraph (a)(3) of this section. The Administrator may select and prescribe the sequence of any Certification Short Tests. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts B, C, P, and O of this part for any motor vehicle which is not susceptible to satisfactory testing using the procedures in subparts B, C, P, and O of this part.

(3) When testing light-duty trucks the following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94 or, for vehicles certified to the National LEV standards, the specifications of § 86.1771–97. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) [Reserved]. For guidance see § 86.1008–90.

(iii) The manufacturer may perform additional preconditioning on Selective

Enforcement Audit test vehicles other than the preconditioning specified in § 86.132–96, or § 86.1773–97 for vehicles certified to the National LEV standards, only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(a)(3)(iv) through (a)(3)(vii) [Reserved]. For guidance see § 86.1008–90.

(a)(3)(viii) The manufacturer need not comply with § 86.142–90 or § 86.1775–97, since the records required therein are provided under other provisions of this subpart.

(a)(3)(ix) [Reserved]. For guidance see § 86.1008–90.

(a)(4) [Reserved]. For guidance see § 86.1008–96.

(5) [Reserved]. For guidance see § 86.1008–90.

(6) [Reserved]. For guidance see § 86.1008–96.

(b) through (i) [Reserved]. For guidance see § 86.1008–90.

26. Section 86.1008–2001 is proposed to be amended by revising paragraphs (a)(2), (a)(3) introductory text, (a)(3)(i), (a)(3)(iii), and (a)(3)(viii) to read as follows:

§ 86.1008–2001 Test procedures.

(a) * * *

(2) For light-duty trucks, the prescribed test procedures are the Federal Test Procedure as described in subpart B and/or subpart R of this part, whichever is applicable, the idle CO test procedure as described in subpart P of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test procedure as described in subpart O of this part.

(3) When testing light-duty trucks, the following exceptions to the test procedures in subpart B and/or subpart R of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94 or, for vehicles certified to the National LEV standards, the specifications of § 86.1771–97. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

* * * * *

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132–96, or § 86.1773–97 for vehicles certified to the National LEV standards, only if the additional preconditioning was performed on certification test vehicles of the same configuration.

* * * * *

(viii) The manufacturer need not comply with § 86.142–90, § 86.155–98, or § 86.1775–97 since the records required therein are provided under other provisions of this subpart K.

* * * * *

27. Section 86.1009–97 is proposed to be added to subpart K to read as follows:

§ 86.1009–97 Calculation and reporting of test results.

Section 86.1009–97 includes text that specifies requirements that differ from those specified in §§ 86.1009–84 and 86.1009–96. Where a paragraph in § 86.1009–84 or § 86.1009–96 is identical and applicable to § 86.1009–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1009–84,'' or ''[Reserved]. For guidance see § 86.1009–96.''

(a) and (b) [Reserved]. For guidance see § 86.1009–96.

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each heavy-duty engine or light-duty truck tested according to subpart B, C, D, I, N, P, or R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine family control system combination and model year to which the selected configuration belongs, and then by multiplying by the appropriate reactivity adjustment factor, if applicable. If the multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor will be one. If the additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(c)(2) [Reserved].

(c)(3) through (c)(4) [Reserved]. For guidance see § 86.1009–96.

(d) [Reserved]. For guidance see § 86.1009–84.

28. Section 86.1009–2001 is proposed to be amended by revising paragraph (c)(1) to read as follows:

§ 86.1009–2001 Calculation and reporting of test results.

* * * * *

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each light-duty truck, heavy-duty engine, or heavy-duty vehicle tested according to subpart B, C, D, I, M, N, P, or R of this part are calculated by first multiplying or adding, as appropriate, the final test results by or to the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs, and then by multiplying by the appropriate reactivity adjustment factor, if applicable. For the purpose of paragraph (c) of this section, if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor will be one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

* * * * *

29. Section 86.1012–97 is proposed to be added to subpart K to read as follows:

§ 86.1012–97 Suspension and revocation of certificates of conformity.

Section 86.1012–97 includes text that specifies requirements that differ from those specified in § 86.1012–84. Where a paragraph in § 86.1012–84 is identical and applicable to § 86.1012–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1012–84.''

(a) The certificate of conformity is immediately suspended with respect to any engine or vehicle failing pursuant to § 86.1010–96(b) effective from the time that testing of that engine or vehicle is completed.

(b) (1) *Selective Enforcement Audits.* The Administrator may suspend the certificate of conformity for a configuration that does not pass a Selective Enforcement Audit pursuant to § 86.1010–96(c) based on the first test, or all tests, conducted on each engine or vehicle. This suspension will not occur before ten days after failure to pass the audit.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may suspend the certificate of conformity for a 50-state engine family or configuration that the Executive Officer has determined to be in non-compliance with one or more applicable pollutants based on the ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'', if the results of vehicle testing conducted by the manufacturer do not meet the acceptable quality level criteria pursuant to § 86.1010–96. The ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' are incorporated by reference. See § 86.1. A vehicle that is tested by the manufacturer and determined to be

a failing vehicle pursuant to California Assembly-Line Quality Audit Test Procedures will be treated as a failed vehicle described in § 86.1010–96(b), unless the manufacturer can show that the vehicle would not be considered a failed vehicle using the test procedures specified in § 86.1008. This suspension will not occur before ten days after the manufacturer receives written notification that the Administrator has determined the 50-state engine family or configuration exceeds one or more applicable federal standards.

(c) (1) *Selective Enforcement Audits.* If the results of engine or vehicle testing pursuant to the requirements of this subpart indicate that engines or vehicles of a particular configuration produced at more than one plant do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that configuration for engines or vehicles manufactured by the manufacturer in other plants of the manufacturer.

(2) *California Assembly-Line Quality Audit Testing.* If the Administrator determines that the results of vehicle testing pursuant to the ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' indicate the vehicles of a particular 50-state engine family or configuration produced at more than one plant do not conform to applicable regulations with respect to which a certificate of conformity was issued, the Administrator may suspend, pursuant to paragraph (b)(2) of this section, the certificate of conformity with respect to that engine family or configuration for vehicles manufactured by the manufacturer in other plants of the manufacturer. The ''California Assembly-Line Quality Audit Test Procedures for 1983 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' are incorporated by reference. See § 86.1.

(d) The Administrator will notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part: Except, that the certificate is immediately suspended with respect to any failed engines or vehicles as provided for in paragraph (a) of this section.

(e) (1) *Selective Enforcement Audits.* The Administrator may revoke a certificate of conformity for a configuration when the certificate has been suspended pursuant to paragraph (b)(1) or (c)(1) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected configuration.

(2) *California Assembly-Line Quality Audit Testing.* The Administrator may revoke a certificate of conformity for an engine family or configuration when the certificate has been suspended pursuant to paragraph (b)(2) or (c)(2) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Executive Officer and/or the Administrator, is one requiring a design change(s) to the engine and/or emission control system as described in the Application for Certification of the affected engine family or configuration.

(f) Once a certificate has been suspended for a failed engine or vehicle as provided for in paragraph (a) of this section, the manufacturer must take the following actions:

(1) Before the certificate is reinstated for that failed engine or vehicle—

(i) Remedy the nonconformity; and

(ii) Demonstrate that the engine or vehicle's final deteriorated test results conform to the applicable emission standards or family particulate emission limits, as defined in this part 86 by retesting the engine or vehicle in accordance with the requirements of this subpart.

(2) Submit a written report to the Administrator within thirty days after successful completion of testing on the failed engine or vehicle, which contains a description of the remedy and test results for the engine or vehicle in addition to other information that may be required by this subpart.

(g) Once a certificate has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating such certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent the future occurrence of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family or configuration for which the certificate of conformity has been suspended does in fact comply with the requirements of this subpart by testing engines or vehicles selected from normal production runs of that engine family or configuration at the plant(s) or the facilities specified by the Administrator, in accordance with:

(i) The conditions specified in the initial test order pursuant to § 86.1003–97 for a configuration suspended pursuant to paragraph (b)(1) or (c)(1) of this section; or

(ii) The conditions specified in a test order pursuant to § 86.1003–97 for an engine family or configuration suspended pursuant to paragraph (b)(2) or (c)(2) of this section.

(3) If the Administrator has not revoked the certificate pursuant to paragraph (e) of this section and if the manufacturer elects to continue testing individual engines or vehicles after suspension of a certificate, the certificate is reinstated for any engine or vehicle actually determined to have its final deteriorated test results in conformance with the applicable standards through testing in accordance with the applicable test procedures.

(4) In cases where the Administrator has suspended a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (b)(2) or (c)(2) of this section, manufacturers may request in writing that the Administrator reinstate the certificate of an engine family or configuration when, in lieu of the actions described in paragraphs (g)(1) and (2) of this section, the manufacturer has complied with section 2108, section 2109, and/or section 2110 of Title 13, Division 3, of the California Code of Regulations, provided an Executive Order is in place for the engine family or configuration. Title 13, Division 3, of the California Code of Regulations is incorporated by reference. See § 86.1.

(h) Once a certificate for a failed engine family or configuration has been revoked under paragraph (e)(1) or (2) of this section and the manufacturer desires to introduce into commerce a modified version of that engine family or configuration the following actions will be taken before the Administrator may issue a certificate for the new engine family or configuration:

(1) If the Administrator determines that the proposed change(s) in engine or vehicle design may have an effect on emission performance deterioration and/or fuel economy, he/she shall notify the manufacturer within 5 working days after receipt of the report in paragraph (g)(1) of this section or after receipt of information pursuant to paragraph (g)(4) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change(s) or whether additional testing will be required.

(2) After implementing the change(s) intended to remedy the nonconformity, the manufacturer shall demonstrate:

(i) If the certificate was revoked pursuant to paragraph (e)(1) of this section, that the modified configuration does in fact conform with the requirements of this subpart by testing engines or vehicles selected from normal production runs of that modified configuration in accordance with the conditions specified in the initial test order pursuant to § 86.1003–97. The Administrator shall consider this testing to satisfy the testing requirements of § 86.079–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to the criteria in § 86.1010–96(c), the Administrator shall reissue or amend the certificate, if necessary, to include that configuration: *Provided,* that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent audit results in a fail decision pursuant to the criteria in § 86.1010–96(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the configuration specified by the test order.

(ii) If the certificate was revoked pursuant to paragraph (e)(2) of this section, that the modified engine family or configuration does in fact conform with the requirements of this subpart by testing vehicles selected from normal production runs of that modified engine family or configuration in accordance with the conditions specified in a test order pursuant to § 86.1003–97. The Administrator shall consider this testing to satisfy the testing requirements of § 86.079–32 or § 86.079–33 if the Administrator had so notified the manufacturer. If the subsequent testing results in a pass decision pursuant to § 86.1010–96(c), the Administrator shall reissue or amend the certificate as necessary: *Provided,* that the manufacturer has satisfied the testing requirements specified in paragraph (h)(1) of this section. If the subsequent testing results in a fail decision pursuant to § 86.1010–96(c), the revocation remains in effect. Any design change approvals under this subpart are limited to the modification of the engine family or configuration specified by the test order.

(3) In cases where the Administrator has revoked a certificate of conformity for a 50-state engine family or configuration pursuant to paragraph (e)(2) of this section, manufacturers may request in writing that the Administrator reissue the certificate for an engine family or configuration when, in lieu of the actions described in (h) (1) and (2) of this section, the manufacturer has complied with section 2108, section 2109, and/or section 2110 of Title 13, Division 3, of the California Code of Regulations, provided an Executive Order is in place for the engine family or configuration. Title 13, Division 3, of the California Code of Regulations is incorporated by reference. See § 86.1.

(i) through (k) [Reserved].

(l) and (m) [Reserved]. For guidance see § 86.1012–84.

(n) To permit a manufacturer to avoid storing non-test engines or vehicles when conducting testing of an engine family or configuration subsequent to suspension or revocation of the certificate of conformity for that engine family or configuration pursuant to paragraph (b), (c), or (e) of this section, the manufacturer may request that the Administrator conditionally reinstate the certificate for that engine family or configuration. The Administrator may reinstate the certificate subject to the condition that the manufacturer consents to recall all engines or vehicles of that engine family or configuration produced from the time the certificate is conditionally reinstated if the engine family or configuration fails the subsequent testing and to remedy any nonconformity at no expense to the owner.

30. Section 86.1014–97 is proposed to be added to subpart K to read as follows:

§ 86.1014–97 Hearings on suspension, revocation, and voiding of certificates of conformity.

Section 86.1014–97 includes text that specifies requirements that differ from those specified in § 86.1014–84. Where a paragraph in § 86.1014–84 is identical and applicable to § 86.1014–97, this may be indicated by specifying the corresponding paragraph and the statement ''[Reserved]. For guidance see § 86.1014–84.''

(a) through (c)(2)(ii) introductory text [Reserved]. For guidance see § 86.1014–84.

(c)(2)(ii)(A) Whether tests have been properly conducted, specifically, whether the tests were conducted in accordance with applicable regulations and whether test equipment was properly calibrated and functioning; and

(c)(2)(ii)(B) through (aa) [Reserved]. For guidance see § 86.1014–84.

31. A new subpart R consisting of §§ 86.1701–97 through 86.1779–97 is proposed to be added to part 86 to read as follows:

Subpart R—General Provisions for the Voluntary National Low-Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks

Sec.
86.1701–97 General applicability.
86.1702–97 Definitions.
86.1703–97 Abbreviations.
86.1704–97 Section numbering; construction.
86.1705–97 General provisions; opt-in; opt-out.
86.1706–97 through 86.1707–97 [Reserved]
86.1708–97 Emission standards for 1997 and later light-duty vehicles.
86.1709–97 Emission standards for 1997 and later light light-duty trucks.
86.1710–97 Fleet average non-methane organic gas exhaust emission requirements for light-duty vehicles and light light-duty trucks.
86.1711–97 through 86.1712–97 [Reserved]
86.1713–97 Light-duty exhaust durability programs.
86.1714–97 Small-volume manufacturers certification procedures.
86.1715–97 [Reserved]
86.1716–97 Prohibition of defeat devices.
86.1717–97 Emission control diagnostic system for 1997 and later light-duty vehicles and light-duty trucks.
86.1718–97 through 86.1720–97 [Reserved]
86.1721–97 Application for certification.
86.1722–97 [Reserved]
86.1723–97 Required data.
86.1724–97 Test vehicles and engines.
86.1725–97 Maintenance.
86.1726–97 Mileage and service accumulation; emission measurements.
86.1727–97 [Reserved]
86.1728–97 Compliance with emission standards.
86.1729–97 through 86.1733–97 [Reserved]
86.1734–97 Alternative procedure for notification of additions and changes.
86.1735–97 Labeling.
86.1736–97 through 86.1737–97 [Reserved]
86.1738–97 Maintenance instructions.
86.1739–97 Submission of maintenance instructions.
86.1740–97 through 86.1769–97 [Reserved]
86.1770–97 Evaporative emission testing.
86.1771–97 Fuel specifications.
86.1772–97 Test sequence; general requirements.
86.1773–97 Vehicle preconditioning.
86.1774–97 Exhaust sample analysis.
86.1775–97 Records required.
86.1776–97 Calculations; exhaust emissions.
86.1777–97 Calculations; particulate emissions.
86.1778–97 General enforcement provisions.
86.1779–97 Prohibited acts.

Subpart R—General Provisions for the Voluntary National Low-Emission Vehicle Program for Light-Duty Vehicles and Light-Duty Trucks

§ 86.1701–97 General applicability.

(a) The provisions of this subpart may be adopted by vehicle manufacturers pursuant to the provisions specified in

§ 86.1705–97. The provisions of this subpart are generally applicable to 1997 and later model year light-duty vehicles and light light-duty trucks produced for sale in the Northeast Ozone Transport Region, and 2001 and later model year light-duty vehicles and light light-duty trucks produced for sale in the United States. In cases where a provision applies only to certain vehicles based on model year, vehicle class, motor fuel, engine type, vehicle emission category, intended sales destination, or other distinguishing characteristics, such limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart shall be referred to as the ''National Low-Emission Vehicle Program'' or ''National LEV'' or ''NLEV.''

(b) All requirements of 40 CFR parts 85 and 86, unless specifically replaced or modified by the provisions of this subpart, shall apply to the National LEV Program.

(c) The requirements of this subpart shall be effective until all covered manufacturers are in the first model year for which EPA promulgates emissions standards under Section 202(i) of the Act (42 U.S.C. 7521(i)) that are at least as stringent as the standards for NMOG, NO_X, and CO provided in this subpart, as determined by the Administrator, and such standards commence no later than model year 2006, provided such standards are promulgated no later than December 15, 2000; otherwise, the requirements of this subpart are effective through model year 2003.

§ 86.1702–97 Definitions.

(a) The definitions in subpart A of this part apply to this subpart.

(b) In addition, the following definitions shall apply to this subpart:

Alcohol fuel means either methanol or ethanol as those terms are defined in these test procedures.

All-electric range test means a test sequence used to determine the range of an electric vehicle or of a hybrid electric vehicle without the use of its auxiliary power unit. The All-Electric Range Test cycle consists of alternating the Highway Fuel Economy Schedule and Urban Dynamometer Driving Schedule.

Applicable fleet average NMOG value is the fleet average NMOG value calculated for a particular averaging set, based upon the applicable production for that averaging set and the applicable fleet average NMOG requirement listed in Tables R97–5 and R97–6 of this subpart.

Applicable production is the number of vehicles and/or trucks that a manufacturer produces in a given model year that are subject to the provisions of this subpart, and are included in the same averaging set.

Averaging sets are the categories of LDVs and LDTs for which the manufacturer calculates a fleet average NMOG value. The four averaging sets for fleet average NMOG value calculation purposes are:

(1) Class A delivered to a point of first retail sale in the Northeast Ozone Transport Region (OTR);

(2) Class A delivered to a point of first retail sale in the 37 States region;

(3) Class B delivered to a point of first retail sale in the OTR; and

(4) Class B delivered to a point of first retail sale in the 37 States region.

Battery assisted combustion engine vehicle means any vehicle which allows power to be delivered to the driven wheels solely by a combustion engine, but which uses a battery pack to store energy which may be derived through remote charging, regenerative braking, and/or a flywheel energy storage system or other means which will be used by an electric motor to assist in vehicle operation.

Battery pack means any electrical energy storage device consisting of any number of individual battery modules which is used to propel electric or hybrid electric vehicles.

Class A comprises LDVs and LDTs 0–3750 lbs. LVW that are subject to the provisions of this subpart.

Class B comprises LDTs 3751–5750 lbs. LVW that are subject to the provisions of this subpart.

Continually regenerating trap oxidizer system means a trap oxidizer system that does not utilize an automated regeneration mode during normal driving conditions for cleaning the trap.

Covered manufacturer means an original equipment manufacturer (OEM), as defined at § 85.1502(9), that meets the conditions specified under § 86.1705(a).

Covered vehicle or engine means a vehicle specified in § 86.1701(a), or an engine in such a vehicle, that is manufactured by a covered manufacturer.

Credits means fleet average NMOG credits as calculated from the amount that the manufacturer's applicable fleet average NMOG value is below the applicable fleet average NMOG requirement, times the applicable production. NMOG credits have units of g/mi.

Debits means fleet average NMOG debits as calculated from the amount that the manufacturer's applicable fleet average NMOG value is above the applicable fleet average NMOG requirement, times the applicable production. NMOG debits have units of g/mi.

Dedicated ethanol vehicle means any ethanol-fueled motor vehicle that is engineered and designed to be operated solely on ethanol.

Dedicated methanol vehicle means any methanol-fueled motor vehicle that is engineered and designed to be operated solely on methanol.

Diesel engine means any engine powered with diesel fuel, gaseous fuel, ethanol, or methanol for which diesel engine speed/torque characteristics and vehicle applications are retained.

Dual-fuel vehicle (or Engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

Electric vehicle means any vehicle which operates solely by use of a battery or battery pack. This definition also includes vehicles which are powered mainly through the use of an electric battery or battery pack, but which use a flywheel that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

Element of design means any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.

Ethanol means any fuel for motor vehicles and motor vehicle engines that is composed of either commercially available or chemically pure ethanol (CH^3CH^2OH) and gasoline as specified in § 86.1771–97 (Fuel Specifications) of these test procedures. The required fuel blend is based on the type of ethanol-fueled vehicle being certified and the particular aspect of the certification procedure being conducted.

Ethanol vehicle means any motor vehicle that is engineered and designed to be operated using ethanol as a fuel.

Executive Officer of the California Air Resources Board (ARB), as used in the referenced materials listed in § 86.1, means the Administrator of the Environmental Protection Agency (EPA).

Flexible-fuel vehicle (or engine) means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

Fuel-fired heater means a fuel burning device which creates heat for the purpose of warming the passenger compartment of a vehicle but does not contribute to the propulsion of the vehicle.

Gaseous fuels means liquefied petroleum gas, compressed natural gas, or liquefied natural gas fuels for use in motor vehicles.

Hybrid electric vehicle (HEV) means any vehicle which is included in the definition of a ''series hybrid electric vehicle,'' a ''parallel hybrid electric vehicle,'' or a ''battery assisted combustion engine vehicle.''

Low volume manufacturer means any vehicle manufacturer with California sales of new passenger cars, light-duty trucks, and medium-duty vehicles less than or equal to 3000 units and nationwide sales of passenger cars and light-duty trucks less than or equal to 40,000 units per model year based on the average number of vehicles sold by the manufacturer for each of the three most recent model years. For manufacturers certifying for the first time, model-year sales shall be based on projected sales.

Low-emission vehicle (LEV) means any vehicle certified to the low-emission vehicle standards specified in this subpart.

Methane reactivity adjustment factor means a factor applied to the mass of methane emissions from natural gas fueled vehicles for the purpose of determining the gasoline equivalent ozone-forming potential of the methane emissions.

Methanol means any fuel for motor vehicles and motor vehicle engines that is composed of either commercially available or chemically pure methanol (CH_3OH) and gasoline as specified in § 86.1771–97 (Fuel Specifications) of these procedures. The required fuel blend is based on the type of methanol-fueled vehicle being certified and the particular aspect of the certification procedure being conducted.

Methanol vehicle means any motor vehicle that is engineered and designed to be operated using methanol as a fuel.

Natural gas means either compressed natural gas or liquefied natural gas.

Natural gas vehicle means any motor vehicle that is engineered and designed to be operated using either compressed natural gas or liquefied natural gas.

Non-methane organic gases (NMOG) means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured in accordance with the ''California Non-Methane Organic Gas Test Procedures.'' This procedure has been incorporated by reference. See § 86.1.

Non-regeneration emission test means a complete emission test which does not include a regeneration.

Northeast Ozone Transport Region (OTR) means the transport region for ozone established by law under the Clean Air Act section 184(a) and comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, the District of Columbia, and that part of Virginia within (as of November 15, 1990) the Consolidated Metropolitan Statistical Area which includes the District of Columbia.

Organic material non-methane hydrocarbon equivalent (or OMNMHCE) for methanol-fueled vehicles means the sum of the carbon mass contribution of non-oxygenated hydrocarbons (excluding methane), methanol, and formaldehyde as contained in a gas sample, expressed as gasoline-fueled hydrocarbons. For ethanol-fueled vehicles, organic material non-methane hydrocarbon equivalent (OMNMHCE) means the sum of carbon mass contribution of non-oxygenated hydrocarbons (excluding methane), methanol, ethanol, formaldehyde and acetaldehyde as contained in a gas sample, expressed as gasoline-fueled hydrocarbons.

Ozone deterioration factor means a factor applied to the mass of NMOG emissions from TLEVs, LEVs, or ULEVs which accounts for changes in the ozone-forming potential of the NMOG emissions from a vehicle as it accumulates mileage.

Parallel hybrid electric vehicle means any vehicle which allows power to be delivered to the driven wheels by either a combustion engine and/or by a battery powered electric motor.

Periodically regenerating trap oxidizer system means a trap oxidizer system that utilizes, during normal driving conditions for cleaning the trap, an automated regeneration mode which can be easily detected.

Point of first retail sale is the location where the completed LDV or LDT is purchased, also known as the final product purchase location. The point of first retail sale may be a retail customer, dealer or secondary manufacturer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first retail sale.

Reactivity adjustment factor means a fraction applied to the mass of NMOG emission from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG emission value. The reactivity adjustment factor is defined as the ozone-forming potential of the exhaust from a vehicle powered by a fuel other than conventional gasoline divided by the ozone-forming potential of conventional gasoline vehicle exhaust.

Regeneration means the process of oxidizing accumulated particulate matter. It may occur continually or periodically.

Regeneration emission test means a complete emission test which includes a regeneration.

Regeneration interval means the interval from the start of a regeneration to the start of the next regeneration.

Series hybrid electric vehicle means any vehicle which allows power to be delivered to the driven wheels solely by a battery powered electric motor, but which also incorporates the use of a combustion engine to provide power to the battery and/or electric motor.

37 States is the trading region comprised of the United States excluding California and the Ozone Transport Region.

Transitional low-emission vehicle (TLEV) means any vehicle certified to the transitional low-emission vehicle standards specified in this subpart.

Trap oxidizer system means an emission control system which consists of a trap to collect particulate matter and a mechanism to oxidize the accumulated particulate.

Type A hybrid electric vehicle means an HEV which achieves a minimum range of 60 miles over the All-Electric Range Test as defined in ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' which is incorporated by reference. See § 86.1.

Type B hybrid electric vehicle means an HEV which achieves a range of 40–59 miles over the All-Electric Range Test as defined in ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' which is incorporated by reference. See § 86.1.

Type C hybrid electric vehicle means an HEV which achieves a range of 0–39 miles over the all-Electric Range test and all other HEVs excluding ''Type A'' and ''Type B'' HEVs as defined in ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' which is incorporated by reference. See § 86.1.

Ultra-low-emission vehicle (ULEV) means any vehicle certified to the ultra-low emission vehicle standards specified in this subpart.

Zero-emission vehicle (ZEV) means any vehicle which is certified to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. Incorporation of a fuel fired heater shall not preclude a vehicle from being certified as a ZEV provided the fuel fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.

§ 86.1703–97 Abbreviations.

(a) The abbreviations in subpart A of this part apply to this subpart. In addition, the following abbreviations shall apply to this subpart:

(b) The abbreviations in the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles,'' which is incorporated by reference (see § 86.1) also apply to this subpart. In addition, the following abbreviations shall apply to this subpart:

HEV—hybrid electric vehicle
LEV—low-emission vehicle
NMOG—non-methane organic gases
OTR—Northeast Ozone Transport Region
TLEV—transitional low-emission vehicle
ULEV—ultra low-emission vehicle
ZEV—zero emission vehicle

§ 86.1704–97 Section numbering; construction.

(a) The model year of initial applicability is indicated by the last two digits of the six-digit group of the section number. A section remains in effect for subsequent model years until it is superseded.

(b) Where a section still in effect references a section that has been superseded, the reference shall be interpreted to mean the superseding section.

(c) Where a California regulation is incorporated by reference in this subpart, and such regulation refers to a provision in the Code of Federal Regulations that has been superseded by a subsequent CFR provision, the superseded CFR section is considered the actual reference and will apply to the specific model year cited. Such references from California provisions will not be interpreted to mean the superseding CFR section.

§ 86.1705–97 General provisions; opt-in; opt-out.

(a) Covered manufacturers must comply with the provisions in this subpart, and in addition, must comply with the otherwise applicable requirements of 40 CFR parts 85 and 86. A manufacturer shall be a covered manufacturer if:

(1) The manufacturer has opted into the program pursuant to paragraph (d) of this section;

(2) Where a manufacturer included the condition on opt-in provided for in paragraph (d) of this section, that condition has not been violated; and

(3) The manufacturer has not opted out or the manufacturer has opted out but that opt-out has not become effective under paragraphs (e) and (f) of this section.

(b) Compliance with the tailpipe emissions standards and other requirements specified in paragraph (h) of this section shall be deemed to be compliance with the corresponding tailpipe emissions standards and other requirements specified in §§ 86.096–8 and 86.097–9.

(c) Covered manufacturers must comply with the standards and requirements specified in this subpart beginning in model year 1997, except a covered manufacturer that opted into the program after model year 1996 must comply with the standards and requirements of this subpart beginning in the first model year after the model year in which that manufacturer opted in. Covered manufacturers must comply with the provisions of this subpart as long as the regulations are effective, as specified in § 86.1701–97(c).

(d) To opt into the National LEV program, a motor vehicle manufacturer must submit a written statement to the Administrator signed by a person or entity within the corporation or business with authority to bind the corporation or business to its election. The statement must unambiguously and unconditionally (apart from the permissible condition specified below) indicate the manufacturer's intent to opt into the program and be subject to the provisions in this subpart, and include the following language: ''[xx company,] its subsidiaries, successors and assigns hereby opts into the voluntary National LEV program, as defined in 40 CFR part 86 subpart R, and agrees to be legally bound by all of the standards, requirements and other provisions of the National LEV program for the duration of the program, as specified in subpart R. [xx company] further commits not to challenge EPA's authority to establish or enforce the National LEV program, and commits not to seek to certify any vehicle except in compliance with the regulations in subpart R.'' The statement may indicate that the manufacturer opts into the program subject to the condition that the Administrator find under 40 CFR 51.121(b)(2) that the program is in effect with the following language: ''This opt-in is subject only to the condition that the Administrator make a finding on or before [insert date 60 days from date of signature] pursuant to 40 CFR 51.121(b)(2) that the National LEV program is in effect for purposes of substitution for OTC LEV.'' A manufacturer shall be considered to have opted in upon the Administrator's receipt of the opt-in notification.

(e) A covered manufacturer may opt out of the National LEV program only if one of the specified conditions allowing opt-out occurs. A manufacturer must exercise the opt-out option within sixty days of the occurrence allowing opt-out, or the opt-out option expires. The opt-out shall become effective upon the times specified below, unless the Administrator finds within sixty days of receipt of the opt-out letter that the condition submitted by the manufacturer has not actually occurred. The following are the conditions allowing opt-out:

(1) EPA makes a revision not specified in paragraph (h)(2) of this section to a standard or requirement listed in paragraph (h)(1) of this section to which the covered manufacturer objected. Only a covered manufacturer that objects to a revision may opt out if that revision is adopted. An objection shall be valid for this purpose only if it was filed during the public comment period on the proposed revision and the objection specifies that it is being made to allow opt-out under paragraph (e) of this section. An opt-out based on this provision shall become effective starting the first model year to which EPA's modified regulations apply.

(2) [Reserved for provisions relating to undetermined state commitments regarding section 177 programs.]

(f) To opt out of the National LEV program, a covered manufacturer must notify the Administrator as provided in paragraph (d) of this section, except that the statement shall specify the condition under paragraph (e) of this section allowing opt-out and shall indicate the manufacturer's intent to opt out of the program and no longer to be subject to the provisions in this subpart. The letter shall include the following language: ''[xx company,] its subsidiaries, successors and assigns hereby opt out of the voluntary National LEV program, as defined in 40 CFR part 86 subpart R.''

(g) A manufacturer that has opted out and is no longer a covered manufacturer under this subpart shall be subject to all provisions that would apply to a manufacturer that had not opted in, including all applicable standards and requirements promulgated under Title II

of the Act (42 U.S.C. 7521 et. seq.) and any state standards adopted pursuant to section 177 of the Act (42 U.S.C. 7507).

(h) (1) The following are the emissions standards and requirements that, if revised, may provide covered manufacturers the opportunity to opt out pursuant to paragraph (e)(1) of this section:

(i) The tailpipe emissions standards for NMOG, NO_X, CO, HCHO, and PM specified in sections 86.1708–97 and 86.1709–97;

(ii) The compliance test procedure (Federal Test Procedure) as specified in § 86.130–96, § 86.115–78, § 86.108–79, and Appendix I to part 86;

(iii) The compliance test fuel, as specified in § 86.1771–97;

(iv) Fleet average NMOG values specified in § 86.1710–97;

(v) The on-board diagnostic system requirements specified in § 86.1717–97;

(vi) The averaging, banking and trading provisions specified in § 86.1710–97;

(vii) The low volume manufacturer provisions specified in § 86.1714–97;

(viii) The evaporative emissions standards and provisions for light-duty vehicles specified in § 86.096–8(b), and the evaporative emissions standards and provisions for light-duty trucks specified in § 86.097–9(b);

(ix) The light-duty vehicle refueling emissions standards and provisions specified in § 86.098–8(d) and the light-duty truck refueling emissions standards and provisions specified in § 86.001–9(d);

(x) The cold temperature carbon monoxide standards and provisions for light-duty vehicles specified in § 86.096–8(k), and the cold temperature carbon monoxide standards and provisions for light-duty trucks specified in § 86.097–9(k), except that changes to these provisions effective after model year 2000 shall not provide an opportunity for a covered manufacturer to opt out.

(xi) The Supplemental Federal Test Procedure emission standards and provisions for light-duty vehicles specified in § 86.098–8(e), and the Supplemental Federal Test Procedure emission standards and provisions for light-duty trucks specified in § 86.098–9(d). [The revisions to §§ 86.098–8(e) and 86.098–9(d) have not been finalized; references are to proposed regulations in 60 FR 7404, February 7, 1995.]

(2) The following types of revisions to the standards and requirements in paragraph (h)(1) of this section do not provide covered manufacturers the right to opt out of the National LEV program:

(i) Revisions that do not increase the stringency of the standard or requirement; or

(ii) Revisions that harmonize the standard or requirement with the comparable California standard or requirement for the same model year (even if the harmonization increases the stringency of the standard or requirement).

§ 86.1706–97 through § 86.1707–97 [Reserved]

§ 86.1708–97 Emission standards for 1997 and later light-duty vehicles.

(a) Light-duty vehicles certified under the provisions of this subpart as TLEVs, LEVs, ULEVs, or ZEVs shall comply with the applicable exhaust emission standards in this section. In addition to the exhaust emission standards in this section, light-duty vehicles certified under the provisions of this subpart as TLEVs, LEVs, ULEVs, or ZEVs shall comply with all applicable emission standards in § 86.096–8 (or appropriate sections as they apply to later model years), as provided in paragraphs (a) (1) and (2) of this section.

(1) Emission standards for total hydrocarbon (THC) and particulate matter (PM) in § 86.096–8(a)(1)(i) shall apply to vehicles certified as TLEVs, LEVs, ULEVs, and ZEVs. Additional exhaust emission standards in § 86.096–8(a)(1)(i) shall not apply to vehicles certified as TLEVs, LEVs, ULEVs, and ZEVs.

(2) Compliance with emission standards at high altitude conditions shall be demonstrated using the applicable emission standards and procedures in § 86.096–8.

(b)(1) *Standards.* (i) Exhaust emissions from 1997 and later model year light-duty vehicles classified as TLEVs, LEVs, ULEVs, and ZEVs shall not exceed the standards in Tables R97–1 and R97–2 in rows designated with the applicable vehicle emission category. These standards shall apply equally to certification and in-use vehicles, except as provided in paragraph (c) of this section:

TABLE R97–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NOX	HCHO
TLEV	0.125	3.4	0.4	0.015
LEV	.075	3.4	.2	.015
ULEV	.040	1.7	.2	.008

TABLE R97–2—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG	CO	NOX	HCHO	PM
TLEV	0.156	4.2	0.6	0.018	0.08
LEV	.090	4.2	.3	.018	.08
ULEV	.055	2.1	.3	.011	.04

(ii) The particulate matter (PM) standards in paragraph (b)(1)(i) of this section are applicable to diesel light-duty vehicles only. All other light-duty vehicles must comply with the applicable PM standards in § 86.096–8.

(iii) Flexible-fuel and dual-fuel light-duty vehicles shall be certified to exhaust emission standards for NMOG established for the operation of the vehicle on an available fuel other than gasoline, and for the operation of the vehicle on gasoline.

(A) The applicable NMOG emission standards for flexible-fuel and dual-fuel light-duty vehicles when certifying the vehicle for operation on fuels other than

gasoline shall be the NMOG standards in paragraph (b)(1)(i) of this section.

(B) The applicable NMOG emission standards for flexible-fuel and dual-fuel light-duty vehicles when certifying the vehicle for operation on gasoline shall be the NMOG standards in the rows designated with the applicable vehicle emission category in tables R97–3 and R97–4:

TABLE R97–3.—INTERMEDIATE USEFUL LIFE NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG
TLEV	0.25
LEV	0.125
ULEV	0.075

TABLE R97–4.—FULL USEFUL LIFE NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT-DUTY VEHICLES CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Vehicle emission category	NMOG
TLEV	0.31
LEV	0.156
ULEV	0.090

(iv) The maximum projected NO_X emissions measured on the Highway Fuel Economy Test in subpart B of this part shall not be greater than 1.33 times the applicable light-duty vehicle standards shown in Tables R97–1 and R97–2. Both the projected emissions and the Highway Fuel Economy Test standard shall be rounded to the nearest 0.1 g/mi in accordance with the Rounding-Off Method specified in ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, before being compared. These procedures have been incorporated by reference. See § 86.1.

(v) Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and shall not be required to demonstrate compliance with 100,000 mile emission standards. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

(2) [Reserved].

(c) *Intermediate in-use emission standards.* (1) 1997 and 1998 model year light-duty vehicles certified as LEVs or ULEVs shall meet the applicable intermediate useful life in-use standards in paragraphs (c)(2) or (c)(3) of this section, according to the following provisions:

(i) In-use compliance with standards beyond the intermediate useful life shall be waived for LEVs and ULEVs through the 1998 model year.

(ii) After the 1998 model year, the applicable in-use standards shall be the intermediate and full useful life standards in paragraph (b) of this section.

(2) Light-duty vehicles, including flexible-fuel and dual-fuel light-duty vehicles when operated on an available fuel other than gasoline, shall meet all intermediate useful life standards for the applicable vehicle emission category in Table R97–5:

TABLE R97–5.—INTERMEDIATE USEFUL LIFE STANDARDS FOR LIGHT-DUTY VEHICLES

Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NOX (g/mi)	HCHO (g/mi)
LEV	0.100	3.4	0.3	0.015
ULEV	0.058	2.6	0.3	0.012

(3) Flexible-fuel and dual-fuel light-duty vehicles when operated on gasoline shall meet all intermediate useful life standards for the applicable vehicle emission category in Table R97–6:

TABLE R97–6.—INTERMEDIATE USEFUL LIFE STANDARDS FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT-DUTY VEHICLES WHEN OPERATED ON GASOLINE

Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NO_X (g/mi)	HCHO (g/mi)
LEV	0.188	3.4	0.3	0.015
ULEV	0.100	2.6	0.3	0.012

(d) *NMOG measurement.* NMOG emissions shall be measured in accordance with the ''California Non-Methane Organic Gas Test Procedures.'' These procedures have been incorporated by reference. See § 86.1. NMOG emissions shall be compared to the applicable NMOG emissions certification or in-use standard according to the following calculation procedures:

(1) For TLEVs, LEVs, and ULEVs designed to operate exclusively on any fuel other than conventional gasoline, and for flexible-fuel and dual-fuel TLEVs, LEVs, and ULEVs when operated on a fuel other than gasoline, manufacturers shall multiply NMOG exhaust emission levels by the applicable reactivity adjustment factor set forth in section 13 of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' (incorporated by reference, see § 86.1), or established by the Executive Officer pursuant to Appendix VIII of the document referenced above and approved by the Administrator. The product of the NMOG exhaust emission levels and the reactivity adjustment factor shall be compared to the applicable certification or in-use exhaust NMOG mass emission

standards established for the particular vehicle emission category to determine compliance.

(2) In addition to multiplying the exhaust NMOG mass emission levels by the applicable reactivity adjustment factor, TLEV, LEV, or ULEV natural gas vehicles shall multiply the exhaust methane mass emission level by the applicable methane reactivity adjustment factor in section 13 of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' (incorporated by reference, see § 86.1), or established by the Executive Officer pursuant to Appendix VIII of the document referenced above and approved by the Administrator. The reactivity-adjusted NMOG value shall be added to the reactivity-adjusted methane value and then the sum shall be compared to the applicable certification or in-use exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

(3) The exhaust NMOG mass emission levels for fuel-flexible and dual-fuel vehicles when operating on gasoline, or for vehicles designed to operate exclusively on gasoline, shall not be multiplied by a reactivity adjustment factor.

§ 86.1709–97 Emission standards for 1997 and later light light-duty trucks.

(a) Light light-duty trucks certified under the provisions of this subpart as TLEVs, LEVs, ULEVs, or ZEVs shall comply with the applicable exhaust emission standards in this section. In addition to the exhaust emission standards in this section, light light-duty trucks certified under the provisions of this subpart as TLEVs, LEVs, ULEVs, or ZEVs shall comply with all applicable emission standards in § 86.097–9 (or appropriate sections as they apply to later model years), as provided in paragraphs (a)(1) and (2) of this section.

(1) Emission standards for total hydrocarbon (THC) and particulate matter (PM) in § 86.097–9(a)(1)(i) shall apply to light light-duty trucks certified as TLEVs, LEVs, ULEVs, and ZEVs. Additional exhaust emission standards in § 86.097–9 (a)(1)(i) shall not apply to light light-duty trucks certified as TLEVs, LEVs, ULEVs, and ZEVs.

(2) Compliance with emission standards at high altitude conditions shall be demonstrated using the applicable emission standards and procedures in § 86.097–9.

(b)(1) *Standards.* (i) Exhaust emissions from 1997 and later model year light light-duty trucks classified as TLEVs, LEVs, ULEVs, and ZEVs shall not exceed the standards in Tables R97–7 and R97–8 in rows designated with the applicable vehicle emission category and loaded vehicle weight. These standards shall apply equally to certification and in-use vehicles, except as provided in paragraph (c) of this section:

TABLE R97–7.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG	CO	NO_X	HCHO
0–3750	TLEV	0.125	3.4	0.4	0.015
	LEV	0.075	3.4	0.2	0.015
	ULEV	0.040	1.7	0.2	0.008
3751–5750	TLEV	0.160	4.4	0.7	0.018
	LEV	0.100	4.4	0.4	0.018
	ULEV	0.050	2.2	0.4	0.009

TABLE R97–8.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG	CO	NO_X	HCHO	PM
0–3750	TLEV	0.156	4.2	0.6	0.018	0.8
	LEV	0.090	4.2	0.3	0.018	0.8
	ULEV	0.055	2.1	0.3	0.011	0.4
3751–5750	TLEV	0.200	5.5	0.9	0.023	0.8
	LEV	0.130	5.5	0.5	0.023	0.8
	ULEV	0.070	2.8	0.5	0.013	0.4

(ii) The particulate matter (PM) standards in paragraph (b)(1)(i) of this section are applicable to diesel vehicles only. All other light light-duty trucks must comply with the applicable PM standards in § 86.097–9.

(iii) Flexible-fuel and dual-fuel light light-duty trucks shall be certified to exhaust emission standards for NMOG established for the operation of the vehicle on an available fuel other than gasoline, and for the operation of the vehicle on gasoline.

(A) The applicable NMOG emission standards for flexible-fuel and dual-fuel light light-duty trucks when certifying the vehicle for operation on fuels other than gasoline shall be the NMOG standards in paragraph (b)(1)(i) of this section.

(B) The applicable NMOG emission standards for flexible-fuel and dual-fuel light light-duty trucks when certifying the vehicle for operation on gasoline shall be the NMOG standards in the rows designated with the applicable vehicle emission category in tables R97–9 and R97–10:

TABLE R97–9.—INTERMEDIATE USEFUL LIFE NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG
0–3750	TLEV	0.25
	LEV	0.125
	ULEV	0.075
3751–5750	TLEV	0.32
	LEV	0.160
	ULEV	0.100

TABLE R97–10.—FULL USEFUL LIFE NMOG STANDARDS (G/MI) FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT LIGHT-DUTY TRUCKS CLASSIFIED AS TLEVS, LEVS, AND ULEVS

Loaded vehicle weight	Vehicle emission category	NMOG
0–3750	TLEV	0.31
	LEV	0.156
	ULEV	0.090
3751–5750	TLEV	0.40
	LEV	0.200
	ULEV	0.130

(iv) The maximum projected NO_X emissions measured on the Highway Fuel Economy Test in subpart B of this part shall be not greater than 1.33 times the applicable light light-duty truck standards shown in Tables R97–7 and R97–8. Both the projected emissions and the Highway Fuel Economy Test standard shall be rounded to the nearest 0.1 g/mi in accordance with the Rounding-Off Method specified in ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, before being compared. These procedures have been incorporated by reference. See § 86.1.

(v) Deterioration factors for hybrid electric vehicles shall be based on the emissions and mileage accumulation of the auxiliary power unit. For certification purposes only, Type A hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors), and shall not be required to demonstrate compliance with 100,000 mile emission standards. For certification purposes only, Type B hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 75,000 mile deterioration factors). For certification purposes only, Type C hybrid electric vehicles shall demonstrate compliance with 50,000 mile emission standards (using 50,000 mile deterioration factors) and 100,000 mile emission standards (using 100,000 mile deterioration factors).

(2) [Reserved].

(c) *Intermediate in-use emission standards.* (1) 1997 and 1998 model year light light-duty trucks certified as LEVs or ULEVs shall meet the applicable intermediate useful life in-use standards in paragraphs (c)(2) or (c)(3) of this section, according to the following provisions:

(i) In-use compliance with standards beyond the intermediate useful life shall be waived for LEVs and ULEVs through the 1998 model year.

(ii) After the 1998 model year, the applicable in-use standards shall be the intermediate and full useful life standards in paragraph (b) of this section.

(2) Light light-duty trucks, including flexible-fuel and dual-fuel light light-duty trucks when operated on an available fuel other than gasoline, shall meet all intermediate useful life standards for the applicable vehicle emission category in Table R97–11:

TABLE R97–11.—INTERMEDIATE USEFUL LIFE STANDARDS FOR LIGHT LIGHT-DUTY TRUCKS

Loaded vehicle weight	Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NO_X (g/mi)	HCHO (g/mi)
0–3750	LEV	0.100	3.4	0.3	0.015
	ULEV	0.058	2.6	0.3	0.012
3751–5750	LEV	0.128	4.4	0.5	0.018
	ULEV	0.075	3.3	0.5	0.014

(3) Flexible-fuel and dual-fuel light light-duty trucks when operated on gasoline shall meet all intermediate useful life standards for the applicable vehicle emission category in Table R97–12:

TABLE R97–12.—INTERMEDIATE USEFUL LIFE STANDARDS FOR FLEXIBLE-FUEL AND DUAL-FUEL LIGHT LIGHT-DUTY TRUCKS WHEN OPERATED ON GASOLINE

Loaded vehicle weight	Vehicle emission category	NMOG (g/mi)	CO (g/mi)	NOX (g/mi)	HCHO (g/mi)
0–3750	LEV	0.188	3.4	0.3	0.015
	ULEV	0.100	2.6	0.3	0.012
3751–5750	LEV	0.238	4.4	0.5	0.018
	ULEV	0.128	3.3	0.5	0.014

(d) *NMOG measurement.* NMOG emissions shall be measured in accordance with the ''California Non-Methane Organic Gas Test Procedures.'' These procedures have been incorporated by reference. See § 86.1. NMOG emissions shall be compared to the applicable NMOG emissions certification or in-use standard according to the following calculation procedures:

(1) For TLEVs, LEVs, and ULEVs designed to operate exclusively on any fuel other than conventional gasoline, and for flexible-fuel and dual-fuel TLEVs, LEVs, and ULEVs when operated on a fuel other than gasoline, manufacturers shall multiply NMOG exhaust emission levels by the applicable reactivity adjustment factor set forth in section 13 of the ''California

Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' (incorporated by reference, see § 86.1), or established by the Executive Officer pursuant to Appendix VIII of the document referenced above and approved by the Administrator. The product of the NMOG exhaust emission levels and the reactivity adjustment factor shall be compared to the applicable certification or in-use exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

(2) In addition to multiplying the exhaust NMOG mass emission levels by the applicable reactivity adjustment factor, TLEV, LEV, or ULEV natural gas vehicles shall multiply the exhaust methane mass emission level by the applicable methane reactivity adjustment factor in section 13 of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles'' (incorporated by reference, see § 86.1), or established by the Executive Officer pursuant to Appendix VIII of the document referenced above and approved by the Administrator. The reactivity-adjusted NMOG value shall be added to the reactivity-adjusted methane value and then the sum shall be compared to the applicable certification or in-use exhaust NMOG mass emission standards established for the particular vehicle emission category to determine compliance.

(3) The exhaust NMOG mass emission levels for fuel-flexible and dual-fuel vehicles when operating on gasoline, or for vehicles designed to operate exclusively on gasoline, shall not be multiplied by a reactivity adjustment factor.

§ 86.1710–97 Fleet average non-methane organic gas exhaust emission requirements for light-duty vehicles and light light-duty trucks.

(a)(1) Each manufacturer shall certify light-duty vehicles or light light-duty trucks to meet the exhaust mass emission standards in this subpart for TLEVs, LEVs, ULEVs, ZEVs, or the exhaust emission standards of § 86.096–8(a)(1)(i) or § 86.097–9(a)(1)(i), such that the manufacturer's fleet average NMOG values for light-duty vehicles and light light-duty trucks produced and delivered for sale in the applicable region according to the specifications of Tables R97–13 and R97–14 are less than or equal to the standards in Tables R97–13 and R97–14 in the rows designated with the applicable vehicle type, loaded vehicle weight, and model year. These standards shall apply at the applicable intermediate useful life:

TABLE R97–13.—FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS (G/MI) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS PRODUCED FOR SALE IN THE NORTHEAST OZONE TRANSPORT REGION

Vehicle type	Loaded vehicle weight	Model year	Fleet average NMOG
Light-duty vehicles	All	1997	0.200
		1998	0.200
and		1999	0.148
		2000	0.095
Light-duty trucks	0–3750	2001 and later	0.075
Light-duty trucks	3751–5750	1997	0.256
		1998	0.256
		1999	0.190
		2000	0.124
		2001 and later	0.100

TABLE R97–14.—FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS (G/MI) FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS PRODUCED FOR SALE IN THE UNITED STATES

Vehicle type	Loaded vehicle weight	Model year	Fleet average NMOG
Light-duty vehicles	All	2001 and later	0.075
and			.....
			.....
Light-duty trucks	0–3750		.....
Light-duty trucks	3751–5750	2001 and later	0.100

(2)(i) For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or ''HEVs'') based on the range of the HEV without the use of the engine. See § 86.1702–97 for definitions of HEV types for purposes of calculating adjusted NMOG emissions.

(ii) For the purpose of calculating fleet average NMOG values, vehicles that have no tailpipe emissions but use fuel-fired heaters and that are not certified as ZEVs shall be treated as ''Type A HEV ULEVs.''

(3)(i) Each manufacturer's fleet average NMOG value for all light-duty vehicles and light light-duty trucks from 0–3750 lbs loaded vehicle weight produced and delivered for sale in the

applicable region according to Tables R97–13 and R97–14 shall be calculated in units of g/mi NMOG according to the following equation, where the term ''Produced'' means produced and delivered for sale in the applicable region according to Tables R97–13 and R97–14, and the term ''Vehicles'' means light-duty vehicles and light light-duty trucks from 0–3750 lbs loaded vehicle weight: {[(No. of Vehicles Certified to the Federal Tier I Exhaust Emission Standards and Produced) × (0.25)] + [(No. of TLEVs Produced excluding HEVs) × (0.125)] + [(No. of LEVs Produced excluding HEVs) × (0.075)] + [(No. of ULEVs Produced excluding HEVs) × (0.040)] + (HEV contribution factor)}/(Total No. of Vehicles Produced, including ZEVs and HEVs).

(ii)(A) ''HEV contribution factor'' shall mean the NMOG emission contribution of HEVs to the fleet average NMOG value. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term ''Produced'' means produced and delivered for sale in the applicable region according to Tables R97–13 and R97–14.

(B) HEV contribution factor = {[(No. of Type A HEV TLEVs Produced) × (0.100)] + [(No. of Type B HEV TLEVs Produced) × (0.113)] + [(No. of Type C HEV TLEVs Produced) × (0.125)]} + {[(No. of Type A HEV LEVs Produced) × (0.057)] + [(No. of Type B HEV LEVs Produced) × (0.066)] + [(No. of Type C HEV LEVs Produced) × (0.075)]} + {[(No. of Type A HEV ULEVs Produced) x (0.020)] + [(No. of Type B HEV ULEVs Produced) × (0.030)] + [(No. of Type C HEV ULEVs Produced) × (0.040)]}.

(4)(i) Manufacturers that certify light light-duty trucks from 3751–5750 lbs loaded vehicle weight shall calculate a fleet average NMOG value in units of g/mi NMOG according to the following equation, where the term ''Produced'' means produced and delivered for sale in the applicable region according to Tables R97–13 and R97–14, and the term ''Vehicles'' means light light-duty trucks from 3751–5750 lbs loaded vehicle weight: {[(No. of Vehicles Certified to the Federal Tier I Exhaust Emission Standards and Produced) × (0.32)] + [(No. of TLEVs Produced excluding HEVs) x (0.160)] + [(No. of LEVs Produced excluding HEVs) × (0.100)] + [(No. of ULEVs Produced excluding HEVs) × (0.050)] + (HEV Contribution factor)}/(Total No. of Vehicles Produced, including ZEVs and HEVs).

(ii)(A) ''HEV contribution factor'' shall mean the NMOG emission contribution of HEVs to the fleet average NMOG. The HEV contribution factor shall be calculated in units of g/mi as follows, where the term ''Produced'' means produced and delivered for sale in the applicable region according to Tables R97–13 and R97–14.

(B) HEV contribution factor = {[(No. of Type A HEV TLEVs Produced) × (0.130)] + [(No. of Type B HEV TLEVs Produced) × (0.145)] + [(No. of Type C HEV TLEVs Produced) × (0.160)]} + {[(No. of Type A HEV LEVs Produced) × (0.075)] + [(No. of Type B HEV LEVs Produced) × (0.087)] + [(No. of Type C HEV LEVs Produced) × (0.100)]} + {[(No. of Type A HEV ULEVs Produced) × (0.025)] + [(No. of Type B HEV ULEVs Produced) × (0.037)] + [(No. of Type C HEV ULEVs Produced) × (0.050)]}.

(5) The calculation of the fleet average NMOG value in paragraphs (a)(3) and (a)(4) of this section shall exclude the light-duty vehicles and light light-duty trucks purchased in the Northeast Ozone Transport Region by federal and state governments to comply with the Energy Policy Act, 42 U.S.C. 13212(b), 13257(o). In determining the quantity of vehicles excluded from the NMOG calculations, no covered manufacturer shall be required to exclude any vehicles that are not reported by the purchasing government in a timely letter to the representative of the covered manufacturer listed in the manufacturer's application. Such letter shall be considered timely only if it is received no later than February 1 of the calendar year following the end of the model year in which the purchases were made.

(6) Low volume manufacturers, as defined in § 86.1702–97, shall comply with the fleet average NMOG standards in paragraph (a)(1) of this section according to the following provisions:

(i) Low volume manufacturers shall be exempt from the requirements in paragraph (a)(1) of this section for model years prior to the 2001 model year. The requirements in paragraph (a)(1) of this section applicable to the 2001 and later model years shall apply to low volume manufacturers.

(ii) If a manufacturer's average California sales exceed 3000 units of new passenger cars, light-duty trucks, and medium-duty vehicles or average nationwide sales exceeds 40,000 units of new passenger cars and light-duty trucks based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall no longer be treated as a low volume manufacturer and shall comply with the fleet average requirements applicable to all other manufacturers as specified in paragraph (a)(1) of this section beginning with the fourth model year after the last of the three consecutive model years.

(iii) If a manufacturer's average California sales are at or below 3000 units of new passenger cars, light-duty trucks, and medium-duty vehicles and average nationwide sales are at or below 40,000 units of new passenger cars and light-duty trucks based on the average number of vehicles sold for any three consecutive model years, the manufacturer shall be treated as a low volume manufacturer and shall be subject to requirements for low volume manufacturers as specified in paragraphs (a)(6)(i) and (ii) of this section beginning with the next model year.

(b) *Fleet average NMOG credit and debit calculations.* (1) For each averaging set, manufacturers that achieve applicable fleet average NMOG values lower than the fleet average NMOG requirement for the corresponding model year may generate credits.

(2) For each averaging set, manufacturers that obtain applicable fleet average NMOG values exceeding the fleet average NMOG requirement for the corresponding model year shall generate debits.

(3) For each averaging set, credits and debits are to be calculated according to the following equation and rounded, in accordance with the Rounding-Off Method specified in ASTM E29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, to the nearest whole number (intermediate calculations will not be rounded) (This procedure has been incorporated by reference. See § 86.1.):

Number of Credits/Debits = {[(Applicable Fleet Average NMOG Requirement) − (Manufacturer's Applicable Fleet Average NMOG Value)] × (Applicable Production)}.

(4) For each region, the annual value of a manufacturer's available credits or level of debits shall be the sum of credits or debits derived from the respective class A and class B averaging sets for that region.

(c) *Fleet average NMOG credits.* (1) Credits may be used to offset fleet average NMOG debits of the same region (Ozone Transport Region or 37 States) in the current or future model year or transferred to another motor vehicle manufacturer.

(2) Credits may be used by the manufacturer that generated them or may be transferred to other parties for use by another motor vehicle manufacturer.

(3) Credits shall be earned on the last day of the model year and may be used

or traded at any time after they are earned, except that available credits must be used to offset any outstanding debits, prior to trading or carryover to the next model year.

(4) Credits earned in any given model year shall retain full value through the subsequent model year.

(5) Unused credits that are available at the end of the second, third, and fourth model years after the year in which the credits were generated shall be discounted to 50%, 25%, and 0% of the original value of the credits, respectively. The discounting of credits also applies to credits transferred between manufacturers.

(6) Credits may not be used to remedy any nonconformities determined by a Selective Enforcement Audit, recall testing, or testing performed with respect to Title 13, Chapter 2, Articles 1 and 2 of the California Code of Regulations.

(7) Prior to model year 2001, low volume manufacturers may earn credits in the OTR for transfer to other motor vehicle manufacturers for use in the OTR. Credits will be based on vehicle certification to NLEV standards and a fleet average NMOG below the applicable NLEV NMOG level for the OTR for that model year.

(8) Manufacturers may earn and bank credits in the 37 states prior to model year 2001. Credits will be based on vehicle certification to NLEV standards and a fleet average NMOG below the NMOG equivalent of the applicable emission standards and other requirements specified in §§ 86.096–8 and 86.097–9.

(d) *Fleet average NMOG debits.* (1) Manufacturers shall obtain enough credits to offset any debits by the end of the model year following the model year in which the debits were generated. Debits may be offset by generating credits, or acquiring credits generated by another manufacturer. Any credits used to offset debits shall be from the same region (Ozone Transport Region or 37 States) in which the debit was incurred.

(2) If debits are not equalized within the specified time period, the number of vehicles not meeting the fleet average NMOG standards shall be calculated by dividing the total amount of debits for the model year by the fleet average NMOG requirement applicable for the model year and averaging set in which the debits were first incurred. In the case where both averaging sets are in debit, any applicable credits would first be split between the sets. Then, noncompliance calculations would begin using the revised debit values. Each noncomplying vehicle will be deemed to be in violation of the conditions of its certificate. EPA will determine these vehicles by designating vehicles in those engine families with the highest certification NMOG emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. EPA may void *ab initio* the certificates of conformity for these vehicles. Failure by a manufacturer to remedy a debit situation within the specified time period may also result in civil penalties.

(e) *Maintenance of records.* (1) The manufacturer producing any vehicles and/or trucks subject to the provisions in this subpart shall establish, maintain, and retain the following information in adequately organized and indexed records for each averaging set of each model year:

(i) Model year;

(ii) Averaging set;

(iii) Applicable fleet average NMOG value achieved; and

(iv) All values used in calculating the applicable fleet average NMOG value achieved.

(2) The manufacturer producing any vehicles and/or trucks subject to the provisions in this subpart shall establish, maintain, and retain the following information in adequately organized and indexed records for each vehicle or truck subject to the provisions of this subpart:

(i) Model year;

(ii) Averaging set;

(iii) EPA engine family;

(iv) Assembly plant;

(v) Vehicle identification number;

(vi) NMOG standard to which the vehicle or truck is certified; and

(vii) Information on the point of first retail sale, including the purchaser, city, and state.

(3) The manufacturer shall retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* certificates of conformity for vehicles and engines for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(f) *NMOG credit transfers.* (1) EPA may reject NMOG credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) In the event of a credit shortfall resulting from a credit transfer between manufacturers, both the credit provider and recipient are liable, except in cases involving fraud. EPA may void the certificates of those LDVs and LDTs contributing to the credit shortfall.

(g) *Reporting.* (1) Each manufacturer shall submit an annual report. The annual report shall contain, for each averaging set, the applicable fleet average NMOG value achieved, all values required to calculate the NMOG value, the number of credits generated or debits incurred, and all the values required to calculate the credits/debits. For each region (Ozone Transport Region and 37 States), the annual report shall contain the resulting balance of credits or debits.

(2) The annual report shall also include documentation on all credit transactions for that calendar year. Information for each transaction shall include:

(i) Name of credit provider;

(ii) Name of credit recipient;

(iii) Date the transfer occurred;

(iv) Quantity of credits transferred;

(v) Model year in which the credits were earned; and

(vi) Region (Ozone Transport Region or 37 States) to which the credits belong.

(3) Manufacturers shall submit annual reports after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports shall be submitted to: Director, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(4) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(5) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's

credit/debit calculations will be recalculated. EPA may void erroneous credits and shall adjust erroneous debits.

(h) *Notice of opportunity for hearing.* Any voiding of the certificate under this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614–84 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

§ 86.1711–97 through § 86.1712–97 [Reserved]

§ 86.1713–97 Light-duty exhaust durability programs.

When applying § 86.094–13 to the National LEV Program, that section shall be modified according to the provisions contained in section 11.a. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1714–97 Small volume manufacturers certification procedures.

When applying § 86.096–14 to the National LEV Program, manufacturers meeting the definition of ''low-volume manufacturer'' are not entitled to the use of the provisions of § 86.096–14 unless they also meet the definition of ''small volume manufacturer.''

§ 86.1715–97 [Reserved]

§ 86.1716–97 Prohibition of defeat devices.

When applying § 86.094–16 to the National LEV Program, that section shall be modified according to the provisions contained in section 11.l. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1717–97 Emission control diagnostic system for 1997 and later light-duty vehicles and light-duty trucks.

Demonstration of compliance with California OBD II requirements (Title 13 California Code 1968.1, as modified pursuant to California Mail Out #95–03 (January 19, 1995) (these procedures are incorporated by reference; see § 86.1), shall satisfy the requirements of this section with the following exceptions:

(1) Compliance with Title 13 California Code 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

(2) The provisions relating to fines for deficiencies in paragraphs (m) (6.1) and (6.2) of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993, do not apply. These procedures are incorporated by reference (see § 86.1).

(b) ''Small-volume manufacturer'' is defined in § 86.096–14.

§ 86.1718–97 through § 86.1720–97 [Reserved]

§ 86.1721–97 Application for certification.

When applying § 86.096–21 to the National LEV Program, that section shall be modified according to the provisions contained in sections 4.a. and 11.f. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1722–97 [Reserved]

§ 86.1723–97 Required data.

When applying § 86.096–23 to the National LEV Program, that section shall be modified according to the provisions contained in sections 4.b., 9.f., and 11.c., 11.e., and 11.k. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1724–97 Test vehicles and engines.

When applying § 86.095–24 to the National LEV Program, that section shall be modified according to the provisions contained in section 4.c. of the ''California Exhaust Emission Standards and Test Procedure for 1988 and subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1725–97 Maintenance.

When applying § 86.094–25 to the National LEV Program, that section shall be modified according to the provisions contained in section 5.a. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated, with the exception of section 5.a. paragraph 5, by reference. See § 86.1.

§ 86.1726–97 Mileage and service accumulation; emission measurements.

When applying § 86.096–26 to the National LEV Program, that section shall be modified according to the provisions contained in sections 6.a., 11.c., and 11.k. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1727–97 [Reserved]

§ 86.1728–97 Compliance with emission standards.

When applying § 86.094–28 to the National LEV Program, that section shall be modified according to the provisions contained in section 6.b. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1729–97 through § 86.1733–97 [Reserved]

§ 86.1734–97 Alternative procedure for notification of additions and changes.

When applying § 86.082–34 to the National LEV Program, that section shall be modified according to the provisions contained in section 8 of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1735–97 Labeling.

When applying § 86.096–35 to the National LEV Program, that section shall be modified according to the provisions contained in the ''California Motor Vehicle Emission Control Label Specifications'' as amended July 12, 1991, with the exception of the provisions in paragraph 3(d)(10). These provisions are incorporated by reference. See § 86.1.

§ 86.1736–97 through § 86.1737–97 [Reserved]

§ 86.1738–97 Maintenance instructions.

When applying § 86.087–38 to the National LEV Program, that section shall be modified according to the provisions contained in section 5.b. of the

''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1739–97 Submission of maintenance instructions.

When applying § 86.079–39 to the National LEV Program, that section shall be modified according to the provisions contained in section 5.c. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1740–97 through § 86.1769–97 [Reserved]

§ 86.1770–97 Evaporative emissions testing.

(a) Testing for evaporative emissions shall be conducted according to the provisions of § 86.130–96, with the following exceptions:

(1) Section 86.107–96 shall be applied as follows:

(i) Where a temperature of 95°F is specified, 105°F shall be used instead.

(ii) Where a temperature profile is specified, it shall be replaced by a profile that cycles from 65°F to 105°F.

(2) Section 86.117–96 shall be applied as follows:

(i) Where a temperature of 96°F is specified, 105°F shall be used instead.

(ii) Where a temperature profile is specified, it shall be replaced by a profile that cycles from 65°F to 105°F.

(3) The temperature profile specified in § 86.133–96 shall instead be replaced by a profile that cycles from 65°F to 105°F.

(4) Where a temperature of 95°F is specified in § 86.134–96, 105°F shall be used instead.

(5) Where a temperature of 95°F is specified in § 86.138–96, 105°F shall be used instead.

(b) [Reserved]

§ 86.1771–97 Fuel specifications.

When applying § 86.113 to the National LEV Program, except when conducting exhaust emission testing at high altitude conditions and evaporative emission testing at high altitude conditions, that section shall be modified according to the provisions contained in section 9.a. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1772–97 Test sequence; general requirements.

When applying § 86.130 to the National LEV Program, that section shall be modified according to the provisions contained in sections 9.c. and 11.k. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' and ''California Non-Methane Organic Gas Test Procedures'', both amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1773–97 Vehicle preconditioning.

When applying § 86.132 to the National LEV Program, that section shall be modified according to the provisions contained in section 9.d. of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1774–97 Exhaust sample analysis.

When applying § 86.140 to the National LEV program, that section shall be modified according to the provisions contained in ''California Non-Methane Organic Gas Test Procedures'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1775–97 Records Required.

When applying § 86.142 to the National LEV Program, that section shall be modified according to the provisions contained in section 9 (except section 9.b paragraphs 1 through 4) and Appendix IV of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' and ''California Non-Methane Organic Gas Test Procedures'' both amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1776–97 Calculations; exhaust emissions.

When applying § 86.144 to the National LEV Program, that section shall be modified according to the provisions contained in sections 9.g., 13, and Appendix V of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' and the ''California Non-Methane Organic Gas Test Procedures'' both amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1777–97 Calculations; particulate emissions.

When applying § 86.145 to the National LEV Program, that section as it pertains to the testing of diesel particulate emissions shall be modified according to the provisions contained in Appendix V of the ''California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles'' as amended September 22, 1993. These provisions are incorporated by reference. See § 86.1.

§ 86.1778–97 General enforcement provisions.

(a) The provisions of sections 203–208 of the Act (42 U.S.C. 7522–7525, 7541–7542) apply to all motor vehicles manufactured by a covered manufacturer under this program, and to all covered manufacturers and all persons with respect to such vehicles.

(b) Violation of the requirements of this subpart shall subject a person to the jurisdiction and penalty provisions of sections 204–205 of the Act (42 U.S.C. 7522–7523).

(c) EPA may not issue a certificate of conformity to a covered manufacturer, as defined in § 86.1702–97, except based on compliance with the standards and requirements in this subpart.

§ 86.1779–97 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1) In the case of a covered manufacturer, as defined by § 86.1702–97, of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, (or in the case of any person, except as provided by regulation of the Administrator), the importation into the United States of any new motor vehicle or new motor vehicle engine subject to this subpart, unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations found in this subpart (except as provided in section 203(b) of the Act (42 U.S.C. 7522(b) or regulations promulgated thereunder).

(2)(i) For any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 208

(42 U.S.C. 7542) with regard to covered vehicles.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under section 206(c) (42 U.S.C. 7525(c)) or section 208 (42 U.S.C. 7542) with regard to covered vehicles.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required under section 208 (42 U.S.C. 7542) with regard to covered vehicles.

(iv) For a person to fail to establish or maintain records as required under §§ 86.1723–97 and 86.1775–97 with regard to covered vehicles.

(v) For any manufacturer to fail to make information available as provided by regulation under section 202(m)(5) (42 U.S.C. 7521(m)(5)) with regard to covered vehicles.

(3)(i) For any person to remove or render inoperative any device or element of design installed on or in a covered vehicle or engine in compliance with regulations under this subpart prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

(ii) For any person to manufacture, sell or offer to sell, or install, any part or component intended for use with, or as part of, any covered vehicle or engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a covered vehicle or engine in compliance with regulations issued under this subpart, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(4) For any manufacturer of a covered vehicle or engine subject to standards prescribed under this subpart:

(i) To sell, offer for sale, introduce or deliver into commerce, or lease any such vehicle or engine unless the manufacturer has complied with the requirements of section 207 (a) and (b) of the Act (42 U.S.C. 7541(a), (b)) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 207(c)(3) (42 U.S.C. 7541(c)(3)).

(ii) To fail or refuse to comply with the requirements of section 207(c) or (e) of the Act (42 U.S.C. 7541(c) or (e)).

(iii) Except as provided in section 207(c)(3) of the Act (42 U.S.C. 7541(c)(3)), to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of any part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(iv) To fail or refuse to comply with the terms and conditions of the warranty under section 207 (a) or (b) of the Act (42 U.S.C. 7541(a) or (b)).

(b) For the purposes of enforcement of this subpart, the following apply:

(1) No action with respect to any element of design referred to in paragraph (a)(4) of this section (including any adjustment or alteration of such element) shall be treated as a prohibited act under paragraph (a)(4) of this section if such action is in accordance with section 215 (42 U.S.C. 7549);

(2) Nothing in paragraph (a)(4) of this section is to be construed to require the use of manufacturer parts in maintaining or repairing a covered vehicle or engine. For the purposes of the preceding sentence, the term ''manufacturer parts'' means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine;

(3) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design;

(4) Actions for the purpose of a conversion of a motor vehicle or motor vehicle engine for use of a clean alternative fuel (as defined in Title II of the Act) are not considered prohibited acts under paragraph (a) of this section if:

(i) The vehicle complies with the applicable standard when operating on the alternative fuel, and the device or element is replaced upon completion of the conversion procedure; and

(ii) In the case of engines converted to dual fuel or flexible use, the action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

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Tuesday
October 10, 1995

Part III

Securities and Exchange Commission

17 CFR Part 240

Order Execution Obligations; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36310; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') today is proposing two rules and amendments to a rule to improve the handling and execution of customer orders. In light of the availability of improvements in order handling technology and the proliferation of ancillary order handling arrangements, including payment for order flow, directed order handling and internalization, the Commission is proposing rules that are intended to improve the opportunity of investors to obtain the best execution possible for their orders. At the same time, the proposals are designed to preserve the benefits of a competitive market structure that has greatly enhanced market liquidity, transparency and efficiency.

DATES: Comments should be submitted on or before January 16, 1996.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should refer to File No. S7–30–95. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David Oestreicher regarding Rules 11Ac1–4 and 11Ac1–5, Ethan Corey regarding best execution obligations, and Gautam S. Gujral, Elizabeth Prout Lefler or Gail A. Marshall regarding amendments to Rule 11Ac1–1 at (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend Rule 11Ac1–1 (''Quote Rule'') [1] under the Securities Exchange Act of 1934 (''Exchange Act'') [2] to require exchanges and over-the-counter (''OTC'') market makers in listed securities to publish quotations for listed securities where the exchange or OTC market maker trades more than 1% of the aggregate trading volume for that security. The Commission also proposes to amend the Quote Rule to require exchange specialists and OTC market makers to quote to the public any better prices that they privately quote through certain electronic communications networks. Further, the Commission proposes to require specialists and OTC market makers to display customer limit orders priced better than the specialist's or OTC market maker's quote. Finally, the Commission proposes to require that specialists and OTC market makers provide customer market orders some opportunity for price improvement before executing the order. The rule provides for order exposure procedures that, if followed, would be deemed to satisfy the requirement that a specialist or OTC market maker provide an opportunity for price improvement. These procedures are not, however, intended to be the only method by which OTC market makers and specialists may offer the opportunity for price improvement.

I. Introduction

A. Background

The vision of a ''national market system'' (''NMS''), which Congress adopted in the Securities Acts Amendments of 1975 (''1975 Amendments''),[3] has served our markets well, fostering a market system that by any measure is the fairest and most efficient in the world. The idea of an integrated system in which competition among linked markets would make the best prices universally available, transparent disclosure of quotes and trades would promote best execution, and broker-dealers would place the interests of customers first, represented a significant step forward for our markets. The costs and dislocations associated with implementing the systems required were substantial and concerns that liquidity would be impaired were pervasive. The undertaking primarily was placed on the shoulders of the securities industry: the Commission took seriously the Congressional mandate that it ''facilitate'' these goals while allowing maximum flexibility in the design.

The last 20 years have seen continued progress toward an NMS. Major infrastructure developments such as the Consolidated Quotation System (''CQS''), the consolidated transaction tape, last-sale reporting for OTC securities, and the Intermarket Trading System (''ITS'') have made information about trading interest, volume, and prices widely available to market participants. The technological innovations of the last two decades have made it possible to display, route, and execute orders in volumes unheard of even a few years ago. Communication among markets and market participants, once slow and costly, is now instantaneous and economical. Now more than ever, investors can expect that their orders will be executed at the best prices available across a spectrum of markets. In a very real sense, investors have benefited directly from the NMS initiatives, as increased transparency has contributed to greater liquidity and better enabled investors to monitor the quality of their executions, and technology has allowed better, quicker, and cheaper access to the markets.

Notwithstanding these positive developments, improved technology also has made possible market practices and structures that raise the issue of whether customers are consistently afforded the enhanced opportunities for better prices made possible by innovations in price dissemination and order handling. Questions have been raised about whether increasingly commonplace practices such as the routing of customer order flow to market makers and specialists in return for payment and the internalization of customer orders by integrated firms may reduce competition based on published quotes. In addition, customers' limit orders are not always displayed in all markets. At a minimum, those customers whose orders are not displayed lose the opportunity to have their orders interact with the market.

There are also concerns about whether quotations fully convey the quality of information intended by the 1975 Amendments. The development of electronic trading systems that allow market makers to display different prices to different customers has created the potential for two-tiered markets in which market makers quote one price to public investors while quoting better prices in private systems. As a result, investors without access to these ''hidden'' quotes may not obtain the benefit of the best available prices. Similarly, investors may not receive the best available prices when other customers' limit orders are not represented in the quotes. When specialists and OTC market makers fail to display limit orders that improve the inside quotes, the quotes do not convey the real quotation spread and may

[1] 17 CFR 240.11Ac1–1.

[2] 15 U.S.C. 78a to 78*ll* (1988).

[3] Pub. L. No. 94–29, 89 Stat. 97 (1975).

present an inaccurate picture of trading interest.

In many respects, these structures and practices have neither kept pace with investors' needs nor advanced Congress' mandate for an NMS. Some investors have sufficient market power, sophistication and access to information and markets necessary to ensure best execution of their orders. Retail customers, however, typically depend on their brokers for information and access to the market. Regardless of whether the execution occurs in an exchange market or OTC, investors expect prompt executions at the best prices reasonably obtainable. Investors should be able to rely on published quotations for an accurate picture of the market. Investors should receive fair treatment for their orders and should not have to compete with their own brokers for quality executions.

Ultimately, if market structures and practices work to their disadvantage, investors will lose confidence in the fairness of the market. The tremendous success of our markets over the last 20 years has been due in large part to investor confidence in their fairness, integrity, and efficiency. To the extent that practices and structures such as hidden limit orders, payment for order flow, internalization, and two-tiered markets may not satisfy investor needs and diminish transparency, these practices threaten to undermine investor confidence and market efficiency.

Congress saw competition as the primary source of change and innovation in achieving an NMS and directed the Commission to use its rulemaking authority to remove impediments to competition and facilitate the development of an NMS. To the extent that order flow increasingly is routed on a basis other than quote competition, the transparency and competitiveness of our markets may suffer. Similarly, the continued fragmentation of quotations erodes the value of the quote. Accordingly, the Commission believes that it is time to propose action to ensure the future confidence of investors and the competitiveness of American markets.

The Commission today is proposing a series of initiatives that would enhance transparency in our markets and improve the handling and interaction of customer orders. The proposed rules stress that markets and dealers should disclose as much information about supply and demand as is practicable. Transparency of customer orders ensures that prices fully reflect overall supply and demand and prevents market fragmentation. The proposed rules assure the continued availability of quality information with respect to quotations. In addition, the proposed rules seek to improve opportunities in auction and dealer markets for market orders to interact directly with other market orders and public limit orders, consistent with the goals of a national market system.

The proposed rules reinforce the importance of fair competition among markets and market participants. The Commission believes that the introduction of new technologies during the past 20 years has been largely a product of competition in our markets. In recognition of the importance of fostering continued innovation through competitive market forces, as well as Congress's mandate to facilitate-but-not-design, the proposals do not require any particular system or market structure. Rather, they attempt to achieve their intended effect by establishing minimum standards for the handling of customer orders. The intent is to further the goals of an NMS while preserving an atmosphere in which innovation is welcome and rewarded.

B. The Duty To Seek Best Execution of Customer Orders

Even absent the rule proposals being issued for comment today, the duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.[4] Although the duty of best execution is longstanding, the specific obligations of broker-dealers in fulfilling that duty have evolved over time. As developments in market structure and technology create new opportunities to achieve better execution of customer orders, it is incumbent on the Commission and the markets to take full advantage of those developments.

Historically, with the development of sophisticated price dissemination and order routing systems, broker-dealers gained better, more economical means to determine the best price for a security trading in multiple markets. For example, before the advent of the Nasdaq automated quotation system, broker-dealers manually routed their customer orders to OTC market makers, and were viewed as having made reasonable efforts if they contacted three market makers to find the best available price. The development of Nasdaq enabled broker-dealers to check the quotations of all Nasdaq market makers at once, thus expanding the range of OTC quotes to be taken into account in seeking best execution.[5] In the listed markets, the CQS provided broker-dealers for the first time with the currently reported bids, offers, and quotation sizes of brokers and dealers trading listed securities both on exchanges and in the OTC market.[6] In approving the CQS, the Commission stressed that it would expect broker-dealers to take into account the pricing information made available through the system in fulfilling their best execution obligations.[7]

Over time, exchanges and broker-dealers also have developed automated order routing systems to process small trades. The Commission concluded in response that an automated order routing environment was not necessarily inconsistent with the achievement of best execution.[8] Indeed, the Commission recognized that it could be impractical, both in terms of time and expense, for a broker that handled a large volume of orders to determine individually where to route each order it received. The Commission therefore stated that broker-dealers routing orders for automated execution could satisfy their best execution obligations by assessing periodically the quality of competing markets to assure that aggregated order flow was directed to markets providing the most advantageous terms for their customers' orders.[9]

In this regard, the Commission recently cited a staff position warning broker-dealers against presuming that routing order flow to a market providing quote-based executions always would satisfy the duty of best execution for small orders in listed securities; at the same time, the Commission noted the role of price improvement as a factor in best execution, speaking in the context of aggregate order routing decisions for

[4] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992); Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (Jan. 1994) (''Market 2000''), Study V.

[5] Market 2000, *supra* note 4, at II–11.

[6] Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851 (Aug. 7, 1978)(first declaring temporarily effective CQS Plan); Securities Exchange Act Release No. 16518 (Jan. 22, 1980), 45 FR 6521 (June 28, 1980) (permanently approving CQS Plan).

[7] *Id.*

[8] Securities Exchange Act Release No. 15671 (Mar. 22, 1979), 44 FR 20360 (Apr. 4, 1979); Securities Exchange Act Release No. 15926 (June 15, 1979), 44 FR 36912, 36923 n. 118 (June 22, 1979); Securities Exchange Act Release No. 17583 (Feb. 27, 1981), 46 FR 15713, 15715 n. 16 (Mar. 9, 1981); Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963, 23973 n. 127 (June 5, 1989); Market 2000, *supra* note 4, Study V at V–1 n. 8; Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006, 55009 n. 30 (Nov. 2, 1994) (''Payment for Order Flow Release'').

[9] *See* sources cited *supra* note 8.

listed and OTC stocks.[10] For example, trades in listed securities that are routed to an exchange typically are exposed to other public orders or interest in the trading crowd that exists on the trading floor.[11] Such order exposure brings with it the possibility for price improvement, *i.e.,* an execution at a price that is better than the existing quotes. In addition, with the development of sophisticated order handling systems, some OTC market makers are now providing an opportunity for price improvement for their customer orders.

As technology has advanced, certain order handling routines that may not have been economical or even possible several years ago have become available. Using internal automated systems, some broker-dealers now are able to route orders automatically to the dealer market or automated system offering the best price, or alternatively, match the best price themselves and execute the order as principal. It now is possible for some broker-dealers to seek better prices for their customers' orders not only on the CQS and Nasdaq, but also on other market systems, such as SelectNet. More importantly, the availability of sophisticated order handling systems has made it possible for some broker-dealers and market centers to provide an opportunity for price improvement for their customer orders. The use of these efficient routing and execution facilities by firms and exchanges suggests that price improvement procedures and other best execution safeguards in an automated environment are increasingly practicable and are setting new standards for the industry.

In the past, quote based executions in OTC securities were generally recognized as satisfying best execution obligations.[12] The development of efficient new facilities, however, alters what broker-dealers must consider in seeking best execution of customer orders. In determining the parameters of what is reasonable in particular circumstances, the Commission believes that in light of recent developments broker-dealers must now consider not only their customers' expectations, but also ways of obtaining improved executions for customers using the range of available new technologies as they evolve. While not all markets and trading systems are equally accessible to large and small broker-dealers, and not all order handling technologies are equally affordable to all broker-dealers, when efficient and cost effective systems are readily accessible, broker-dealers must evaluate carefully whether they can be used in fulfilling their duty of best execution.

C. Overview of the Proposed Rules

The rules proposed today will increase the opportunities for investors to receive best execution for their orders and promote market efficiency. Moreover, by stressing the importance of transparency and price improvement, the proposed rules should reinforce competition among markets and market participants. The rules proposed today, however, are not intended to alter or displace the well-established duty under the antifraud principles for market participants to provide customers with best execution. Broker-dealers remain obligated to seek the most favorable terms possible under the circumstances for their customers.

The first of these rule proposals involves amendments to the Quote Rule that would improve information about the significant market makers in a security and the prices they are quoting. The proposals would require exchanges and OTC market makers that account for more than 1% of the volume in a listed security to publish their quotations for that security. In addition, the amendments would require exchange specialists and OTC market makers who submit priced orders to certain electronic communications networks to include those orders in their published quotes.

Second, the Commission is proposing a minimum standard for all markets that would require the display of customer limit orders under certain circumstances. The proposed rule would promote best execution of customer limit orders, and would increase market transparency and efficiency by ensuring that prices fully reflect overall supply and demand.

Finally, the Commission has previously stated in other contexts that broker-dealers have a duty to consider opportunities for price improvement when deciding where to route customer orders for execution.[13] In support of this duty, the rules would require OTC market makers and specialists to provide their customer orders with an opportunity for price improvement. Recognizing that OTC market makers and specialists currently employ a variety of systems and procedures to provide price improvement opportunities, the proposed rule does not impose any one formula or mechanism for achieving price improvement. Nonetheless, to provide guidance to dealers as to one set of conditions under which they would satisfy their obligation under the rule, the Commission is proposing a non-exclusive safe harbor. The safe harbor sets out a procedure that would satisfy the price improvement obligation while allowing for the duty to be satisfied by alternative means. The Commission also seeks comment on alternative safe harbors.

While the legislative history of the 1975 Amendments recognized that order exposure and interaction may not be appropriate for some securities, Congress intended that for as many securities as feasible, the NMS should ensure that public investors receive the benefits and protections associated with transparency and order interaction. Accordingly, the rules proposed today are designed to comport with the principle that a broker-dealer will seek the same quality of execution regardless of whether the broker-dealer is acting as principal or agent, and regardless of whether the transaction is effected in an exchange or OTC market.

II. Proposals

A. Amendments to the Quote Rule

1. Background

The proposed amendments to the Quote Rule are designed to: (1) expand the coverage of existing broker-dealer quotation requirements to include substantial market makers in non-Rule 19c–3 securities,[14] and (2) ensure that OTC market makers and exchange specialists reflect in their public quotes the best prices they have published in certain electronic communications networks.

The Commission believes these amendments are important to enhance competition in publicly disseminated

[10] *See* Payment for Order Flow Release, *supra* note 8, at text accompanying nn. 31–33.

[11] *See* Payment for Order Flow Release, *supra* note 8. In addition, most regional exchanges have incorporated order exposure features into their small order routing and execution systems so that price improvement may be offered. Most regional exchanges program their automated execution systems to ensure that customer orders receive a price at the national best bid or best offer (''NBBO'') or better, and the specialist is provided an opportunity to improve the price. Payment for Order Flow Release, *supra* note 8, at n. 32 and sources cited therein. This feature by itself, however, rarely provides an execution between the spread.

[12] Market 2000, *supra* note 4, Study V at V–4.

[13] *See* Payment for Order Flow Release, *supra* note 8.

[14] *See* 17 CFR 240.19c–3. Exchange Act Rule 19c–3 prohibits the application of off-board trading restrictions to securities that: (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c–3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c–3 securities.

quotes. Furthermore, these amendments are intended to improve published quotation information by ensuring that OTC market makers and exchanges publicly disseminate quotations in the exchange-listed securities they actively trade, and by ensuring that the best bid and offer prices are made available to public investors.

The legislative history of the 1975 Amendments makes it clear that a prompt, accurate and reliable composite quotation reporting system is an essential element of the NMS.[15] Congress believed it essential that the composite quotation reporting system include quotations from all market centers.[16] Those Amendments also granted the Commission ''pervasive rulemaking power to regulate securities communications systems.'' [17]

a. Dissemination of Quotes Under the Rule

Public quote reporting for equity securities is governed by Section 11A of the Exchange Act,[18] the Quote Rule [19] and Rule 11Aa3–2 (the ''Plan Rule''),[20] as well as exchange and NASD rules. These rules require registered exchanges and securities associations [21] to file quotation reporting plans with the Commission that provide for the collection and transmission of quotation information on a real-time basis.[22] Specialists and OTC market makers communicate their quotes to the exchange and to the NASD pursuant to these plans and the SROs in turn make this information available to vendors for dissemination to the public.[23] The Quote Rule requires public dissemination of the best bid, best offer, and size for each market trading the security as well as the consolidated best bid and offer.[24] Quotations provided to vendors must be firm, and a specialist or OTC market maker generally is obligated to execute any order at a price at least as good as its published bid or offer.[25] Brokers and dealers covered by the Rule, including dealers trading listed securities in the OTC market (*i.e.,* third market makers), must supply quotations to their exchange or association for dissemination to quotation vendors.

b. Mandatory and Voluntary Quotes Under the Rule

When the Commission first proposed the Quote Rule, it noted that a lack of reliable quotation information from the various markets was hampering private and self-regulatory efforts to establish a viable composite quotation system which consequently was impeding the development of an NMS.[26] Accordingly, the Quote Rule, as originally adopted, mandated that specialists and OTC market makers subject to the Rule's provisions communicate their quotations promptly to their relevant exchange or association and that such quotations be ''firm.''

Shortly after the rule was adopted, the Commission granted exemptive relief to exchanges and OTC market makers [27] responsible for less than 1% of the aggregate trading volume in a reported security, primarily because the costs of compliance with the mandatory Quote Rule for such exchanges and OTC market makers with *de minimis* market share were substantially disproportionate to any reasonably anticipated competitive benefits.[28]

In 1982, the Commission amended the rule to make quote dissemination voluntary rather than mandatory for those OTC market makers and exchanges with less than 1% of the volume in Rule 19c–3 securities. For non-Rule 19c–3 securities, the amendment required OTC market makers and exchanges to communicate quotes only when they qualified as the principal market for the security. Market makers could voluntarily quote if they elected to do so in accordance with the Rule. Thus, under the Quote Rule presently, unless an OTC market maker or exchange is responsible for such a significant share of the trading volume that it can be considered the principal market for an exchange-traded security, its decision to register to communicate its quotes in non-Rule 19c–3 securities is purely voluntary.[29]

The Commission noted that many of the quotations provided by dealers to comply with the mandatory rule had been inaccurate and stale or produced by systems designed to track the primary market automatically.[30] Processing and dissemination of the resulting quotation information, some of which was deemed unreliable, had been a strain on vendor systems. The Commission also believed that the operation of the ITS,[31] through which third market makers who disseminate quotes may effect transactions with other markets in Rule 19c–3 securities, would create an economic incentive to quote competitively in the affected securities in the absence of a mandate.

However, after the adoption of the voluntary quote rule, regional exchanges continued to quote the securities they traded using automated quotation devices that tracked the national best bid and offer.[32] Today, although many

[15] S. Rep. No. 75, 94th Cong., 1st Sess. 9–10 (1975) (''Senate Report''). *Cf.* H.R. Rep. No. 229, 94th Cong. 1st Sess. 29 (1975) (''House Report) (noting that conference committee adopted the Senate's provisions on the NMS with minor revisions).

[16] Senate Report, *supra* note 15 at 101.

[17] *Id.* at 93.

[18] 15 U.S.C. 78k–1.

[19] 17 CFR 240.11Ac1–1 (1993). *See* Securities Exchange Act Release No. 14415 (Jan. 26, 1978), 43 FR 4342 (Feb. 1, 1978).

[20] 17 CFR 240.11Aa3–2 (1993).

[21] The NASD is the only registered national securities association.

[22] *See* Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1) (dissemination requirements for exchanges and associations).

[23] Rule 11Ac1–2, 17 CFR 240.11Ac1–2 (''Vendor Display Rule'') requires vendors of market information to display quotation information in a non-discriminatory manner.

[24] *See* Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1).

[25] *See* Rule 11Ac1–1(c)(1), 17 CFR 240.11Ac1–1(c)(1).

[26] *See* Securities Exchange Act Release No. 12670 (July 29, 1976), 41 FR 32856 (Aug. 5, 1976) (''Quote Rule Proposing Release'').

[27] *See e.g.* Securities Exchange Act Release No. 15747 (Apr. 19, 1979), 17 S.E.C. Doc. 304, granting Amswiss International Corporation exemptive relief from paragraph (c)(1) of the Quote Rule, pursuant to paragraph (d) of the rule, (''Amswiss exemption''). The Commission also granted exemptive relief to certain exchanges which accounted for a *de minimis* share of the consolidated volume in any reported security. *See* Securities Exchange Act Release No. 15012 (July 28, 1978), 43 FR 33978 (Aug. 2, 1978) (Intermountain Stock Exchange); Securities Exchange Act Release No. 15011 (July 28, 1978), 43 FR 33983 (Aug. 2, 1978) (Spokane Stock Exchange); Securities Exchange Act Release No. 15010 (July 28, 1978), 43 FR 33976 (Aug. 2, 1978) (Cincinnati Stock Exchange); Securities Exchange Act Release No. 15013 (July 28, 1978), 43 FR 33981 (Aug. 2, 1978) (Philadelphia Stock Exchange).

[28] *See* Securities Exchange Act Release No. 15771 (Apr. 26, 1979), 44 FR 26067 (May 4, 1979). *See also* Securities Exchange Act Release No. 18482 (Feb. 11, 1982), 47 FR 7399, 7405 (Feb. 19, 1982) (stating that the Commission has followed an established policy of granting exemptive relief to OTC market makers with a *de minimis* share of the order flow in a particular security).

[29] An OTC market maker in reported securities may effectively elect to disseminate quotations under proposed paragraph (a)(25)(ii)(B) by registering as a NASD market maker and ''communicating'' its best bids and offers to the association by entering two-sided quotations in the Nasdaq System. *See* NASD By-Laws, Schedule D, Part V, § 1 (CCH) ¶ 1816D.

Similarly, an exchange that is not the principal market for a reported security may voluntarily elect to disseminate quotes for the security pursuant to proposed paragraph (a)(25)(i)(B).

[30] *See* Securities Exchange Act Release No. 17583 (Feb. 27, 1981), 46 FR 15713 (Mar. 9, 1981).

[31] The ITS commenced operation on a pilot basis on April 17, 1978. The ITS is an intermarket order routing facility which permits orders for the purchase and sale of multiply-traded securities to be sent directly from one market center to another. OTC market makers do not have access to ITS for non-Rule 19c–3 securities.

[32] In this regard, the ITS Plan provides:

each Participant that furnishes to other Participants bid-asked quotations that are generated by an automated quotation tracking system (such as the Autoquote or the Centramart system currently employed by certain Participants) agrees that no such quotation shall be for more than 100 shares.

Continued

third market makers quote competitively, some do so selectively, choosing not to display quotes for securities that are subject only to voluntary quote provisions. In fact, several active third market makers maintain continuous, two-sided quotations but do not disseminate them to the investing public because they are not obligated to do so. This has left a significant gap in the quotation information which is available to all investors, contrary to an essential goal of the NMS.

While the Commission believes that the 1% threshold for mandatory quotes continues to be appropriate, the Commission believes the disparate treatment of Rule 19c–3 and non-Rule 19c–3 securities now should be revisited.[33] Since the Quote Rule initially was promulgated, and thereafter amended, trading under the regulatory scheme has evolved and market participants and the Commission have gained substantial experience under Rule 19c–3 and the Quote Rule. For example, as more securities have become subject to Rule 19c–3, trading volume in the third market has grown.[34] Thus, off-board trading in Rule 19c–3 securities now accounts for a greater number of stocks and a more substantial percentage of U.S. trading volume than it did when the Commission initially established the disparate treatment for quotations in Rule 19c–3 and non-Rule 19c–3 securities under the Quote Rule.

In view of the growth of third market trading volume, much of which is executed by automated systems at prices derived from the principal markets, the Commission questions whether this trading should continue to be conducted on the basis of voluntary quotations, or whether it should be subject to standards similar to those for trading Rule 19c–3 securities. Under the Quote Rule presently, executing market makers are subject to disparate quotation requirements for non-Rule 19c–3 and Rule 19c–3 securities. The Commission questions whether there are sufficient distinctions between trading in Rule 19c–3 securities and other listed securities to justify different quotation standards. Requiring OTC market makers and exchanges that account for more than 1% of the volume in a listed security to disseminate quotations for that security would provide greater information about significant market makers in the security, and the prices at which they are willing to trade.

The proposed uniform application of the Quote Rule to all exchange-listed securities, if adopted, raises the issue of the disparate treatment of Rule 19c–3 and non-Rule 19c–3 securities under the ITS Plan. Currently, the ITS Plan provides access to any participant in any Rule 19c–3 security in which the participant disseminates continuous two-sided quotations, but excludes OTC market makers from ITS access for non-Rule 19c–3 securities. The proposed amendments to the Quote Rule would subject OTC market makers and exchanges to the same quotation requirements for all exchange-listed securities. Accordingly, the Commission believes it is appropriate to reconsider the issue of ITS access by third market makers. The Commission requests comment on whether the amendments should be accompanied by an expansion of the linkage between ITS and the NASD's CAES to provide ITS access to and from any market maker for any exchange-listed security in which that market maker disseminates continuous two-sided quotations.

Requiring active third market makers to quote also raises the issue of whether revisions to a current NASD rule that restricts certain computer generated quotations are necessary.[35] Regional exchange specialists currently may use automated mechanisms to track the NBBO in a security if they maintain a quotation size of no more than 100 shares. OTC market makers, however, are prohibited, by NASD requirements, from using similar automated quotation tracking systems. The NASD requirements are designed to prevent the multiplication of non-competitive quotes, with their attendant burden on system capacity. In the absence of an amendment to the NASD rule, market makers in effect often would be required to maintain firm, continuous two-sided markets without using computers to generate those quotes. The Commission requests comment on whether computer generated quotations should be permitted if active third market makers are required to quote in non-Rule 19c–3 securities, and if so, under what conditions.

The Commission also notes that the proposed amendments to the Quote Rule would extend the coverage of the rule to all Nasdaq securities (including SmallCap securities) where previously the rule applied only to Nasdaq/National Market securities. The Commission preliminarily believes that this element of the proposal should not impose new costs on market participants because the NASD rules concerning quotations already treat Nasdaq/National Market and SmallCap securities similarly. The Commission believes that this aspect of the proposed Quote Rule amendment, therefore, simply extends Exchange Act rule coverage to the same range of securities as existing NASD rules.

c. Dissemination of Quotes Through Electronic Communications Networks

Since the Quote Rule's adoption in 1978, electronic communications networks have been developed that allow participants to enter priced orders which are widely disseminated to third parties and which permit such orders to be executed in whole or in part. Participants may include investors (retail and institutional), broker-dealers, and market makers. The sponsors of these systems may be regulated as broker-dealers even though the manner of operation of the systems may differ from the activities of traditional broker-dealers.[36]

The Commission traditionally has been concerned with the creation of so-called ''hidden markets'' whereby an OTC market maker or specialist publishes quotations in some market centers at prices superior to the quotation information disseminated broadly by such OTC market maker or specialist.[37] Due to an increasing number of electronic communications networks being developed by market participants and market centers, quotation information is becoming splintered, with OTC market makers and specialists publishing different

ITS Plan, 8(d)(ii). Thus, it is not unusual for exchanges to disseminate quotations, presumably generated by computers, that are bid at ⅛ below the best national bid and offered at ⅛ above the best national offer, for 100 shares on each side.

[33] Firms that trade non-Rule 19c–3 securities off an exchange are not subject to the same requirements as third market makers that meet the 1% threshold for Rule 19c–3 securities. For example, a third market maker required to quote in a Rule 19c–3 security must register as a CQS market maker with the NASD. *NASD Manual,* Schedule D to the By-Laws, Part VI, § 1, (CCH) ¶ 1828. CQS market makers are subject to the NASD's CQS market maker rules, which include firm and continuous two-sided quote obligations and mandatory participation in Nasdaq's Computer Assisted Execution System (''CAES''), and in the ITS. *NASD Manual,* Schedule D to the By-Laws, Part IV, § 1, 2, (CCH) ¶ 1828, 9.

[34] *See Fragmentation vs. Consolidation of Securities Trading: Evidence from the Operation of Rule 19c–3,* Office of Economic Analysis, SEC, pp. 4–5 (Mar. 29, 1995).

[35] NASD Manual, Schedules to the By-Laws, Schedule D, Part IV, Sec. 2, (CCH) ¶ 1829. The NASD, however, provides an automated quotation update capability (auto-refresh) which market makers may elect to use. Specifically, the quote of a market maker using auto-refresh will be automatically updated when the market maker exhausts its exposure limit in the NASD's Small Order Execution System.

[36] *See* Market 2000, *supra* note 4, at III–12. *See also* 17 CFR 240.17a–23 regarding regulation of Broker Dealer Trading Systems.

[37] *See* Securities Exchange Act Release No. 17583, *supra* note 30.

proposed trading prices in different quotation systems, some with limited access. As a result, smaller retail customers do not always obtain the benefit of the best available price.

While these systems may have increased intermarket competition, the Commission believes that consolidated quotations and their dissemination to the public continue to be important elements of the NMS. Moreover, while competition is an important goal of the NMS, competition based on fragmented quotations may reduce efficient pricing of publicly disseminated bids and offers, thereby impeding the NMS goal of consolidated quotations. More importantly, the availability of accurate quotation information enables investors to police the efforts of their brokerage firms to obtain the best price possible for their orders.

Over 20 years ago, the Commission noted that an essential purpose for the establishment of an NMS ''is to make information on prices, volume, and quotes for securities in *all* markets available to *all* investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell, or not sell for less than the highest price a buyer is prepared to offer.'' [38] In adopting the 1975 Amendments, Congress embraced the Commission's position by specifying in Section 11A(a)(1)(C)(iii) of the Exchange Act that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure ''the availability to brokers, dealers and investors, of information with respect to quotations for and transactions in securities.'' [39]

The proposed amendments to the Quote Rule are intended to improve the quality and expand the scope of published quotation information from OTC market makers and specialists by requiring them to reflect in their public quotes the bid and offer prices (*e.g.,* priced orders) they disseminate through electronic communications networks that provide the ability to execute against these priced orders. The amendments are designed specifically to address what the Commission believes to be the potential for market makers to quote one price to public investors but to publish firm quotes in private systems at better prices.

2. Proposed Amendments

a. Definition of Subject Security

Coverage of the Quote Rule would be expanded pursuant to proposed subparagraph (a)(6), which defines a ''covered security.'' As proposed, a covered security would mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act.[40] This expansion of coverage would bring Nasdaq SmallCap securities within the scope of the Quote Rule.[41] Thus, market makers in those securities would be obligated under the Rule, as well as NASD rules, to provide quotes and to honor those quotes in trading with the public.[42]

b. Market Makers That Trade More Than 1% of a Security in a Quarter

The proposed amendments to the Quote Rule would expand the definition of a subject security to include non-Rule 19c–3 securities as well as Rule 19c–3 securities. As a result, firms that hold themselves out as willing to buy and sell non-Rule 19c–3 securities on a regular or continuous basis, even if they have not elected to register as market makers with the NASD, would be subject to the rule, contingent upon meeting the 1% threshold. Exchanges that trade more than 1% of either a Rule 19c–3 or a non-Rule 19c–3 security would also be required to make continuous two-sided quotes available to the public.

The practical implication of this amendment is that the most active market makers in non-Rule 19c–3 securities, who currently have no obligations to report quotations, would be required to register as CQS market makers and disseminate continuous two-sided quotations publicly.

The Commission also is proposing an amendment to the definition of ''OTC market maker'' to include a market maker that holds itself out as willing to buy from and sell to its customers, if it does so on a regular or continuous basis. This would apply even if the market maker does not hold itself out as willing to buy and sell to the market in general. Dealers that internalize customer order flow in particular stocks, and dealers that hold themselves out to particular firms as willing to execute their customer order flow, and who execute these orders on a regular or continuous basis, would be considered market makers under the proposed amendment. As in the past, broker-dealers would not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request. Moreover, the proposed definition does not encompass block positioning.

c. Use of Electronic Communications Networks

The Commission is proposing to include prospectively within the definition of ''bid'' or ''offer'' under the Quote Rule priced orders that market makers enter into widely disseminated electronic communications networks, thereby requiring market makers to include such orders in the bids and offers they communicate to their exchange or association for reflection in their published quotations.[43] New paragraph (c)(5)(i)(A) would deem, prospectively, dissemination of a priced order by an exchange market maker, defined to include specialists, and an

[38] Securities and Exchange Commission, *Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets* (Feb. 2, 1972) (''Future Structure Statement'') at 9–10, 37 FR 5286, 5287 (Feb. 4, 1972) (emphasis added). *See also* SEC, *Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System* (1973) at 25–28.

[39] 15 U.S.C. § 78k–1(a)(i)(c)(iii).

[40] 15 U.S.C. § 78c(a)(51)(A)(ii).

[41] Section 11A(c)(1) grants the Commission the authority to prescribe, among other matters, rules and regulations to assure accurate and reliable quotations ''with respect to any security other than an exempted security.'' The Commission believes that extending the requirements of the Quote Rule to Nasdaq SmallCap securities will further these interests.

[42] In addition to the changes discussed in greater detail herein, the Commission is proposing to make technical, non-substantive changes to the Quote Rule. The terms ''association,'' ''revised bid or offer,'' and ''revised quotation size'' will be separately defined in the rule. The definition of ''exchange-traded security'' has been revised to exclude OTC securities traded on an exchange pursuant to unlisted trading privileges. The definition of ''plan processor'' has been amended to reflect the appropriate cross-reference. The definition of ''principal market'' has been removed from the Quote Rule because it is no longer applicable. In addition, the definitions have been rearranged in alphabetical order.

Paragraph (b)(1)(i) of the rule has been reorganized to separately set forth the exclusions in subparagraphs (A) and (B). Paragraph (b)(1)(iii) has been eliminated and the substance of the provision has been incorporated into paragraphs (b)(1)(i) and (b)(1)(ii).

The Commission is also proposing to amend the definition of the term ''reported security'' as it appears in Rule 11Aa3–1(a)(4). The amendment alters the form but not the meaning of the term or its application. The amendment will make the term consistent with the definition of ''reported security'' in the Quote Rule.

[43] Paragraph (a)(3) of the amended Quote Rule defines the terms ''best bid'' and ''best offer'' to mean the highest priced bid and lowest priced offer.

Conforming amendments to the definition of ''bid'' and ''offer'' and paragraph (c)(1) are proposed to, in effect, require brokers and dealers to report their ''best bids'' and ''best offers'' rather than their ''most recently'' communicated bids and offers. This represents a change from the existing rule's reliance on a temporal standard to a price standard.

OTC market maker in an electronic communications network to be a publication of a bid or offer.[44] The rule would not require the OTC market maker or specialist to publish in its publicly disseminated quote the full size of the priced order included in the electronic communications network. Rather, the OTC market maker or specialist would be required to disseminate publicly the price of the order and the minimum size set by the exchange or association.

The term ''electronic communications network'' would include continuous auction systems, but is not intended to include crossing systems or broker-dealer internal order routing systems. The term ''priced order'' within the rule refers to orders at a specified price, not indications of interest. Thus, the Commission intends the scope of this proposal to include disseminated commitments to buy or sell a security at a particular price for a particular number of shares (which may be effected in whole or in part). The Commission does not intend the scope of the amendments to include disseminated interest to buy or sell a security where price or the number of shares is not included as part of the dissemination. Furthermore, the rule does not apply to odd-lot orders. Unlike the other proposals, these proposed amendments do not include exceptions for block orders or orders for which an OTC market maker's or specialist's customer has expressly requested that the order not be displayed. However, the Commission requests comment on whether the rule should exclude orders where an OTC market maker or specialist is acting as agent if its customer requests that the order not be displayed.

The Commission recognizes that the exchanges and the NASD impose minimum price variations for securities traded or quoted by their members. For example, currently most exchange-listed securities are quoted and traded with a minimum price variation of 1/8 point or, in some instances, 1/16 point. Nasdaq securities may be traded and reported in variations as low as 1/256, and may be quoted in minimum variations of 1/16. Some existing electronic communications networks allow for trading variations as low as 1/256, and some systems also provide for decimal variations as low as a penny. The fact that systems allow for different minimum variations in the quote may cause conflicts for OTC market makers and specialists attempting to comply with the proposed amendments to the Quote Rule. For example, a market maker may submit an order in an electronic communications network at a price of 20 5/16, but only have the facility to post a quote in the primary market in minimum variations of 1/8. The Commission does not intend to create incentives for OTC market makers or specialists to increase the size of the fractions they would quote in electronic communications networks or in any other market. As such, the proposed amendment to the quote rule, if adopted, may necessitate simultaneous changes to the minimum price variations across markets.

The proposed amendments would ensure that OTC market makers and specialists in a stock reflect in their quotes superior priced quotation information including buy and sell orders in that stock that they have entered into electronic communications networks, as described. As a result, an OTC market maker or specialist that was making a continuous market in a stock, but was not previously publishing quotes in that stock, would obligate itself by making quotes available to electronic communications networks to publish two-sided quotes in that stock. While this obligation to publish quotations resulting from entry of a priced order in an electronic communications network would end once the order is removed from the network, as a practical matter, immediate withdrawal of public quotations could result in the OTC market maker or specialist being unable to re-enter quotations for that security for a subsequent period.

3. Request for Comments

The Commission requests comment on issues raised by the proposed amendments to the Quote Rule. Concerning the proposed addition of quotations in non-Rule 19c–3 securities in the existing mandatory and voluntary Quote Rule requirements, commenters are encouraged specifically to address the following questions:

(1) The primary effect of this amendment is that the most active market makers in non-Rule 19c–3 securities (generally, those trading more that 1% of the consolidated volume in the securities), who currently are not required to disseminate quotes in the securities, would be required to register as ''CQS market makers,'' pursuant to NASD rules. The Quote Rule and NASD rules currently require CQS market makers, among other matters, to maintain firm, continuous two-sided markets in the securities they trade. The Commission seeks comment on whether the proposed amendment would result in more accurate and useful quotations. The Commission also seeks comment on whether market makers required to register as CQS market makers, and thereby maintain two-sided quotes, should be granted greater ITS access.

(2) In view of the various ITS and NASD restrictions on computer generated quotations, the Commission seeks comment on the costs and benefits to market participants and the markets in general that would be associated with the proposed amendments. The Commission also invites comment on whether amendments to SRO rules are necessary to achieve the Commission's objectives.

Concerning the proposed amendment for inclusion of best bids and offers that are disseminated through electronic communications networks, the Commission specifically seeks comment on the following issues:

(1) The proposed amendments are designed to deter fragmented markets and to promote improved quotations. The Commission seeks comment on whether the proposed amendments achieve this goal, and invites suggestions for alternatives to the rule that would better achieve this goal. The Commission also requests comment generally as to whether there are business justifications or economic rationale for permitting market makers to publish bid and offer prices for execution in electronic communications networks which differ from their quotations in public markets. The Commission requests comment on whether market participants utilize electronic communications networks to quote in finer increments because such finer increments are not possible on an exchange or Nasdaq.

(2) The Commission notes that the proposed rule will have the effect of prohibiting market makers that do not currently publish quotes in a covered security from placing an order, bid or offer into an electronic communications network, unless they elect to publish quotations for such orders in that security. The Commission seeks comment on whether this result is appropriate.

(3) The Commission seeks comment on the types of electronic communications networks that would be subject to the rule. The Commission solicits comment on whether the definition of the term ''electronic

[44] Pursuant to proposed subparagraph (c)(4)(i), no exchange or OTC market maker would be able to make available, disseminate or otherwise communicate to any quotation vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any covered security which is not a subject security with respect to such exchange or OTC market maker.

communications network'' unintentionally captures crossing systems or broker-dealer internal order routing systems or any other systems inconsistent with the Commission's objectives. The Commission also seeks comment on whether the proposal should apply to crossing systems or broker-dealer internal systems in some manner. Finally, the Commission seeks comment on the competitive effects of the proposal on existing electronic communications networks, their subscribers and users, and whether there are alternatives to the proposal that would minimize any negative competitive effects while achieving the Commission's goals. For example, should the Commission require these systems to furnish these prices to the applicable exchange or association for further dissemination, and provide some access, such as a linkage, to the prices in their electronic network?

(4) As indicated in the discussion, differences in the minimum trading variation across markets and electronic communication networks raise concerns about how the proposed amendment to the Quote Rule would apply across all systems. The Commission seeks comment on the steps necessary to ensure that differential minimum variation requirements do not frustrate the purposes of the rule. What modifications to SRO member firm facilities are required?

Would an acceptable alternative be to require an OTC market maker or specialist that enters a priced order at a smaller price variation than is used by the exchange or association's quotation system, to display a quotation at a price that is rounded to the next quotation increment used in that market? While this approach would not provide full public disclosure of the better price available in the electronic communications network, it also would not require changes to existing quotation systems.

(5) As discussed above, the proposed amendments would not apply to any firm that occasionally executes customer orders as principal, but does not generally hold itself out as willing to buy and sell the security. The Commission seeks comment on whether the proposed amendments should be modified to include these firms in the definition of OTC market maker. In addition, the Commission requests suggestions for alternative language to achieve the Commission's stated goals.

(6) The Commission requests comments on whether there should be exceptions under the rule, and if so, under what circumstances. Specifically, the Commission seeks views on whether the rule should exclude orders where a market maker is acting as agent if its customer expressly requests that the order not be displayed. In particular, should an exception be provided for customer limit orders entered into an electronic communications network if the customer has requested, pursuant to the exception from the limit order display rule, that its limit order not be displayed?

(7) The proposed rule would only require OTC market makers and specialists to display the minimum quotation size established by an exchange or association for an order displayed in an electronic communications network. Should the OTC market maker or specialist be required to display publicly the full size of the order? Alternatively, should the rule require the public display of the full size unless the customer requests otherwise?

4. Consideration of the Proposed Rule's Costs and Benefits

The proposed amendments would require some market participants to modify their current quotation dissemination systems. Although the Commission believes that these amendments would not impose significant implementation costs, it seeks comment on the order of magnitude of the costs. The Commission believes that the proposed amendments would provide several benefits to the markets and to investors in those markets, including improved price discovery, liquidity and competition between market makers. In addition, the proposed amendments would improve execution prices of customer market orders that are priced off the consolidated best bids and offers. These benefits are distributed across a wide constituency, so the Commission seeks guidance on how best to evaluate the benefits associated with the proposed amendments.

The Commission seeks detailed comment on the following specific questions regarding the costs and benefits of amendments to the Quote Rule:

(1) What system changes and costs under the proposed amendments to the Quote Rule would be necessary?

(2) If the amendments were adopted, what would be the likely impact on OTC market makers, specialists, and electronic communications networks?

(3) Currently, some market makers receive the benefits associated with OTC market maker or specialist designation (*e.g.,* favorable margin treatment, short-sale trading exemptions, and enhanced market access) without being required to disseminate continuous two-sided quotes. How should the Commission quantify the benefits derived from OTC market maker or specialist status? How should the Commission quantify the costs associated with disseminating continuous two-sided quotes? In particular, how should the Commission quantify the costs associated with disseminating such quotes manually, rather than through computer generated mechanisms?

(4) How should the Commission assess the potential benefits associated with public access to the best prices in the market and how should those benefits be quantified?

(5) How would the proposed amendments contribute to transparency in the market and how should the improvements in transparency be quantified?

(6) To the extent that OTC market makers and specialists maintain superior bids (offers) in electronic communications networks, those bids (offers) would be reflected in the consolidated quotes that are available to the public. How should the Commission quantify the savings to customers associated with the concomitant narrowing of publicly disseminated spreads?

B. Display of Customer Limit Orders

1. Background

The failure to display limit orders that are priced better than current quotes raises at least three regulatory concerns. First, the failure to display limit orders can produce an artificial widening of spreads, raising the concern that investors may not have access to optimum prices. Second, there are concerns about fair competition. If the quotes from a market or market maker do not fully represent the buying and selling interest in a given security, quote competition is less keen, and the price discovery process may be impaired. Third, because many markets and market makers offer automatic executions of small orders at the best displayed quotes, a failure to display limit orders that improve the best displayed quotes can result in inferior executions for these orders.

In connection with Market 2000,[45] the Commission received comments

[45] Market 2000 recommended that the securities exchanges consider whether to encourage the display of all limit orders (*i.e.,* orders to buy or sell at a specified price) in listed stocks priced better than the best intermarket quotes, unless the ultimate customer requests that the order not be displayed. Market 2000 also recommended that the NASD consider whether to encourage the display of limit orders in Nasdaq stocks when the orders are

Continued

concerning whether the optimal degree of pre-trade disclosure of limit orders was being achieved within a given market. Some commentators alleged that specialists and third market dealers sometimes fail to display limit orders priced better than the displayed quotation.[46] Questions were also raised about the lack of limit order exposure on Nasdaq. Although the OTC market recently has made improvements in the manner in which customer limit orders are handled, there is no requirement that limit orders be displayed.[47]

Section 11A(a)(1)(C)(v) of the Exchange Act expresses Congress' goal that, consistent with the other objectives of the NMS, investor orders, including limit orders, should be permitted to interact without the participation of a dealer.[48] Congress envisioned that the NMS would make all specialists and market makers aware of public customer limit orders held anywhere in the system, and provide enhanced protection and priority for those orders.[49]

The Commission does not believe that the differences between dealer and auction markets compel different results in the degree of investor protection afforded in competing markets. Accordingly, the Commission believes it is appropriate at this time, and consistent with investor expectations, to propose the uniform disclosure of customer limit orders across all markets. The increased transparency of customer limit orders in all markets could produce, among other benefits, spreads that more fully represent buying and selling interest in the market and enhance an investor's ability to monitor execution quality. This, in turn, should increase competition among dealers based on their respective quotations.

The Commission also believes that the proposed rule will benefit orders routed to automated execution systems. Execution on these systems is often tied to the best displayed quotation for a particular security. The display requirement should result in executions at prices that more accurately reflect buying and selling interest in the market, thus resulting in better executions for orders priced through automated execution systems.

2. Discussion

Limit orders currently are handled differently in the various auction and dealer markets. Generally, exchange rules require that a limit order be displayed in the quotation for a security when it improves the best bid or offer. NYSE specialists, for example, must reflect a customer limit order in their quotations at the limit price when requested to do so.[50] In addition, the NYSE's order handling procedures assume that all limit orders routed to a specialist through SuperDot implicitly contain a display request.[51] Therefore, except in the unusual and infrequent circumstance where a specialist believes market conditions suggest the likelihood of imminent price improvement, a limit order received by a specialist through SuperDot should be reflected in the specialist's quote as soon as practicable following receipt of the order.[52] According to the NYSE, 93% of all limit orders that improve the best bid or offer displayed are reflected in the specialist's quote within two minutes of receipt, while 98% of such limit orders are reflected within five minutes of receipt.[53]

The Commission recently approved a proposed rule change by the NYSE that clarifies the exchange's policy with respect to the display of limit orders received by a specialist.[54] This policy requires specialists to display the full size of all orders received through SuperDot as well as orders received by specialists manually which are subsequently entered into the electronic book. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer; when a member requests that less than the full size of the order be shown, the specialist is obligated to show the size requested. Specialists must display as soon as practicable any order which, in relation to current market conditions in a particular security, represents a material change in the supply or demand for that security. If the quotation already reflects significant supply or demand, and the specialist receives an order that is *de minimis* in relation to such supply or demand, the specialist may take a reasonable time (generally not more than two minutes) before updating the size of the quotation.[55]

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at prices better than the best Nasdaq quotes, unless the customer requests that the order not be displayed. *See* Market 2000, *supra* note 4 at IV–6.

[46] *See* Thomas H. McInish & Robert A. Wood, ''Hidden Limit Orders on the NYSE'', 21 *J. Portfolio Mgmt* 19 (No. 3, Spring 1995). The authors assert that New York Stock Exchange (''NYSE'') specialists only display about 50% of limit orders that better existing quotes. In their opinion, this practice represents a serious policy issue because it places both public investors and regional exchanges at a disadvantage. They assert that hiding limit orders impedes strategic decisions on order placement; results in publicly submitted market orders receiving inferior prices; hampers the monitoring of order executions; reduces the probability of a limit order being executed; results in a delay in reporting limit order executions; interferes with the ability of the regional exchanges to execute public orders; and artificially improves NYSE performance relative to the regional exchanges using a common benchmark. The authors also claim that NYSE Rule 60 is ambiguous in that the specialists may have some leeway in choosing what to disclose in their quotes. The NYSE, in Information Memo 93–12, *infra* note 51–52 and accompanying text, reminded members of the duty to represent limit orders at their limit prices when requested to do so. Some traders, however, have continued to accuse NYSE specialists of hiding limit orders. *See Traders Accuse Specialists of Holding Back Limit Orders,* Investment Dealers' Digest, 8, (Feb. 14, 1994).

In its comment letter to Market 2000, however, the NYSE asserted that its publicly disseminated best bid or offer includes all firm trading interest announced on the floor as required by the exchange's rules. *See* Letter from William H. Donaldson, Chairman and Chief Executive Officer, NYSE, to Jonathan G. Katz, Secretary, SEC at 25–26 (Nov. 24, 1992) (''NYSE Letter''). In addition, as discussed later, a recently issued NYSE policy statement indicates that specialists have an obligation to reflect in their quotes certain limit orders received manually or via the Designated Order Turnaround System (''SuperDot''). *See infra* note 54–55 and accompanying text.

[47] *See infra* note 56–60 and accompanying text.

[48] 15 U.S.C. § 78k–1(a)(1)(C)(v) (1988).

[49] Senate Report, *supra* note 15 at 18 (''The Committee is satisfied that [the legislation] grants the Commission complete and effective authority to implement a system for the satisfaction of public limit orders.'').

[50] *See* NYSE Rule 79A.10 (when a limit order is presented to the specialist by a floor broker, the floor broker must affirmatively request that the specialist display the limit order; failure to so request leaves the decision whether to display the limit order to the discretion of the specialist); *see also* NYSE Rule 60 (requiring specialists to promptly report, inter alia, the best bid and offer in the trading crowd in each reported security in which the specialist is registered).

Of course, adoption of the Commission's proposal would supersede any exchange or association rule regarding the display of customer limit orders to the extent such exchange or association rule is inconsistent with the Commission's proposal.

[51] NYSE Information Memo 93–12 (Mar. 30, 1993).

[52] *Id.*

[53] Telephone Conference between Edward A. Kwalwasser, Executive Vice President, NYSE, and Holly Smith, Associate Director, Division of Market Regulation, SEC, January 9, 1995.

Other exchanges also have rules regarding dissemination of bids and offers. Generally, these rules either cite, in whole or in part, language from the Quote Rule, or are drafted in such a manner as to allow for broad interpretation with respect to the display of limit orders. *See, e.g.*, Boston Stock Exchange Guide, Rules of the Board of Governors, Chapter II, Sec. 7, (CCH) ¶ 2020; Pacific Stock Exchange Guide, Rules of the Board of Governors, Rule 5.6(f), (CCH) ¶ 3979; American Stock Exchange Guide, General and Floor Rules, Rule 115, (CCH) ¶ 9265; Chicago Stock Exchange Guide, Article XX, Rule 7, (CCH) ¶ 1688; Philadelphia Stock Exchange Guide, Rules 105 and 229 (CCH) ¶ 2105 and 2229.

[54] *See* Securities Exchange Act Release No. 35687 (May 8, 1995), 60 FR 25751 (May 12, 1995) (notice of the proposal), and Securities Exchange Act Release No. 36231 (Sept. 14, 1995), 60 FR 48736 (Sept. 20, 1995) (approval order).

[55] The NYSE provides the following example of when a specialist may take a reasonable time to update the size of the quotation: If the market in XYZ security is 20 (5000) – 20¼ (50,000), and the specialist receives an order to sell 200 shares at 20¼, such order would be considered *de minimis* and the specialist would be permitted to wait a reasonable period of time (but not more than two

The OTC market operates as a dealer market, in which the quote for any security represents a dealer's own bid and offer. The rules of the NASD currently do not require market makers to display customer limit orders that better the best bid or offer for the security.[56] Generally, customer limit orders in OTC securities either will be routed to a broker-dealer's market making desk or to a non-affiliated market maker for execution if the firm does not make a market in the security.[57] In the past, market makers typically did not execute limit orders until the best bid or offer displayed on Nasdaq equaled the limit price. This practice has changed, however, over the course of the past year. In June 1994, the Commission approved a proposed rule change filed by the NASD that prohibits broker-dealers from trading ahead of their customers' limit orders.[58] The Commission further expanded this prohibition in May 1995, when it approved another NASD proposed rule change that prohibits broker-dealers from trading ahead of customer limit orders they accept from other brokers.[59] The Commission also has published for comment a proposed rule change filed by the NASD that would require, in certain circumstances, the display of customer limit orders for exchange-listed securities traded OTC.[60]

The exchanges and the NASD use automated trading systems to route and, in some instances, execute orders of predetermined size. Some of these systems accept limit orders. Each system, however, may differ in its handling of limit orders that are not executed immediately upon receipt. For example, the NYSE's SuperDot system routes limit orders to the specialists' posts where they are handled in accordance with NYSE rules governing specialist representation of such orders. The American Stock Exchange's (''Amex'') PER system routes limit orders in the same manner as SuperDot and the orders are handled in accordance with Amex rules. The NASD's Small Order Execution System (''SOES'') treats limit orders priced at the current inside market as market orders that are immediately executed.[61] All other limit orders reside in a limit order file that can be reviewed by market makers.[62] The NASD has filed for Commission approval a proposed system, ''NAqcess,'' that would replace SOES and include a limit order file designed to improve the handling of customer limit orders.[63]

The Commission is proposing new Rule 11Ac1–4 to require the uniform display of customer limit orders that improve a specialist's or OTC market maker's best bid or offer for a particular security as well as the size of such orders. In addition, the rule would require the display of the size of certain limit orders priced at the NBBO. The Commission has considered and is building upon the special role played by market makers and specialists in discovering prices and providing liquidity to the securities markets. While the proposed rule generally mandates display of limit orders, market makers and specialists still would retain some flexibility in handling limit orders accepted for execution.

Specifically, the rule would allow an OTC market maker or specialist, immediately upon receipt of the limit order, to: (1) Change its quote and the size associated with its quote to reflect the limit order; (2) execute the limit order; (3) place the limit order in a limit order book in its own market or another market that complies with the requirements of the rule; or (4) send the limit order to another market maker or specialist who complies with the requirements of the rule. The proposed rule prescribes the duty of a specialist or OTC market maker to display a customer limit order when the order is ''held'' by the specialist or OTC market maker. If the specialist or OTC market maker immediately sends the order to a limit order book or another specialist or OTC market maker that would display the order in compliance with the rule, the specialist or OTC market maker that routes the order would have no duty to display. The Commission believes that these alternatives will provide all market makers, specialists, and market centers an opportunity to continue to provide their valuable services while offering customers the best available execution opportunities.

3. Proposed Rule

Proposed Rule 11Ac1–4 applies to ''customer limit orders'' in ''covered securities.'' A covered security is defined as any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system that is sponsored by a registered securities association. This definition is designed to encompass all exchange-listed securities, Nasdaq National Market securities and Nasdaq SmallCap securities.[64]

A customer limit order includes any order to buy or sell a covered security at a specified price not for the account of a broker or dealer. Limit orders transmitted for execution by a broker or dealer on behalf of a customer are included in the definition.[65] The size of any limit order that improves the NBBO would be displayed in full. The size of a limit order priced at the NBBO would be displayed when it represents more than a de minimis change in relation to the size displayed by the specialist or OTC market maker.

minutes) before changing the size of the offer to 50,200. The Commission requests comment on whether, in the context of its rule proposal, a discretionary *de minimis* threshold is appropriate; whether an alternative standard (*e. g.*, 5% of the outstanding size) is appropriate; or whether there should be no exception for *de minimis* size orders. *See* Part 4, Request for Comments (No. 3).

[56] *See NASD Manual*, Schedule D to the By-Laws, Part V, Section 2 (CCH) ¶ 1819.

[57] *Market 2000, supra* note 4 at V–5.

[58] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[59] *See* Securities Exchange Act Release No. 35751 (May 22, 1995), 60 FR 27997 (May 26, 1995).

[60] See Securities Exchange Act Release No. 35471 (Mar. 10, 1995), 60 FR 14310 (Mar. 16, 1995). The proposed rule, applicable to exchange listed securities traded OTC, generally would require a market maker either to execute immediately a limit order of 500 shares or less priced better than the market maker's quotation, or display the order in its quotation with a minimum quotation size of 500 shares. Limit orders greater than 500 shares would be required to be displayed in the market maker's quotation but the quotation size need not equal the size of the limit order. Any portion of the order not displayed, however, would have to be executed at a price at least as favorable as the displayed price.

[61] Preferenced orders (*i.e.*, orders routed to a specific market maker pursuant to a pre-existing agreement) are executed immediately at the inside quote. Unpreferenced orders are executed against market makers in a security in rotation. SOES, however, does not execute an unpreferenced order against a single market maker more than once every 15 seconds.

[62] The current SOES rules have been extended, with certain changes that do not affect the handling of limit orders, through October 2, 1995. *See* Securities Exchange Act Release No. 35535 (Mar. 27, 1995), 60 FR 16690 (Mar. 31, 1995). The NASD has requested that the Commission grant a further extension through January 31, 1996. Securities Exchange Act Release No. 36154 (Aug. 25, 1995), 60 FR 45502 (Aug. 31, 1995).

[63] *See* File No. SR-NASD–95–42, submitted on September 22, 1995.

[64] Regionally listed securities that do not substantially meet NYSE or Amex original listing criteria do not satisfy the definition of ''covered security.'' Such securities are not ''reported securities'' as that term is defined, nor do they meet the other elements of the definition of covered security. OTC Bulletin Board (''OTCBB'') securities also do not satisfy the definition of covered security. The Commission has determined not to extend the display requirement to such securities at the present time. The Commission requests comment, however, on the appropriate scope of the rule. *See* Part 4, Request for Comments (No.5).

[65] SRO rules typically provide some time and price priority for orders submitted by non-broker-dealer customers, in recognition of the time and price advantages associated with professional orders. *But see* Securities Exchange Act Release No. 35751, *supra* note 59, in which the Commission discussed the appropriateness of excluding options market makers from the customer class protected by the NASD prohibition against ''trading ahead.''

The proposed rule would apply to: (i) Every member of an exchange that is registered by that exchange as a specialist or has been authorized by an exchange to perform functions substantially similar to that of a specialist (collectively ''specialist''); [66] (ii) third market makers; [67] (iii) members of an association that are OTC market makers; [68] and (iv) exchange members that trade an OTC security pursuant to UTP.[69] These persons would be required to reflect immediately in their bid or offer the price and size of each customer limit order they hold at a price that would improve their bid or offer in the security.[70] For example, in the case where a person covered by the rule is quoting 10–10½ when it receives a customer limit order in a covered security to buy at 10¼, it must change its bid to 10¼ immediately to reflect the limit order. The size of the order also must be included in the quote. Where the order betters the NBBO, the person would be required to change the price and size of its quote regardless of the size of the limit order, except in the case of an odd-lot or block size order. Nasdaq market makers, however, are subject to minimum quotation size requirements which depend on the characteristics of the security. The proposed rule would require that the size of the customer limit order be displayed. The Commission recognizes, therefore, that the NASD may need to amend its quote size rules to allow display of small customer limit orders.[71]

All persons covered by the rule also would be obligated to reflect in their quotes the size of a customer limit order that: (1) Is priced equal to their bid or offer; (2) is priced equal to the national best bid or offer for the security; and (3) represents more than a *de minimis* change in relation to the size associated with their bid or offer.[72] For example, assume a regional specialist's quote is 10 (1000)–10½ (1000), when the specialist receives a customer limit order to buy 2000 shares at 10. Assume further that the NBBO is 10–10¼. Under the rule, the specialist would be obligated to change immediately its bid to 10 (3000).

As noted above, the rule would require the ''immediate'' display of certain customer limit orders. To satisfy this requirement, a specialist or OTC market maker must display the limit order immediately upon receipt unless there exists an applicable exception to the display requirement.

There are six exceptions to the general requirements of the proposed rule. The first exception applies to any customer limit order that is executed upon receipt of the order.[73] If the order is executed upon receipt, then no duty arises under the proposed rule.

The second exception applies to any limit order that is placed by a customer who expressly requests that the order not be displayed.[74] This exception is included because there may be instances where a customer may prefer to exclude its order from public display. This exception will permit customers to negotiate individually execution parameters for the handling of their orders with their broker-dealers either on an order-by-order basis or prospectively. Standardized disclaimers or contractual language by a firm would not be deemed to be a request by a customer that its order not be displayed. For example, a customer with a large limit order may wish to let its broker work the order rather than display the entire order. This exception gives the customer the right to decide if the order should be displayed in total, in part, or not at all. The rule would require a customer to expressly request that an order *not* be displayed. A customer request that an order be placed in a particular non-public trading system would not, by itself, be deemed to come within the exception. The Commission expects that most retail customers will want their limit orders displayed pursuant to the rule. Thus, the Commission has crafted the rule to require specialists and OTC market makers to assume that retail customers wish to have their orders displayed.

The third exception applies to odd-lot orders.[75] The rule does not require the display of an order for less than a unit of trading pursuant to the rules of the exchange or association. In the event that a round-lot limit order represented in the quote is partially filled and, as a result, would then be deemed an odd-lot order, the exchange or association may treat the remainder of the order as an odd-lot for purposes of this rule.

The fourth exception applies to block size orders.[76] Orders of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000 need not be displayed in accordance with the rule.[77] Customers placing block orders, however, may request that the order be displayed in accordance with the requirements of the rule. The specialist or OTC market maker would be obligated to honor such a request.

The fifth exception applies to a limit order that is delivered immediately to an exchange or association sponsored system that displays limit orders and complies with the requirements of the rule with respect to that order.[78] This exception, however, does not relieve a specialist or OTC market maker from its display obligation for orders it receives through exchange or association facilities, unless the system itself displays the order.

The sixth exception applies to a limit order that is delivered to another exchange member or OTC market maker that complies with the display requirements of the rule with respect to that order.[79] For example, a market maker that receives a limit order subject to the display requirement under the rule may immediately send the order to another market maker in the security if it reasonably believes that the other market maker will display the order in accordance with this rule.

4. Request for Comments

The Commission requests comment on issues raised by this proposal, including the following matters:

(1) The proposed rule is designed to increase transparency of customer limit orders. The Commission seeks comment on whether the rule promotes transparency consistent with customers' agency expectations.

(2) As discussed earlier, some commenters believe that specialists sometimes fail to display limit orders entered at prices better than the displayed quotation. The present rule proposal is designed, in part, to address this concern. Accordingly, the Commission seeks comment on the extent to which specialists currently fail to reflect immediately in their quotes limit orders that improve the best bid or offer; whether the rule addresses legitimate concerns that limit orders are not presently displayed in a consistent manner in all auction markets; and whether there may be situations where,

[66] Proposed § 240.11Ac1–4(b)(1)(i).

[67] Proposed § 240.11Ac1–4(b)(1)(ii).

[68] Proposed § 240.11Ac1–4(b)(2)(i). If an OTC market maker is not quoting publicly, it still must publish a quotation that identifies the limit order, or avail itself of one of the exceptions.

[69] Proposed § 240.11Ac1–4(b)(2)(ii).

[70] *See* Proposed § 240.11Ac1–4(b)(1)(i)(A), (b)(1)(ii)(A), (b)(2)(i)(A) and (b)(2)(ii)(A). The Commission notes that the rule does not provide for any discretion in the timing of the display of the limit order.

[71] *See also* Section II.C.2. (regarding proposed price improvement rule).

[72] *See* Proposed § 240.11Ac1–4(b)(1)(i)(B), (b)(1)(ii)(B), (b)(2)(i)(B) and (b)(2)(ii)(B).

[73] Proposed § 240.11Ac1–4(c)(1).

[74] Proposed § 240.11Ac1–4(c)(2).

[75] Proposed § 240.11Ac1–4(c)(3).

[76] Proposed § 240.11Ac1–4(c)(4).

[77] This block definition is consistent with the current definition used in NYSE Rule 127.10.

[78] Proposed § 240.11Ac1–4(c)(5).

[79] Proposed § 240.11Ac1–4(c)(6).

in the interest of best execution, a specialist should have the discretion not to announce some or all of a customer's order on the floor.[80]

(3) In certain circumstances, the rule would require that the size of a customer limit order be reflected where the limit order is priced equal to the NBBO and represents more than a *de minimis* change in relation to the size displayed by the specialist or OTC market maker. The Commission seeks comment on whether it is appropriate to base the display requirement on a *de minimis* threshold; whether this threshold should be quantified (*e.g.*, 5% of current quote size); or whether the size of all orders priced equal to the NBBO should be displayed.

(4) The Commission seeks comment on whether the scope of the definition of ''block size'' is appropriate, particularly whether the definition should be changed to apply to orders of greater size or market value (*e.g.*, 25,000 shares as in NYSE Rule 72(b)). Alternatively, the Commission requests comment on whether orders of block size should be subject to the display requirement.

(5) The proposed rule would apply to exchange listed securities, Nasdaq National Market securities and Nasdaq SmallCap securities. The Commission seeks comment on the scope of the rule.

(6) The Commission seeks comment on the rule's interaction with other initiatives, such as the NASD's proposal to create a new small order execution system;[81] the NASD's proposal to impose display requirements on market makers holding limit orders for exchange-listed securities traded over-the-counter;[82] and the NASD's trading ahead prohibitions.[83]

(7) The Commission requests comment on whether the exception to the display requirement for limit orders delivered immediately upon receipt to an exchange- or association-sponsored system that displays those limit orders in accordance with the rule should be extended to electronic communications networks or other proprietary trading systems. If so, the Commission seeks comment on whether the extension of such exception should be predicated on the level of accessibility and transparency afforded by these systems.

(8) The Commission seeks comment on whether it would be appropriate to include within the definition of limit orders those orders, however defined by a particular exchange or association, as to which a specialist, market maker or system sponsor has some discretion over the price at which the order is executed. For example, the Commission is interested in the potential costs and benefits of including CAP orders within the scope of the rule.[84]

(9) The Commission seeks comment on the effect of the rule on passive market making activities pursuant to Rule 10b–6A of the Exchange Act (17 CFR 240.10b–6A).

(10) The Commission seeks comment on whether a market maker should be required to obtain some form of assurance that a customer limit order it sends to another market maker will be displayed in accordance with this rule, before the market maker would be allowed to send the limit order pursuant to paragraph (c)(6) of the rule.

5. Consideration of the Proposed Rule's Costs and Benefits

To evaluate fully the impact of the proposed rule, the Commission requests commenters to provide their views on the costs and benefits associated with the proposed rule, and any data that may support those views.

The proposed limit order display rule would require market makers and specialists to display customer limit orders that either narrow their own spread or increase the size associated with the NBBO. This rule is intended to encourage quote competition between markets and market participants; to enhance customer-to-customer interaction without the intervention of a specialist or OTC market maker; to increase opportunities for the execution of limit orders; and to improve transparency in all markets.

The Commission acknowledges that the display obligations would require some market participants to modify their current order handling and display practices. The Commission notes that market makers may continue to receive or demand compensation for executing customer limit orders, such as by charging a commission for handling the order. The Commission believes that the implementation cost of the proposed rule is minor, but seeks comment on the order of magnitude of such costs.

The Commission envisions that this rule would have significant benefits for the financial markets and investors in those markets. Investors are expected to benefit from enhanced transparency, improved price competition and the interaction of customer orders without the intervention of a market maker or specialist, all of which should lower the cost for investors to trade in the market. The financial markets as a whole should benefit from the proposed rule because the price discovery process will be enhanced, market transparency will be improved and price competition will be promoted. By their very nature, these benefits are broad-based and pervasive. Because incremental amounts on a trade-by-trade basis produce significant cumulative amounts for the market as a whole, the Commission seeks guidance on how to represent accurately the savings associated with the implementation of this rule.

The Commission seeks further comment on the following specific questions:

(1) What would be the necessary system changes and costs associated with implementation of the limit order display rule?

(2) If the rule were adopted, what would be the likely impact on OTC market makers and specialists? Would these effects on the commitment of capital be influenced by the trading characteristics of particular securities, *e.g.*, high volume vs. limited volume?

(3) The Commission recognizes that subsequent to adoption of the rule, market makers may need to charge commissions for the handling and display of public limit orders. What would be the anticipated level of commissions for a limit order and what would be the overall cost to the customer?

(4) How should the Commission assess the potential benefits associated with the narrowing of spreads?

(5) What would be the likely impact of the proposed rule on the depth of the market and how should that impact be quantified?

(6) What would be the likely impact of the rule on the liquidity of the market and how should that impact be quantified?

(7) How would the proposed rule contribute to transparency in the market and how should the improvements in transparency be quantified?

(8) What degree of customer-to-customer interaction could be expected if the rule is adopted and what are the savings to those customers?

[80] *See* NYSE Letter, *supra* note 46 at 26 (specialist allowed to use professional judgment as an agent on how best to serve the customer). *But see* NYSE Information Memo 93–12, *supra* note 51 (except in unusual and infrequent circumstances, a limit order received through SuperDot will be reflected in the specialist's quote).

[81] *See* File No. SR–NASD–95–42, *supra* note 63.

[82] *See* Securities Exchange Act Release No. 35471, *supra* note 60.

[83] *See*, *supra* note 58–59.

[84] Such orders are percentage orders entered with a ''convert and participate'' instruction, and are executed based on the execution of other orders. For a discussion of percentage orders, *see* NYSE Rule 123A.

C. Price Improvement for Customer Market Orders

1. Background

The Commission today seeks comment on a market-wide price improvement rule for customer market orders. The rule would apply across exchange and OTC markets to promote best execution for all securities covered by the rule. The Commission also is proposing a non-exclusive safe harbor as one means by which a specialist or OTC market maker can be assured that an order has received a sufficient opportunity for price improvement for purposes of the rule.

The Commission believes this rule will encourage market participants to take advantage of current technologies and provide customer market orders with improved access to price improvement opportunities, regardless of where such orders are routed for execution. Although the proposed rule speaks to OTC market makers and specialists, if adopted it would have clear implications for the best execution obligations of broker-dealers generally. The Commission does not intend for the proposed rule to displace the existing best execution obligation;[85] rather, the Commission believes that the rule would complement the long-standing duties of broker-dealers to seek to obtain best execution of their customer orders. Moreover, the rule is intended to foster competition among markets and market makers on the basis of price improvement opportunities.

Although the rule proposed today would require OTC market makers and specialists to provide price improvement opportunities for customer orders, the Commission is not prescribing any particular method of achieving price improvement in recognition of the fact that competition can produce innovative price improvement mechanisms. However, to provide certainty regarding one alternative by which a specialist or OTC market maker will be deemed to have provided price improvement opportunities to customer market orders, the Commission is proposing a non-exclusive safe harbor. A specialist or OTC market maker that executes a customer market order in accordance with the conditions of the safe harbor would be deemed to have satisfied its price improvement obligation.

The Commission wishes to stress, however, that the order exposure procedures set out in the proposed safe harbor are not mandatory, nor are they the exclusive means by which to satisfy the obligation to provide an opportunity for price improvement. The Commission believes that methods other than the exposure of customer orders can satisfy the obligation. The Commission is interested in receiving comment regarding alternative methods by which price improvement opportunities may be provided. For example, some specialists and OTC market makers utilize systems based on algorithms that automatically provide an opportunity for price improvement. Orders that are processed manually also can be provided enhanced opportunities to achieve better executions. The Commission requests comment on an alternative safe harbor procedure, described *infra*.[86]

Under the safe harbor proposed today, a specialist or market maker would expose in its quote a customer order at an improved price and provide the customer with a guaranteed execution at the ''stop'' price. This procedure is designed to promote the interaction of exposed orders at prices better than the displayed NBBO with orders or trading interest in other markets. The safe harbor also could lead to increased competition by encouraging OTC market makers and specialists to compete more actively for order flow on the basis of their published quotations.

The 1975 Amendments were designed to facilitate the creation of a ''market characterized by economically efficient executions, fair competition, broad dissemination of basic market information and the maximum interplay of auction market principles.'' [87] One of the ''paramount objectives'' Congress established for the NMS was ''the centralization of all buying and selling interest so that each investor will have the opportunity for the best possible execution of his order.'' [88] Congress made it clear that the Commission has broad discretion how best to facilitate the development of an NMS.[89]

The proposed safe harbor is based, in part, on the order exposure proposals considered by the Commission in 1982.[90] In August 1983, the Commission postponed further action on these initiatives, due, in part, to then existing market structure and practices.[91] The largest market maker trading Rule 19c–3 securities had ceased operations earlier that year and the Commission believed that, due to the low level of OTC trading in Rule 19c–3 securities and certain technological impediments, the costs associated with the rule would outweigh the benefits that could be achieved at that time.

The utility of an order exposure requirement was debated again in response to Market 2000,[92] with comment divided on the need for such a rule.[93] The NYSE suggested that the Commission reconsider an order exposure rule to provide for greater interaction and enhance best execution of customer orders. The regional exchanges believed that an order exposure rule could restore the incentive of market makers and exchanges to compete on the basis of their displayed quotations.[94] The U.S. General Accounting Office suggested that order exposure rules be considered in connection with any new proposals to further repeal off-board trading restrictions.[95] Other commenters to Market 2000 were ambivalent; for example, the Securities Industry Association noted that ''currently there is no compromise or consensus between those who would advocate a uniform public order exposure rule for listed securities and those who believe transparency requirements should be determined by customer demand and not mandated.'' [96] The National Specialists Association, commenting on prior Commission NMS initiatives, stated that the Association was ''aware of nothing that should persuade the Commission to revisit any of these proposals, except, perhaps, the order exposure rule.'' [97] The NASD stated that a new order exposure rule was unnecessary, but that if one were to be

[85] *See* Payment for Order Flow Release, *supra* note 8.

[86] *See* Part 3, Request for Comments (No. 15).

[87] Senate Report, *supra* note 15 at 101.

[88] *Id.* at 100.

[89] *Id.* at 18, 19; *accord* H.R. Rep. No. 229, 94th Cong., 1st Sess. 29 (1975).

[90] *See* Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376 (May 24, 1982); Securities Exchange Act Release No. 19372 (Dec. 23, 1982), 47 FR 58287 (Dec. 30, 1982).

[91] *See* Securities Exchange Act Release No. 20074 (Aug. 12, 1983), 48 FR 38250 (Aug. 23, 1983).

[92] *See* Market 2000, *supra* note 4 at IV–10. Because some SROs supported an order exposure rule, Market 2000 suggested that all interested SROs coordinate the development of an order exposure rule for Commission consideration. *See, e.g.,* NYSE Letter, *supra* note 46; Letter from William G. Morton, Jr., Boston Stock Exchange, John L. Fletcher, Midwest Stock Exchange, Leopold Korins, Pacific Stock Exchange, and Nicholas A. Giordano, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, SEC (Dec. 11, 1992) (''Regional Letter''). Since the publication of Market 2000, however, no efforts have been initiated toward this end.

[93] *See* NYSE Letter, *supra* note 46.

[94] *See* Regional Letter, *supra* note 92.

[95] *See* GAO, *Securities Markets: SEC Actions Needed to Address Market Fragmentation Issues* (June 1993).

[96] *See* Letter from Thomas M. O'Donnell, Chairman, and Marc E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (July 1, 1993).

[97] *See* Letter from David Humphreville, National Specialists Association, to Jonathan Katz, Secretary, SEC (Dec. 11, 1992).

developed it should apply to all markets equally.[98]

2. Proposed Rule

Proposed Rule 11Ac1–5 would require each specialist or OTC market maker[99] in a covered security that accepts a customer market order to provide that order with an opportunity for price improvement.[100] The term ''price improvement'' is defined as the execution of an order at a price that is better than the existing NBBO.[101] A covered security is defined as any reported security and any other security for which a transaction report, last sale data, or quotation information is disseminated through an automated quotation system that is sponsored by a registered securities association. Therefore, the definition of covered security includes exchange-listed securities, and those Nasdaq securities that satisfy a threshold requirement based on average daily volume.[102] The threshold for inclusion of Nasdaq securities has been proposed to include the 250 Nasdaq stocks with the highest average daily trading volume over the previous quarter. The Commission preliminarily believes that customer market orders for certain Nasdaq securities are not presently received with sufficient regularity to provide a substantial likelihood of price improvement. Therefore, at the present time, the Commission questions whether the potential costs associated with providing the opportunity for price improvement are justified for these securities. Accordingly, the Commission has set a threshold in an attempt to identify the securities for which price improvement opportunities are appropriate. The Commission would consider, at a later date, whether to extend the rule with respect to Nasdaq securities falling below the threshold.

The proposed rule applies to all customer market orders, defined to include any order to buy or sell a covered security at the best available price that is not for the account of either a broker or a dealer. Further, the proposed rule applies in those instances where the spread between the NBBO is greater than the minimum variation. The ''minimum variation'' is defined as the minimum increment by which a covered security may be quoted on the primary market for the security.[103]

The proposed rule does not specify the extent to which an opportunity for price improvement must be provided, or what method must be used to provide this opportunity. To clarify one acceptable means of satisfying the rule's requirement, however, the rule includes a safe harbor that describes order exposure procedures that would be deemed to provide sufficient price improvement opportunities under the rule.[104] Under these procedures, prior to executing a customer market order in a covered security, the specialist or market maker would be required to stop the customer order at the NBBO,[105] and publish, and maintain for 30 seconds, a bid or offer on behalf of the customer. The specialist or market maker's quote must be for at least the size of the customer order, at a price one minimum variation away from the stop price on the opposite side of the market.[106] If the exposed order is not executed at the new quote, the specialist or market maker would fill the customer order at the stop price for the lesser of: (1) the full number of shares of the order; or (2) the size associated with the NBBO at the time the order was stopped. The exposure procedures would not apply in circumstances where the order is for a security with a spread between the NBBO greater than four times the minimum variation to avoid excessive quotation volatility resulting from the exposure requirement in markets with a wide spread.[107]

The following example illustrates the operation of the safe harbor. Assume that an exchange specialist is quoting 20 (500)—20⅜ (1,000), the NBBO for XYZ security. Assume further that a customer market order to sell 1000 shares of XYZ security is received by that exchange specialist. Pursuant to the safe harbor, the exchange specialist would stop the order at 20 for 500 shares, and expose the entire 1,000 share order on the offer at an increment ⅛ higher than the stop price for 30 seconds. The new inside quote, therefore, would be 20 (500)—20⅛ (1000) for 30 seconds. The size associated with the exposed order may be reduced to the extent of any partial execution during the exposure period.[108]

Although the exposure procedures require a market maker or specialist to expose a customer market order at a price that is one minimum variation better than the stop price, the Commission considered alternative approaches. For example, the Commission considered whether to require exposure of the order at one minimum variation better than the bid (for a buy order) or the offer (for a sell order). To illustrate, assume that the NBBO is 20—20⅜, and a customer market order to sell is received. The proposed exposure procedures would require that the order be stopped at 20 (up to the size associated with the NBBO) and exposed as an offer at 20⅛. The Commission considered whether the exposure procedures should, instead, require the specialist to stop the order at 20 and expose it as an offer at 20¼ (⅛ better than the best offer). Although the alternative potentially would result in a better execution price for an exposed order where the spread between the NBBO was greater than ¼, it appears that there would be less likelihood that the order would receive price improvement because it would be displayed at a price less likely to draw contra-side orders.[109] Nevertheless, the Commission seeks comment on whether this alternative would be preferable.

It should be noted that because exposure of orders under the proposed safe harbor would result in the dissemination of a new NBBO during the exposure period, the price improvement opportunity for other customer market orders received during

[98] *See* Letter from Joseph R. Hardiman, President, NASD, to Jonathan G. Katz, Secretary, SEC (Nov. 20, 1992).

[99] *See* Proposed § 240.11Ac1–5(a)(9). The term *OTC market maker* has the same meaning provided in § 240.11Ac1–1. This definition is not coextensive with the definition found at 15 U.S.C. 78c(a)(38). *See supra* section II.A.2.b. regarding the amendments to the Quote Rule.

[100] Proposed § 240.11Ac1–5(b).

[101] Proposed § 240.11Ac1–5(a)(10).

[102] Proposed § 11Ac1–5(a)(3). In addition, regionally listed securities that do not substantially meet NYSE or Amex original listing criteria do not satisfy the definition of ''covered security.'' Such securities are not ''reported securities'' as that term is defined in the proposed rule, nor do they meet the other elements of the definition of covered security. OTC Bulletin Board securities also do not satisfy the definition. The Commission has determined not to extend the requirements of the rule to such securities at the present time. The Commission has, however, requested comment on the appropriate scope of the rule. *See* Part 3, Request for Comments (Nos. 11 and 17).

[103] Proposed § 240.11Ac1–5(a)(6).

[104] Proposed § 240.11Ac1–5(c).

[105] Proposed § 240.11Ac1–5(d)(1)(i).

[106] Proposed § 11Ac1–5(d)(1)(ii). When a specialist or market maker ''stops'' an order, such specialist or market maker guarantees the execution or partial execution of the order at a specified price. Proposed § 240.11Ac1–5(a)(12). The specified price is defined as the ''stop price.'' Proposed § 240.11Ac1–5(a)(13).

[107] Proposed § 240.11Ac1–5(d)(5)(i). For example, a customer market order for an NYSE listed security with a current bid of 20 and an offer of 20¾ would not be subject to the exposure requirements of the safe harbor.

[108] Proposed § 240.11Ac1–5(d)(4).

[109] For example, if the NBBO is 20—20⅜ when a customer sell order is received, the new NBBO under the proposal would be 20—20⅛ and 20—20¼ under the alternative. If a buy market order was received, the current proposal could result in execution at 20⅛ and the alternative could result in an execution at 20¼. However, the buy market order would be more likely to be executed on the offer of 20⅛ because it is more advantageous for buy orders and so would be more likely to be executed at the exposure price.

the exposure period will be determined on the basis of the new NBBO. For example, if the NBBO is 20—20½ and thereafter is reduced to 20—20⅛ because of the exposure of a customer sell order, customer market orders sent to other markets during the exposure period would not be entitled to price improvement under the rule because the new NBBO (during the exposure period) has been narrowed to the minimum variation, although the Commission is seeking comment on whether the safe harbor should be extended to minimum increment markets. But, under best execution principles, other customer orders presumably would be required to be executed at prices at least as favorable as the new NBBO during the period it existed.

The order exposure procedures contain provisions designed to facilitate efficient order execution during periods in which orders are received in rapid succession. For example, the order exposure procedures provide that if the specialist or market maker receives a subsequent customer market order on the same side of the market during the exposure period, the specialist or market maker may immediately execute the exposed order at the stop price and must stop and expose the subsequent customer market order.[110] This means that in the example stated above, the specialist could execute immediately the exposed order at the stop price of 20 (up to the amount of the order that has been stopped), stop the subsequent sell-side customer market order at 20, and expose the subsequent order at 20⅛ for 30 seconds (assuming the NBBO remains the same).

The order exposure procedures also provide an exception for order execution where another specialist or market maker executes a transaction at a price equal or inferior to the stop price on the same side of the market.[111] In the example given above, if the XYZ specialist in another market executes an order at 20, the specialist who currently is exposing an order at 20⅛ could immediately execute the exposed order at 20 rather than continue to expose the order for the full 30 seconds.

In addition, the order exposure procedures provide for the execution of an exposed order prior to the expiration of the exposure period where the market for a particular security moves away from the stop price.[112] This exception is meant to reduce the risk associated with stopping an order during a substantial market move. If another specialist or market maker changes its bid (in the case of a stopped buy order) or offer (in the case of a stopped sell order) to the stop price, then the specialist or market maker exposing the order may execute that exposed order at the stop price prior to the expiration of the exposure period. For example, if a specialist on another exchange changes its offer to the stop price in response to market conditions, the specialist that has been exposing the customer market order at 20⅛ also may change its offer and immediately execute the customer order at the stop price of 20 rather than expose the order for the full 30 second period at 20⅛.

The order exposure procedures would not apply in certain circumstances. The procedures contain an exception for any order of block size.[113] The safe harbor also contains an exception for orders of non-block size that are effected in conjunction with a block trade effected outside of the NBBO.[114] For example, if a customer order to sell is stopped at 20 and exposed on the offer at 20⅛, and a block transaction is effected at 20¼, the exposed order may be executed in accordance with exchange practices.

The final two exceptions to the safe harbor apply to odd-lot orders and orders received within 5 minutes of the opening and closing of the trading day. The latter exception is intended to allow for the efficient opening and closing of all markets.

The rule, as a whole, contains an exception for ''fast market'' conditions.[115] Specifically, the requirement to provide an opportunity for price improvement would not apply to transactions where firm quotations on an exchange or by the association are not required based on unusual market conditions. In addition, the proposed rule contains an exception that permits a specialist or market maker to send a customer market order to another market or market maker if those markets or market makers are in compliance with the rule.[116]

3. Request for Comments

The Commission requests comment on issues raised by this proposal, including the following matters:

(1) The proposed rule would require that market makers or specialists provide an opportunity for price improvement before executing customer orders, and sets forth non-exclusive procedures that would satisfy that requirement. The Commission requests comment on whether the rule should set forth the specific degree or manner by which the price improvement opportunity must be provided.

(2) The Commission recognizes that some automated execution systems operated by markets do not currently provide an opportunity for price improvement for market orders, but include the possibility of interaction with limit orders entered into the system. The Commission seeks comment on whether these systems should be adapted to allow market makers to provide opportunities for price improvement, or whether they should be deemed to satisfy the rule's requirement as currently operated.

(3) The payment for order flow rules require broker-dealers that receive payment for order flow in a security to disclose their order routing practices to their customers, including the availability of price improvement opportunities. The Commission seeks comment on whether an extension of these disclosure rules to all covered securities, irrespective of whether payment for order flow is received, would provide sufficient additional incentive for market makers and specialists to provide price improvement opportunities, without the adoption of a specific price improvement rule.

(4) Under the order exposure procedures, the quote exposing the order would become the NBBO for the length of time that the order is exposed (*e.g.*, up to 30 seconds). After execution of the order or expiration of the exposure period, the spread for the NBBO would widen. The Commission seeks comment on what effect, if any, rapid quote changes may have on system capacity, autoquote systems, automated execution systems that execute customer orders at the NBBO, and the expectations of investors with respect to the execution prices of market orders.

(5) Under the safe harbor, the Commission has proposed an exposure period of 30 seconds. The Commission seeks comment on the effect of a 30-second exposure period on the functions of specialists or market makers, and whether a longer (*e.g.,* 45 or 60 seconds) or shorter (*e.g.,* 15 seconds) period is appropriate.

(6) As noted above, the proposed rule is designed to ensure that price improvement opportunities will be more widely available for customer orders. Such a rule should promote the interaction of exposed orders with orders or trading interest in other markets. The Commission seeks comment on whether exposure of orders

[110] Proposed § 240.11Ac1–5(d)(2).

[111] Proposed § 240.11Ac1–5(b)(3)(i).

[112] Proposed § 240.11Ac1–5(b)(3)(ii).

[113] Proposed § 240.11Ac1–5(d)(5)(ii).

[114] Proposed § 240.11Ac1–5(d)(5)(v).

[115] Proposed § 11Ac1–5(e) (1), (2) and (3).

[116] Proposed § 11Ac1–5(e)(4).

in non-Rule 19c–3 listed securities would be fully effective without extension of the ITS interface, which links Nasdaq with the registered securities exchanges for trading in Rule 19c–3 securities, to all listed securities.[117]

(7) The Commission has proposed several exceptions to the order exposure procedures for situations where a specialist or market maker receives orders in rapid succession. While alleviating the problems associated with queuing, the exceptions may affect the overall utility of the rule. The Commission seeks comment on alternative methods for addressing potential order queues and rapidly moving markets.

(8) As proposed, the requirement to provide an opportunity for price improvement would apply to situations where the spread between the NBBO is greater than the minimum variation. The Commission seeks comment on whether application of the rule should be extended to situations where the spread between the NBBO is equal to the minimum variation. If extended, under the exposure procedures a specialist or market maker would be required to stop a customer buy order at the national best offer and expose it at the national best bid; a sell order would be stopped at the national best bid and exposed at the national best offer.

(9) If the exposure procedures were extended to minimum variation markets, the Commission seeks comment on whether the rule should contain an exception to the exposure procedures in situations where a specialist or market maker receives an order that would be executed against a limit order represented in the quote. The effect of the exception is illustrated in the following example: assume that the NBBO is 20–20⅛ and that the offer price represents a customer limit order. If a market order to buy is received, the exception would allow the trade to be executed immediately at 20⅛. Alternatively, if there were no exception for agency orders represented in the quote, the market order would be stopped at 20⅛ and exposed at 20 for 30 seconds. Comment is requested on both approaches. Further, the Commission seeks comment on whether the rule should contain an exception to the exposure procedures in situations where a specialist or market maker receives an order that would be executed against a limit order represented in the quote, where the spread between the NBBO is greater than the minimum variation.

(10) The Commission seeks comment on whether the order exposure procedures should apply to agency cross transactions, *e.g.*, the execution of a buy and sell order for the same security by an entity acting as agent for both orders.

(11) The proposed rule would apply to exchange listed securities, and those OTC securities that satisfy the threshold requirement. The Commission seeks comment on whether the scope of the rule is appropriate.

(12) The Commission seeks comment on how the rule would interact with other initiatives, such as the Commission's proposed amendments to the Quote Rule and the Commission's proposed Limit Order Display Rule.

(13) In light of the activity that takes place at the beginning and the end of the trading day, the proposed safe harbor includes an exception from the exposure requirement during the first five minutes of trading, as well as the last five minutes of the trading day. The Commission seeks comment on whether this exception is appropriate.

(14) Some SROs maintain rules regarding excess spread parameters.[118] The Commission seeks comment on the impact of the proposed rule on such excess spread parameters.

(15) The Commission seeks comment on alternative methods by which price improvement opportunities for customer market orders may be achieved, and on alternative safe harbor procedures, including reliance on internal order crossing and intermarket print protection systems. For example, an alternative may be to permit a specialist or market maker to stop a customer market order at its proposed execution price for a short period of time (*e.g.*, 1 minute). If during this time period the specialist or market maker received a customer market order on the opposite side of the market from the stopped order, the specialist or market maker would cross the orders at a price better than the proposed execution price. In addition, if during this time period a trade in the stock is reported in another market at a price better than the proposed execution price, the specialist or market maker would also be required to execute the customer order at a price better than the proposed execution price.

The Commission requests comment on whether this alternative would provide sufficient opportunity for price improvement to be included as a safe harbor under the rule. Unlike the order exposure safe harbor, it would not require publication of a quotation reflecting the order, and may, therefore, provide a simpler process with less impact on quote variations, while still providing customer orders an opportunity for better prices based on other internal orders and superior reported trade prices. At the same time, because the customer order would not be publicly displayed, this procedure would not result in narrower quotes or provide an opportunity for greater intermarket order interaction.

The Commission also requests comment on the mechanics of how the alternate safe harbor should function. First, in the event of an intervening trade away from the specialist, market maker, or dealer, should protection be offered at the print price or at a price that is better than the minimum price variation? Second, how should subsequent orders received during the period the stop is in effect be handled; should they be immediately executed at the stop price or should a new time period be created? Finally, should price protection be offered only up to the size of the intervening trade (if it is less than the size of the order) or for the full size of the order?

(16) The Commission seeks comment on alternative procedures under the proposed safe harbor:

(a) The first alternative would require a specialist or OTC market maker that receives a customer market order to stop the order at the price at which it was quoting when the order was received, or if it was not publicly quoting, at its proposed execution price. Under this scenario, if the NBBO was 20–20¼, and the market maker was quoting 20–20½ when it received a customer market order to buy, the market maker would be allowed to stop the order at 20½. If, however, the best offer remained 20¼ at the time of execution, execution at an inferior stop price would be constrained by best execution principles.

(b) The second alternative would require a specialist or market maker that receives a customer market order to stop the order if the bid (for a sell order) or offer (for a buy order) is the specialist's or market maker's principal quotation. If, however, the bid or offer represents an agency order, the specialist or market maker would not be required to stop the incoming market order.

(17) The Commission seeks comment on the liquidity threshold, specifically:

(a) Whether a selection based on average daily trading volume is appropriate and, if not, alternative selection criterion that would be appropriate given the Commission's stated goals;

[117] *See supra* section II.A.1.b. regarding the amendments to the Quote Rule.

[118] *See, e.g., NASD Manual*, Schedule D to the By-Laws, Part V, Section 2(d), (CCH) ¶ 1819.

(b) Whether the 250 issue cutoff is appropriate [119] and, if not, a more appropriate cutoff and the basis for that selection; and

(c) Whether an average daily trading volume threshold should be applied only to Nasdaq securities or all securities.

(18) In addition, for all markets, the Commission recognizes that the proposed safe harbor may not be appropriate for stocks which trade with significant spreads. For example, when a market order to sell is received for a stock that trades with a bid of 330 and an offer of 334, it may not be appropriate to narrow the spread to 330–330⅛. For this reason, the Commission is proposing an exemption to the safe harbor for stocks whose spread is greater than four times the minimum variation in the stock.[120] The Commission seeks comment with respect to this spread threshold, specifically:

(a) Whether a spread threshold should be applied, or whether all market makers and specialists, regardless of the spread, should offer price improvement under the proposed safe harbor for all stocks; and

(b) Whether the proposed spread threshold of greater than four times the minimum variation should be higher or lower.

(19) The proposed rules are designed to enhance opportunities for price improvement of customer orders in light of the existing ⅛ point minimum trading variation that exists for most stocks in the market. The Commission understands that, to some extent, the minimum variation itself may serve as an impediment to quote based competition and price improvement opportunities. Under the existing scheme, market participants must pay up the entire ⅛ point to obtain price priority. A reduction in the minimum trading variation would lower this cost and provide additional opportunities for customer limit orders and market maker quotes to narrow spreads not only in those stocks where the minimum variation is ⅛ of a point, but in all stocks.

The Commission recognizes that there are many issues related to a change in the minimum variation—including, among others, the effect that a reduction in the ⅛ point increment might have on the priority of orders and the liquidity of the markets more generally. In this regard, the Commission's Division of Market Regulation previously requested that SROs study these potential costs, as well as the benefits that might be associated with a system of decimal pricing. The ultimate goal of such a study would be to determine whether such a shift would strengthen the competitive posture of the U.S. equity markets as they position themselves in a global marketplace.[121]

Notwithstanding the lack of a comprehensive study by the SROs, the Commission continues to believe that decimal pricing is the next logical step for the markets to pursue to improve transparency and provide opportunities for narrower spreads.[122] Although the Commission is not prepared to mandate such a change in the minimum increment at this time, comment is requested on the costs and benefits of a change in the minimum variation either relative, or as a supplement to, the rules being proposed today. Comment is also requested on whether any reduction in the minimum increment should be in a finer increment of fractions (e.g., 1/16 or 1/32) or decimals (e.g., $0.10, or $0.05).

4. Consideration of Proposed Rule's Costs and Benefits

To evaluate fully the impact of the proposed rule, the Commission requests commenters to provide their views on the costs and benefits associated with the rule, and any data that may support those views.

The proposed rule would require each OTC market maker or specialist that accepts a customer market order to provide that order with an opportunity to receive price improvement when the difference between the NBBO for the security is greater than the minimum variation by which the security may be quoted on the principal market for such security. This rule is intended to enhance best execution opportunities for customer market orders in all markets. The rule is intended to encourage quote competition between markets and market participants; to enhance customer-to-customer order interaction without the intervention of a specialist or market maker; to improve transparency in all markets; and provide more opportunities for broker-dealers to satisfy their best execution obligations.

The Commission acknowledges that the price improvement obligations would require some market participants to modify their current order handling and display practices. The Commission seeks comment on the magnitude of such costs. Further, the Commission recognizes that the price improvement requirement and direct interaction between customers may reduce the profitability associated with market making activities. To the extent that this can be quantified, the Commission seeks comment as to how much profit market makers would forego if the proposed rule is adopted.

The Commission envisions that this rule would have significant benefits for the financial markets and investors in those markets. Investors are expected to benefit from the enhanced transparency, improved price competition, the interaction of customer orders without the intervention of an OTC market maker or specialist, and improved opportunities to receive better executions, all of which should lower the cost for investors to trade in the market. Additionally, the financial markets as a whole should benefit from the proposed rule since the price discovery process will be enhanced, transparency will be improved and price competition will be promoted. By their very nature, these benefits are broad-based and pervasive. Because incremental amounts on a trade-by-trade basis produce significant cumulative amounts for the market as a whole, the Commission seeks guidance on how to represent accurately the savings associated with the implementation of this rule.

The Commission seeks detailed comment on the following specific questions:

(1) What would be the necessary system changes and costs associated with implementation of the proposed rule?

(2) If the proposed rule were to be adopted, what effect would the interaction of customer orders have on market makers and specialists?

(3) The Commission recognizes that subsequent to the adoption of the proposed rule, market makers may need to charge commissions for the handling of market orders. What would be the anticipated level of commissions for a market order and what would be the overall cost to the customer?

(4) How should the Commission assess the potential benefits associated with the narrowing of spreads?

(5) What would be the likely impact of the proposed rule on the depth of the market and how should it be quantified?

(6) What would be the likely impact on the liquidity of the market and how should that impact be quantified?

[119] For the quarter beginning April 1995 and ending June 1995, the 250 stocks with the highest average daily volume on Nasdaq had an average daily trading volume of 731,000 shares per stock per day.

[120] This exemption would exclude approximately 6% of NYSE listed stocks and 5% of AMEX listed stocks but no stocks in the 250 Nasdaq stocks that meet the liquidity threshold. If applied to all Nasdaq securities, this exemption would exclude approximately 7% of Nasdaq stocks.

[121] *See* Market 2000, *supra* note 4 at 18.

[122] Payment for Order Flow Release, *supra* note 8.

(7) What degree of customer-to-customer interaction could be expected if the proposed rule is adopted and what are the savings to those customers?

III. Statutory Basis

The amendments to Rule 11Ac1–1 and adoption of Rules 11Ac1–4 and 11Ac1–5 are being proposed pursuant to 15 U.S.C. 78 *et seq.*, particularly sections 11A, 6, 10(b), 11(a)(2), 11(b), 15A, 15(c) and 23(a)(1); 15 U.S.C. 78k–1, 78f, 78j(b), 78k(a)(2), 78k(b), 78*o*–3, 78*o*(c) and 78w(a)(1) (1988).

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. Section 603 regarding proposed Rule 11Ac1–4, Rule 11Ac1–5, and amended Rule 11Ac1–1. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of ''small entities'' adopted by the Commission for purposes of the Regulatory Flexibility Act. In the IRFA, the Commission states that regulatory action is proposed to ensure the display of customer limit orders that are priced better than the current inside quotes, and to ensure the exposure of customer market orders when the spread between the NBBO is greater than the minimum increment by which a security may be quoted. Specifically, by requiring display, Rule 11Ac1–4 would narrow spreads, increase competition, and improve the price discovery process. Likewise, by providing for order exposure, Rule 11Ac1–5 would enhance best execution opportunities, increase competition, and improve the price discovery process.

In the IRFA, the Commission states that the amendment to the Quote Rule is proposed to ensure that market makers in reported securities and other securities adhere to firm quote reporting obligations. Specifically, requiring both 19c–3 and non-19c–3 market makers to communicate quotes if they trade more than 1% of the aggregate trading volume, and requiring OTC market makers and specialists to display in their quote orders placed into an electronic communications network will contribute to price discovery, promote liquidity, enhance competition among market makers and facilitate the best execution of customer orders.

The Commission is unable to quantify reasonably the impact that the proposed rules and amendments would have on small brokers or dealers. The Commission does not believe it would be practicable to exempt small entities from the proposed rules and amendments because to do so would be inconsistent with the Commission's statutory mandate.

A copy of the IRFA analysis may be obtained by contacting Mignon McLemore, Division of Market Regulation, SEC, 450 Fifth Street NW., Washington, DC 20549, (202) 942–0158.

V. Paperwork Reduction Act

Certain provisions of proposed Rule 11Ac1–4 and the proposed amendments to Rule 11Ac1–1 may contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is: ''Proposed Amendments to Rule 11Ac1–1; Proposed Rule 11Ac1–4.''

The proposed amendments to Rule 11Ac1–1, and in particular the definition of ''subject security'' under paragraph (a)(25), would increase the number of OTC market makers who are required under paragraph (c)(1) of the Quote Rule to communicate their bids, offers, and quotation sizes to their association which, in turn, disseminate the information in the form of public quotations pursuant to paragraph (b); it would also require an exchange that meets the threshold to disseminate the information in the form of public quotations pursuant to paragraph (b). This collection of information will be used to ensure public dissemination of quotations in accordance with the Quote Rule. The collection of information is necessary to expand the coverage of existing broker-dealer quotation requirements to include substantial market makers in non-Rule 19c–3 securities and to improve public information about the prices they are quoting. The likely respondents to the proposed collection of information will be the 10 or less third market makers not already subject to the Quote Rule. They will respond to the collection of information each time they initially enter and then update their quotations, estimated to be 120–200 times per trading day per respondent. The Commission anticipates the collection of information will result in a negligible additional burden to the NASD (the association to which the 10 or so market makers would be required to communicate their bids, offers, and quotation sizes). The collection of information would require the 10 or so respondents to access Nasdaq Work Station Level III (the media through which market makers update their quotations). Because the respondents should already subscribe to Nasdaq Work Station Level II, and because there is no additional fee for Level III, the 10 or so respondents would not incur any additional expense to comply with the collection of information. To the extent that updating quotations for reporting purposes requires manual entry on Level III, the Commission estimates an additional clerical burden of approximately 25.2–42 hours per year for each respondent (based on an estimated average of 3 seconds for each update). The estimated total annual reporting burden for a total of 10 respondents combined is 252–420 hours per year.

In addition, the Commission notes that specialists and OTC market makers who currently publish quotations for non-Rule 19c–3 securities pursuant to the voluntary election provisions of the Rule would be required to do so under the proposed amendments. Because these specialists and market makers are already publishing quotations, no additional burden should result from the collection of information. Similarly, because OTC market makers in Nasdaq SmallCap securities are already required to publish quotations in accordance with NASD rules, no additional burden should result to such market makers from the proposed collection of information.

The Commission is also proposing new Rule 11Ac1–4 which, with certain exceptions and in certain circumstances, would require specialists and OTC market makers to change their published quotation to reflect the price and/or size of a customer limit order which would improve their published bid or offer. This collection of information will be used to require generally that market makers reflect immediately in their bid or offer the price and size of each customer limit order they hold at a price that would improve their bid or offer in the security. The collection of information is necessary to provide a minimum standard for all markets that would require the display of customer limit orders under certain circumstances.

The likely respondents to the collection of information will be approximately 500–600 OTC market makers. They will respond to the collection of information each time they update their quotations in response to the customer limit orders described above, estimated to average 30–60 times per trading day per respondent. The Commission estimates on average for each OTC market maker that the additional clerical burden for updating

quotations based on customer limit orders would be 7–13 hours per year per respondent (based on an estimated average of 3 seconds for each update). The Commission does not anticipate any significant additional burden on exchange specialists in light of current exchange order handling practices. The estimated total annual reporting burden for all respondents combined is 5,530 hours per year.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments directly to the Commission. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Effects on Competition

Section 23(a)(2) of the Exchange Act [123] requires the Commission, in adopting rules under the Exchange Act, to consider any anti-competitive effects of such rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Exchange Act.

The Commission preliminarily views the proposed amendments to Rule 11Ac1–1 and proposed Rules 11Ac1–4 and 11Ac1–5 as causing no burden on competition unnecessary or inappropriate in furtherance of the purposes of the Exchange Act. The Commission believes that the proposed rules are consistent with the principles for the development of the national market system that Congress specified in the Exchange Act. The Commission also believes that any burden on competition that the proposed rules and amendments may impose on the exchanges, Nasdaq and their members, and applicable proprietary trading systems is necessary and appropriate.

As noted above, the Commission has asked for comments on the costs and benefits of each of the proposed rules and amendments. In addressing those issues, the Commission also requests comment on any competitive burdens that might result from adoption of the proposed rules described in this release. In particular (but without limitation), the Commission requests comment on the effect adoption of the proposed rules would have on competition among primary exchanges, regional exchanges and third market makers; among integrated broker-dealers, wholesale market makers, and specialists; between integrated broker-dealers and order entry firms; among Nasdaq, exchanges and proprietary trading systems; and between U.S. broker-dealers, exchanges and associations and overseas broker-dealers and exchanges.

[123] 15 U.S.C. 78w(a)(2) (1988).

Text of the Proposed Rules

List of Subjects in 17 CFR Part 240

Confidential business information, Registration of securities information processors, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Aa3–1 is amended by revising paragraph (a)(4) to read as follows:

§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* * * *

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

* * * * *

3. Section 240.11Ac1–1 is revised to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* For the purposes of this section:

(1) The term *aggregate quotation size* shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any exchange bids or offers for a covered security at the same price.

(2) The term *association* shall mean any association of brokers and dealers registered pursuant to section 15A of the Act (15 U.S.C. 78*o*–3).

(3) The terms *best bid* and *best offer* shall mean the highest priced bid and the lowest priced offer.

(4) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest.

(5) The term *consolidated system* shall mean the consolidated transaction reporting system.

(6) The term *covered security* shall mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(7) The term *effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3–1.

(8) The term *exchange market maker* shall mean any member of a national securities exchange (''exchange'') who is registered as a specialist or market maker pursuant to the rules of such exchange.

(9) The term *exchange-traded security* shall mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange, provided, however, that securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

(10) The term *make available,* when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide circuit connections at the premises of the exchange or association supplying such data, or at a common

location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

(11) The term *odd-lot* shall mean an order for the purchase or sale of a covered security in an amount less than a round lot.

(12) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to a customer, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.

(13) The term *plan processor* shall have the meaning provided in § 240.11Aa3–2.

(14) The term *published aggregate quotation size* shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(15) The terms *published bid* and *published offer* shall mean the bid or offer of a responsible broker or dealer for a covered security communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(16) The term *published quotation size* shall mean the quotation size of a responsible broker or dealer communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(17) The term *quotation size,* when used with respect to a responsible broker's or dealer's bid or offer for a covered security, shall mean:

(i) The number of shares (or units of trading) of that covered security which such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or

(ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that covered security.

(18) The term *quotation vendor* shall mean any securities information processor engaged in the business of disseminating to brokers, dealers or investors on a real-time basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(19) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(20) The term *responsible broker or dealer* shall mean:

(i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; provided, however, that, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a ''responsible broker or dealer'' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and further provided, that for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the ''responsible broker or dealer'' for that bid or offer; and

(ii) When used with respect to bids and offers communicated by a member of an association to another broker or dealer or to a customer otherwise than on an exchange, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(21) The term *revised bid or offer* shall mean a market maker's bid or offer which supersedes its published bid or published offer.

(22) The term *revised quotation size* shall mean a market maker's quotation size which supersedes its published quotation size.

(23) The term *specified persons,* when used in connection with any notification required to be provided pursuant to paragraph (b)(3) of this section and any election (or withdrawal thereof) permitted under paragraph (b)(5) of this section, shall mean:

(i) Each quotation vendor;

(ii) Each plan processor; and

(iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities underlying options admitted to trading on any exchange).

(24) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

(b) *Dissemination requirements for exchanges and associations.* (1) Every exchange and association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors, as follows:

(i) Each exchange shall at all times such exchange is open for trading, collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is

cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange;

(ii) Each association shall, at all times that last sale information with respect to reported securities is reported pursuant to an effective transaction reporting plan, collect, process and make available to quotation vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended; and

(2) Each exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of the responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3) (i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules approved by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligations under paragraphs (b)(1) and (2) of this section for that security: *Provided, however,* That such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to quotation vendors data for that security in accordance with paragraph (b)(1) of this section.

(ii) During any period an exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (b)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to quotation vendors the data for that security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (b)(1) of this section.

(5) (i) Any exchange may make an election for purposes of paragraph (a)(24)(i)(B) of this section for any covered security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any covered security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of an association acting in the capacity of an OTC market maker may make an election for purposes of paragraph (a)(24)(ii)(B) of this section for any covered security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other covered security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association and all specified persons, and shall be effective at the opening of trading on the business day following notification.

(iii) The election of an exchange or member of an association for any covered security pursuant to this paragraph shall cease to be in effect if such exchange or member ceases to make available or communicate bids, offers, and quotation sizes in such security.

(c) *Obligations of responsible brokers and dealers.* (1) Each responsible broker or dealer shall promptly communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (c)(3) of this section, each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

(3)(i) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation if:

(A) Prior to the presentation of an order for the purchase or sale of a subject security, a responsible broker or dealer has communicated to its exchange or association, pursuant to paragraph (c)(1) of this section, a revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is presented, a responsible broker or dealer is in the process of effecting a transaction in such subject security, and immediately after the completion of such transaction, it communicates to its exchange or association a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to

its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer: *Provided, however,* That such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (b)(4) of this section:

(i) No exchange or OTC market maker may make available, disseminate or otherwise communicate to any quotation vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any covered security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No quotation vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any exchange or OTC market maker for any covered security which is not a subject security with respect to such exchange or OTC market maker.

(5)(i) Entry of any priced order for a covered security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such orders to third parties and permits such orders to be executed against in whole or in part shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to paragraph (c) of this section for at least the minimum quotation size that is required by the rules of the market maker's exchange or association; and

(B) A communication of a bid or offer to a quotation vendor for display on a display device for purposes of paragraph (c)(4)(i) of this section.

(ii) Paragraph (c)(5)(i) of this section shall not apply to any odd-lot order.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

4. Sections 240.11Ac1–4 and 240.11Ac1–5 are added to read as follows:

§ 240.11Ac1–4 Display of customer limit orders.

(a) *Definitions.* For purposes of this section:

(1) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. § 78*o*–3).

(2) The terms *best bid* and *best offer* shall mean the highest priced bid and lowest priced offer.

(3) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by a broker-dealer to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent.

(4) The term *block size* shall mean any order:

(i) Of at least 10,000 shares; or

(ii) For a quantity of stock having a market value of at least $200,000.

(5) The term *covered security* shall mean any ''reported security'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in 15 U.S.C. 78c(a)(51)(A)(ii).

(6) The term *customer limit order* shall mean an order to buy or sell a covered security at a specified price that is not for the account of either a broker or dealer; *Provided, however*, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(7) The term *exchange-traded security* shall have the meaning provided in § 240.11Ac1–1.

(8) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(9) The term *reported security* shall have the meaning provided in § 240.11Aa3–1.

(b) *Specialists and OTC market makers.* (1) For covered securities that are exchange-traded securities:

(i) Each member of an exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(A) The price and size of each customer limit order held by such member that is at a price that would improve the best bid or offer of such member in such security; and

(B) The size of each customer limit order that:

(*1*) Is priced equal to the bid or offer of such specialist for such security;

(*2*) Is priced equal to the national best bid or offer; and

(*3*) Represents more than a *de minimis change* in relation to the size associated with the specialist's bid or offer.

(ii) Each registered broker or dealer that acts as a OTC market maker shall publish immediately a bid or offer that reflects:

(A) The price and size of each customer limit order held by the broker or dealer for execution otherwise than on the floor of an exchange that is at a price that would improve the bid or offer of such broker or dealer in such security; and

(B) The size of each customer limit order held by the broker or dealer for execution otherwise than on the floor of an exchange that:

(*1*) Is priced equal to the bid or offer of such broker or dealer for such security;

(*2*) Is priced equal to the national best bid or offer; and

(*3*) Represents more than a *de minimis* change in relation to the size associated with the broker or dealer's bid or offer.

(2) For covered securities that are not exchange-traded securities:

(i) Each member of an association that is an OTC market maker shall publish immediately a bid or offer that reflects:

(A) The price and size of each customer limit order held by the OTC market maker when the customer limit order is at a price that would improve the bid or offer of such OTC market maker in such security; and

(B) The size of each customer limit order held by the OTC market maker that:

(*1*) Is priced equal to the bid or offer of such OTC market maker for such security;

(*2*) Is priced equal to the national best bid or offer; and

(*3*) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(ii) Each exchange member shall publish immediately a bid or offer that reflects:

(A) The price and size of each customer limit order held by the exchange member when the customer

limit order is at a price that would improve the bid or offer of such exchange member in such security; and

(B) The size of each customer limit order held by the exchange member that:

(*1*) Is priced equal to the bid or offer of such exchange member for such security;

(*2*) Is priced equal to the national best bid or offer; and

(*3*) Represents more than a *de minimis* change in relation to the size associated with the member's bid or offer.

(c) *Exceptions*. The requirements in paragraph (b) of this section shall not apply to any customer limit order:

(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed in compliance with this section.

(5) That is delivered immediately upon receipt to an exchange or association-sponsored system that displays those limit orders, and complies with the requirements of this section with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

§ 240.11Ac1–5 Price improvement for customer market orders.

(a) *Definitions*. For purposes of this section:

(1) The term *association* shall mean any association of brokers and dealers registered pursuant to section 15A of the Act (15 U.S.C. 78*o*–3).

(2) The term *block size* shall mean any order:

(i) Of at least 10,000 shares; or

(ii) For a quantity of stock having a market value of at least $200,000.

(3) The term *covered security* shall mean any ''reported security'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in 15 U.S.C. 78c(a)(51)(A)(ii); *Provided, however*, that with respect to over-the-counter securities, the term covered security shall include only the 250 over-the-counter securities with the highest average daily trading volume over the previous quarter.

(4) The term *customer market order* shall mean an order to buy or sell a covered security at the best available price that is not for the account of either a broker or a dealer; *Provided, however*, that the term customer market order shall include an order transmitted by a broker or dealer on behalf of a customer.

(5) The term *exchange-traded security* shall have the meaning provided in § 240.11Ac1–1.

(6) The term *minimum variation* shall mean the minimum increment by which a covered security may be quoted on the primary market for the security.

(7) The term *national best bid* shall mean, with respect to a ''covered security,'' the highest bid published for that security in the United States equity markets.

(8) The term *national best offer* shall mean, with respect to a ''covered security,'' the lowest offer published for that security in the United States equity markets.

(9) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(10) The term *price improvement* shall mean the execution of an order at a price that is better than the existing national best bid or offer.

(11) The term *reported security* shall have the meaning provided in § 240.11Aa3–1.

(12) The term *stop* shall mean to guarantee the execution or partial execution of an order at a specified price.

(13) The term *stop price* shall mean the specified price at which an order is stopped.

(b) *Execution duty*. Each specialist or OTC market maker that accepts a customer market order in a covered security shall provide that order an opportunity to receive price improvement when the difference between the national best bid and offer for the security is greater than the minimum variation by which the security may be quoted on the principal market for such security.

(c) *Compliance with the duty*. Each specialist or OTC market maker shall be deemed to have provided an opportunity for price improvement pursuant to paragraph (b) of this section, if the specialist or OTC market maker follows the procedures set forth in paragraph (d) of this section.

(d) *Order exposure procedures*. (1) To provide an opportunity for price improvement pursuant to this paragraph, when the spread between the national best bid and offer is greater than the minimum variation, an exchange specialist or OTC market maker shall, before executing a customer market order in a covered security:

(i) Stop the customer order at the national best bid (for a sell order) or offer (for a buy order) for the lesser of:

(A) The full size of the order; or

(B) The size associated with the national best bid (for a sell order) or offer (for a buy order); and

(ii) Publish and maintain for at least 30 seconds an offer (for a sell order) or a bid (for a buy order) on behalf of the customer, for the full number of shares of the order, at a price that is one minimum variation higher (for a sell order) or lower (for a buy order) than the stop price.

(2) If, during the time a specialist or OTC market maker is exposing a customer market order pursuant to paragraph (d)(1)(ii) of this section, the specialist or OTC market maker receives a subsequent customer market order on the same side of the market as the exposed order, such specialist or OTC market maker may execute immediately the exposed order at the stop price and shall stop and expose the subsequent customer market order pursuant to paragraph (d)(1) of this section.

(3) When a specialist or OTC market maker is exposing a customer market order pursuant to paragraph (d)(1)(ii) of this section, such specialist or OTC market maker may execute immediately such order at the stop price if, after exposure has commenced:

(i) Another specialist or OTC market maker executes a transaction at a price equal or inferior to the stop price; or

(ii) Another specialist or OTC market maker changes its bid or offer to a price equal or inferior to the stop price.

(4) The size associated with any bid or offer required to be maintained on behalf of a customer pursuant to paragraph (d)(1)(ii) of this section may be reduced to the extent of any partial execution during the exposure period.

(5) The requirements of paragraph (d) of this section shall not apply to:

(i) Any order for a covered security with a spread between the national best bid and offer of greater than four times the minimum variation;

(ii) Any order of block size;

(iii) Transactions for odd-lot orders;

(iv) Customer market orders in covered securities received within five minutes of the opening or closing of the trading day for the primary market in which the security trades; or

(v) Customer orders effected in conjunction with a block size trade

effected outside the national best bid or offer.

(e) *Exceptions*. The requirements of paragraphs (b) and (d) of this section shall not apply to:

(1) Any transaction for an exchange-traded covered security effected on an exchange during any period when such exchange is relieved of its obligation to collect, process and make available to quotation vendors bids and offers pursuant to paragraph (b)(3)(i) of § 240.11Ac1–1;

(2) Any transaction for an exchange-traded covered security effected otherwise than on the floor of an exchange during any period when the principal exchange market for the security is relieved of its obligation to collect, process and make available to quotation vendors bids and offers in such security pursuant to paragraph (b)(3)(i) of § 240.11Ac1–1;

(3) Any transaction for a non-exchange-traded covered security effected during any period when an association determines, pursuant to rules and regulations approved by the Commission pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the association is incapable of collecting, processing, and making available to quotation vendors the data normally reported with respect to the security; or

(4) A customer market order that is delivered immediately upon receipt to another specialist or OTC market maker that complies with the requirements of this section with respect to that order.

Dated: September 29, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–24911 Filed 10–6–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Tuesday
October 10, 1995

Part IV

Department of Education

Part A of Title I of the Elementary and Secondary Education Act of 1965; Notice

DEPARTMENT OF EDUCATION

Part A of Title I of the Elementary and Secondary Education Act of 1965

AGENCY: Department of Education.

ACTION: Notice of guidance for requesting waivers under part A of title I of the Elementary and Secondary Education Act of 1965 for schools under State-ordered or court-ordered desegregation plans.

SUMMARY: In this notice, the Assistant Secretary for Elementary and Secondary Education provides guidance to local educational agencies (LEAs) with schools under a court-ordered or State-ordered desegregation plan or a plan that continues to be implemented in accordance with a court-ordered or State-ordered desegregation plan. This guidance is intended to assist the Secretary in implementing section 1113(a)(7) of title I of the Elementary and Secondary Education Act of 1965 (Title I). The information obtained enables the Secretary to waive certain requirements of title I for eligible LEAs.

ADDRESSES: Requests for waivers should be submitted, in writing, to the Honorable Richard W. Riley, Secretary of Education, U.S. Department of Education, 600 Independence Avenue SW., room 6300, Attn: Waiver Action Board, Washington, D.C. 20202–0125.

FOR FURTHER INFORMATION CONTACT: Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W. (Portals Building, room 4400), Washington, D.C. 20202–6132. Telephone (202) 260–0826. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: One of the overarching principles of part A of title I of the Elementary and Secondary Education Act of 1965, as recently amended by the Improving America's Schools Act, is to target resources on those elementary and secondary schools with the highest concentrations of children from low-income families. As a result, section 1113(a) of title I requires an LEA to identify its eligible school attendance areas and schools, rank those areas and schools according to concentrations of poverty, and serve those areas and schools in rank order. An eligible area or school is one in which the percentage of children from low-income families is above the districtwide poverty average or 35 percent. Under section 1113(c)(1) of title I, the LEA must allocate funds to participating areas or schools in rank order on the basis of the total number of children from low-income families in each area or school.

Section 1113(a)(7) of title I recognizes that a State-ordered or court-ordered school desegregation plan or a plan that continues to be implemented in accordance with such a desegregation plan may alter the concentrations of poverty in schools governed by the plan. To accommodate this situation, if the number of children from low-income families in a school under a desegregation plan is at least 25 percent of the school's total enrollment, the LEA may request the Secretary to waive the eligibility and allocation requirements in section 1113(a) and (c) so that the LEA may identify as eligible and serve the school under title I. The Secretary may grant the LEA's request if the Secretary determines that approval of the request would further the purposes of part A of title I.

If an LEA desires a waiver of the requirements in either section 1113(a) or (c) for a school under a State-ordered or court-ordered school desegregation plan or a plan that continues to be implemented in accordance with such a desegregation plan, the LEA must submit a written request to the Secretary. The Secretary encourages the LEA, in preparing its request, to seek comment from interested parties, including the State educational agency and private school officials, if appropriate, and to include the following information in its request so that the Secretary may determine whether the request meets the statutory criteria in section 1113(a)(7):

- The school or schools for which the waiver is requested.
- A copy of the LEA's ranking of school attendance areas and schools, indicating which schools the LEA would fund if the waiver is granted and which schools the LEA would fund absent a waiver.
- A brief explanation of the LEA's desegregation plan (indicating the date of the plan and whether it is court-ordered, State-ordered, or continues to be implemented in accordance with a court- or State-ordered plan), how the desegregation plan affects the schools for which the waiver is requested (including, if available, the plan's impact on the concentrations of poverty in those schools), and how the plan would be furthered by the waiver.
- An explanation of the educational justification supporting the waiver request, including measurable educational improvement goals and expected outcomes for affected students and the methods to be used to measure progress in meeting those goals and outcomes.
- If the LEA proposes to skip eligible schools in order to serve schools under a waiver, an explanation of why it would further the purposes of the title I program to serve the schools for which the waiver is requested rather than the schools that would be skipped, including a description of the services to be provided and the number of children who would benefit.
- If the LEA is requesting a waiver of section 1113(c), the per-pupil amount the LEA intends to allocate to the schools for which the waiver is requested and the per-pupil amount(s) the LEA intends to allocate to its other schools.
- An explanation of how the LEA will continue to ensure the equitable participation of eligible private school children if the waiver is granted, including a description of how it consulted with private school officials in the development of the waiver request.

The Secretary may grant the LEA's request if the Secretary determines that approval of the request would further the purposes of part A of title I.

(Approved by the Office of Management and Budget under control number 18100586)

(Catalog of Federal Domestic Assistance Number: 84.010, Improving Programs Operated by Local Educational Agencies)

Dated: September 27, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 95–24963 Filed 10–6–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
October 10, 1995

Part V

The President

Memorandum of October 2, 1995—Federal Employee Domestic Violence Awareness Campaign

Presidential Determination No. 95–45 of September 29, 1995—Classified Information Concerning the Air Force's Operating Location Near Groom Lake, NV

Federal Register
Vol. 60, No. 195
Tuesday, October 10, 1995

Presidential Documents

Title 3—

The President

Memorandum of October 2, 1995

Federal Employee Domestic Violence Awareness Campaign

Memorandum for Heads of Executive Departments and Agencies

Domestic violence is not a private, family dispute that affects only the people involved. Domestic violence is violent criminal activity that affects us all, regardless of race, income, or age, in every community in this country. It means higher health care costs, increased absenteeism, and declining productivity. It destroys families, relationships, and lives. More importantly, it tears at the moral fabric of who we are and undermines the very institution that has been the cornerstone of our country: the family.

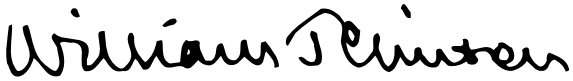
In passing the Violence Against Women Act as part of the Violent Crime Control Act (''VCCA'') last year, the Congress recognized the seriousness of the problem of domestic violence. This new law combines tough new penalties with programs to prosecute offenders and help women victims. In the last year, every State has received a down payment of $426,000 in grants to help train prosecutors, police, and service providers in combatting the problem of domestic violence. Moreover, because of the VCCA, every State will now ensure that women who have been assaulted will not have to pay for their medical examinations resulting from rape and other acts of violence.

Throughout October, National Domestic Violence Awareness Month, business, labor, law enforcement, public health, and civic organizations will be working to increase our understanding of this problem and create solutions that can save lives. I believe the Federal Government has a responsibility to be a leader in this effort.

Today, I am directing that executive departments and agencies institute employee awareness campaigns on domestic violence. Within the next 6 months, you should implement a program to promote Federal employee awareness of the problem of domestic violence and the programs and resources that are available for victims. I support and encourage the initial plans made by the Justice Department, which include the production of a resource manual and a poster, and the scheduling of a Violence Against Women Information Fair on October 30, 1995. This fair will include speakers, artwork, and exhibits.

We have a responsibility to assist all victims of domestic violence and their families trapped in a cycle of violence with no sense of where to turn. Often, victims will not report their circumstances to the public, but they may turn to coworkers for help. Thus, by providing information to all Federal workers on the programs available, we can make a contribution to the effort to protect women from abuse and reduce the level of violence in America.

The Director of the Office Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 2, 1995.

[FR Doc. 95–25235
Filed 10–6–95; 9:38 am]
Billing code 3110–01–M

Presidential Documents

Presidential Determination No. 95–45 of September 29, 1995

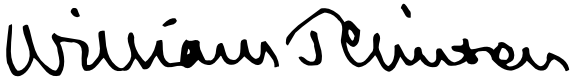
Presidential Determination on Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada (the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP)) from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. § 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada from any Federal, State, interstate or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this Determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 1995.

[FR Doc. 95–25244
Filed 10–6–95; 10:54 am]
Billing code 3910–01–M

federal register

Tuesday
October 10, 1995

Part VI

The President

Proclamation 6831—National Breast Cancer Awareness Month, 1995

Executive Order 12976—Compensation Practices of Government Corporations

Federal Register
Vol. 60, No. 195
Tuesday, October 10, 1995

Presidential Documents

Title 3—

The President

Proclamation 6831 of October 5, 1995

National Breast Cancer Awareness Month, 1995

By the President of the United States of America

A Proclamation

Our Nation can take pride in the progress we have made in the war against breast cancer. Many patients who would have confronted prolonged suffering and tragic death just a few years ago can now weigh options for treatment and face the future with excellent chances for recovery. My Administration has made a strong commitment to ending breast cancer's threat to the health of American women, significantly increasing funding for research, launching a campaign to encourage older women to take advantage of the mammography covered by Medicare, and creating a National Action Plan on Breast Cancer. This initiative unites the Federal Government, advocacy groups, health professionals, and private industries in a dynamic partnership to develop new strategies for prevention and care.

Yet even as we celebrate these gains, we must remember that millions of American women still fight this terrible disease, and tens of thousands die each year as a result of its devastating effects. Every three minutes another woman is diagnosed, and breast cancer claims some 120 precious lives daily. It is the most common form of cancer among women in this country and the leading cause of cancer death for those aged 30 to 54. And all women—our mothers, sisters, daughters, and friends—face the same stark statistics.

If we are to protect our citizens and honor the memories of the brave women who, like my mother, lost their lives to breast cancer, we must rededicate ourselves to the final eradication of the illness. Although there is no known cure, early detection and advances in medical technology remain our best weapons. By doing routine self-examinations, undergoing regular mammograms, and keeping a schedule of preventive medical care, women can detect breast tumors early and dramatically reduce the spread of cancer. This month and throughout the year, let us work to increase awareness of these lifesaving therapies and renew our commitment to developing new means of prevention.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1995 as National Breast Cancer Awareness Month. I urge the people of the United States to learn more about breast cancer and the resources we have—including examinations, mammography, good nutrition, and exercise—that may prevent its occurrence and minimize its spread. During this month, I call upon every citizen to extend special compassion to those who still struggle against the disease and to the many who have lost loved ones. Join us in the fight to end breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–25255
Filed 10–6–95; 11:41 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12976 of October 5, 1995

Compensation Practices of Government Corporations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 1105, 1108, and 1111 of title 31, United States Code, it is hereby ordered as follows:

Section 1. *Statement of Presidential Principles.*

Government corporations subject to this order should not pay bonuses in excess of those authorized by sections 4501 through 4507 of title 5, United States Code, except as otherwise specifically provided by law.

Sec. 2. *Administration Review.* (a) Before taking action to approve any bonus in excess of those authorized in section 4502 of title 5, United States Code, each corporation subject to this section (as provided in section 6 of this order) shall submit information to the Director of the Office of Management and Budget (OMB) relating to such bonuses as provided in subsection (b). Such corporation shall refrain from approving any such bonus until the Director of OMB has had an opportunity to review the information provided by the corporation.

(b) The Director of OMB shall issue instructions to the corporations subject to this section specifying when information is to be submitted, and the content and form of such information.

Sec. 3. *Information Reporting Requirements.* (a) Government corporations subject to this order will provide information to the Director of OMB relating to the compensation practices for senior executives of such corporations as provided in subsection (c).

(b) Information submitted shall include the following with respect to senior executives of each corporation subject to this section:

(1) the compensation plan, procedures, and structure of such corporation;

(2) base salary levels, annual bonuses, and other compensation; and

(3) information supporting the senior executive compensation plan and levels.

(c) The Director of OMB shall issue instructions to the corporations subject to this section specifying when information is to be submitted, and the content and form of such information.

Sec. 4. *Review.* (a) OMB, in consultation with the Department of Labor, will review the information submitted pursuant to section 3, taking into consideration:

(1) consistency with statutory requirements;

(2) consistency with corporate mission;

(3) standards of Federal management and efficiency; and

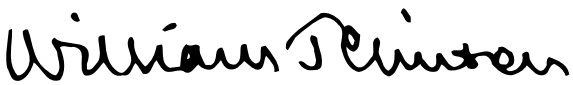
(4) equivalent private sector compensation practices.

Sec. 5. *Public Dissemination Requirement.* Government corporations subject to this order shall make available through public dissemination the information submitted pursuant to section 3 of this order.

Sec. 6. *Coverage.* This order will apply to all mixed-ownership and wholly owned corporations listed in section 9101 (2) and (3) of title 31, United States Code. Section 2 shall apply only to wholly owned corporations except such corporations that have specific authority to approve bonuses in excess of those authorized under sections 4501 through 4507 of title 5, United States Code.

Sec. 7. *Administration.* All corporations subject to this order shall provide any information in the manner and form, and at the time, requested pursuant to this order by the Director of OMB.

Sec. 8. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.



THE WHITE HOUSE,
October 5, 1995.

[FR Doc. 95–25256
Filed 10–6–95; 11:34 am]
Billing code 3195–01–P

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Federal Register

Vol. 60, No. 195

Tuesday, October 10, 1995

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
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86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
*700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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101	(869–022–00157–4)	29.00	July 1, 1994
*102–200	(869–026–00161–8)	15.00	July 1, 1995
*201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
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48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
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49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
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178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
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400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
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1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.