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[Three Sessions]

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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–108–1]

Pine Shoot Beetle; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to add 28 counties in Illinois, New York, Ohio, Pennsylvania, Maryland, and West Virginia to the list of quarantined areas. We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles. This action is necessary to prevent the spread of the pine shoot beetle, a highly destructive pest of pine products, into noninfested areas of the United States.

DATES: Interim rule effective October 27, 1995. Consideration will be given only to comments received on or before January 2, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–108–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–108–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Knight, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–7935.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States.

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During the ''maturation feeding,'' the young beetles bore up the center of pine shoots (usually of the current year's growth) causing stunted and distorted growth in the host trees. The pine shoot beetle is also a vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances. This pest damages urban trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

Pine shoot beetle hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of the pine shoot beetle. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of the pine shoot beetle.

Surveys recently conducted by State and Federal inspectors revealed additional areas infested with the pine shoot beetle in four States that were previously known to contain infested areas (Illinois, New York, Ohio, and Pennsylvania) and in two States not previously known to be infested (Maryland and West Virginia). Copies of the surveys may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

In accordance with these criteria, we are designating Champaign, Grundy, Vermilion, and Winnebago Counties, IL; Allegany County, MD; Stuben County, NY; Carroll, Columbiana, Crawford, Fulton, Holmes, Lucas, Ottawa, Sandusky, Seneca, Tuscarawas, Williams, Wood, and Wyandot Counties, OH; Armstrong, Cameron, Clearfield, Elk, Forest, Jefferson, McKean, and Westmoreland Counties, PA; and Hancock County, WV, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles under § 301.50–2. The pine shoot beetle quarantine does not currently regulate the movement of pine wreaths and garlands. However, a pest risk analysis determined that pine wreaths and garlands are hosts of the pine shoot beetle; their unregulated sale and transport would contribute to the spread of the pine shoot beetle.

We are also adding pine wreaths and garlands and raw pine materials for pine wreaths and garlands to the lists of regulated articles authorized for cold treatment and fumigation as specified in §§ 301.50–10(b) and (c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are

received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

The pine shoot beetle regulations impose restrictions on the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States. This rule amends these regulations by adding 28 counties to the list of quarantined areas. We are also adding raw pine materials for pine wreaths and garlands and finished pine wreaths and garlands to the list of regulated articles. This action is necessary to prevent the spread of the pine shoot beetle, a highly destructive pest of pine products, into noninfested areas of the United States.

Nurseries, Christmas tree producers, and logging operations in most of the 28 newly regulated counties will not be notably affected by this rule, either because pine species comprise a very minor share of their products or because they serve largely local populations. Counties included in this group are Champaign, Vermilion, Winnebago, and Grundy Counties, IL; Allegany County, MD; Stuben County, NY; Columbiana, Crawford, Fulton, Holmes, Lucas, Ottawa, Sandusky, Seneca, Williams, Wood, and Wyandot Counties, OH; Cameron, Clearfield, Elk, Forest, McKean, and Westmoreland Counties, PA; and Hancock County, WV. The four remaining counties (Carroll and Tuscarawas Counties, OH, and Armstrong and Jefferson Counties, PA) contain nurseries and Christmas tree plantations that have extensive stands of pine and whose owners rely mainly on out-of-county and out-of-State markets.

Affected businesses can maintain markets outside the regulated areas by arranging for inspections and the issuance of certificates or limited permits, or by fumigating or cold treating the regulated articles. Inspection is provided at no cost during normal business hours. However, there may be imputed costs to the businesses in preparing for the inspections and possible marketing delays. Such costs and inconveniences may be more likely for producers of live pine nursery stock, since inspection is required of each live plant before it may be moved to a nonregulated area. For producers in these counties who already have their trees inspected for other pests, another inspection may be a relatively small burden, especially when compared to the societal benefits of minimizing the human-assisted movement of the pine shoot beetle.

Extending the regulation to pine wreaths and garlands is important for the effectiveness of the quarantine. Should the producers decide to treat wreaths and garlands with methyl bromide, the low costs of treatment will not have a significant economic effect on small producers. Nurseries and other producers earn an average of 4 percent of their revenue from wreaths and garlands. Methyl bromide treatment of wreaths and garlands should cost approximately 1 percent of this revenue. Estimated treatment costs for small Christmas tree growers are $15–$20 per year, and estimated treatment costs for small nurseries are $50–$100 per year.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of pine wreaths and garlands, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were 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).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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 copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In § 301.50–2, paragraph (a) is revised to read as follows:

§ 301.50–2 Regulated articles.

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; pine wreaths and garlands; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

§ 301.50–3 [Amended]

3. Section 301.50–3 is amended as follows:

a. Paragraph (c) is amended by adding, in alphabetical order, under Illinois, New York, Ohio, and Pennsylvania, new counties to read as set forth below.

b. In paragraph (c), new entries for Maryland and West Virginia are added in alphabetical order to read as set forth below.

c. Paragraph (d) is revised to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

Champaign County. The entire county.

* * * * *

Grundy County. The entire county.

* * * * *

Vermilion County. The entire county.

* * * * *

Winnebago County. The entire county.

* * * * *

MARYLAND

Allegany County. The entire county.

* * * * *

NEW YORK

* * * * *

Stuben County. The entire county.

* * * * *

OHIO

* * * * *

Carroll County. The entire county.

Columbiana County. The entire county.

Crawford County. The entire county.

* * * * *

Fulton County. The entire county.

* * * * *

Holmes County. The entire county.

* * * * *

Lucas County. The entire county.

* * * * *

Ottawa County. The entire county.

* * * * *

Sandusky County. The entire county.

Seneca County. The entire county.

* * * * *

Tuscarawas County. The entire county.

* * * * *

Williams County. The entire county.

Wood County. The entire county.

Wyandot County. The entire county.

PENNSYLVANIA

* * * * *

Armstrong County. The entire county.

* * * * *

Cameron County. The entire county.

* * * * *

Clearfield County. The entire county.

* * * * *

Elk County. The entire county.

* * * * *

Forest County. The entire county.

Jefferson County. The entire county.

* * * * *

McKean County. The entire county.

* * * * *

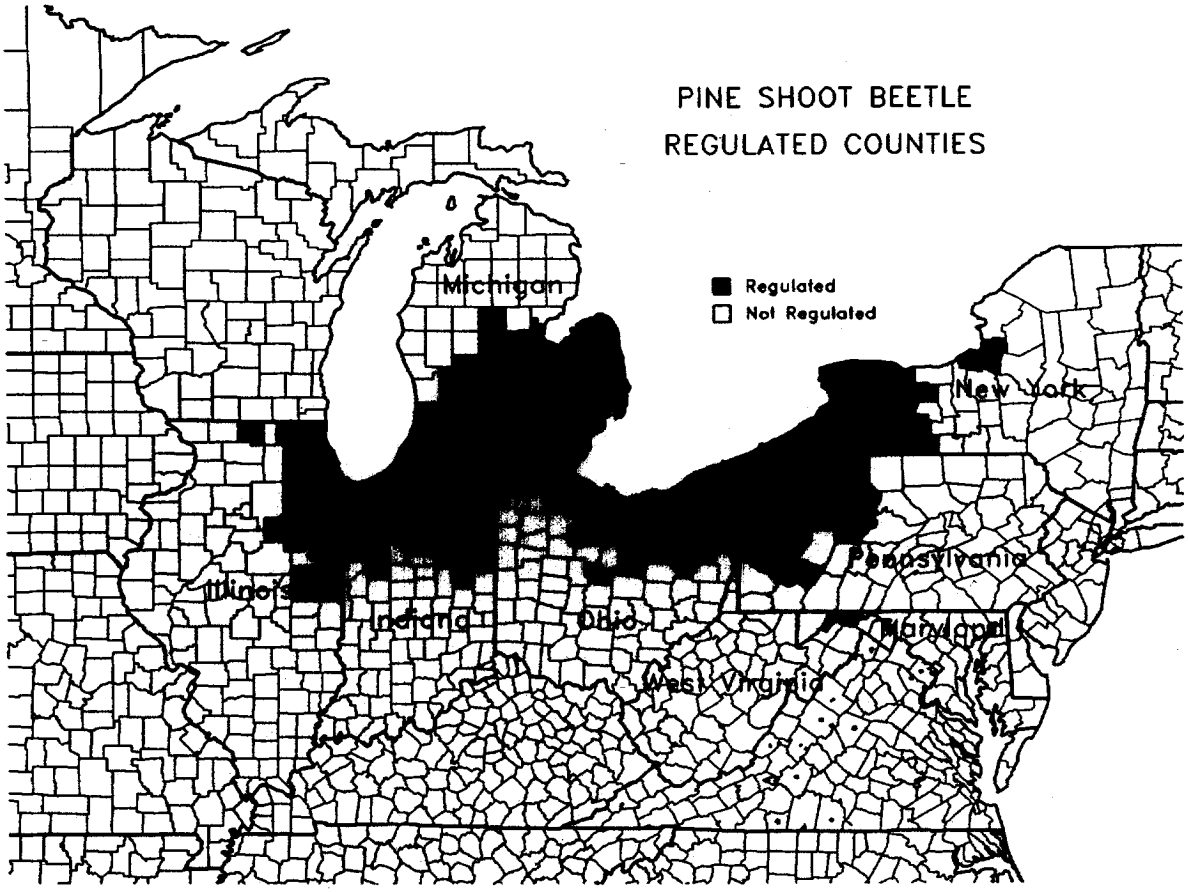
Westmoreland County. The entire county.

WEST VIRGINIA

Hancock County. The entire county.

(d) A map of the quarantined areas follows:

BILLING CODE 3410–34–P



BILLING CODE 3410–34–C

4. In § 301.50–10, paragraph (b) is amended by removing ''cut pine Christmas trees and pine nursery stock'' and adding in its place ''cut pine Christmas trees, pine nursery stock, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands''.

5. In § 301.50–10, paragraph (c), the introductory text is revised to read as follows:

§ 301.50–10 Treatments.

* * * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees, pine wreaths and garlands, and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows:

* * * * *

Done in Washington, DC, this 27th day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–27284 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 443

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure hybrid seed effective for the 1994 and succeeding crop years. The intended effect of this action is to incorporate the late and prevented planting coverage into the hybrid seed crop insurance policy.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, Regulatory and Procedural Development Staff, Suite 500, 2101 L Street, N.W., Washington, D.C., 20037. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1997.

This rule has been determined to be ''exempt'' for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

The provisions set forth in this rule do not impose burdensome information collection requirements that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase from the amount required to deliver previous policies. This action, in fact, reduces the paperwork burden on the insured farmer and insurance providers. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require 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.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are retroactively effective as of November 30, 1993, and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, December 22, 1993, FCIC published an interim rule in the Federal Register at 58 FR 67644, to amend the Hybrid Seed Crop Insurance Regulations (7 CFR part 443) by incorporating late and prevented planting provisions into that policy, effective for the 1994 and succeeding crop years. Because this rule benefited the insured by improving coverage for policyholders, good cause was found to make the interim rule retroactively effective as of November 30, 1993.

Following publication of the interim rule, the public was afforded 60 days to submit written comments, data and opinions, but none were received. Therefore, the interim rule as published on December 22, 1993, at 58 FR 67644 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 443

Crop insurance, Hybrid seed.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby adopts as a final rule, the interim rule as published at 58 FR 67644 on December 22, 1993.

Done in Washington, D.C., on October 25, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27334 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–31; Amendment 39–9408; AD 95–22–01]

Airworthiness Directives; Aerospace Lighting Corporation Power Units and Power Supplies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospace Lighting Corporation (ALC) lamp connectors and fluorescent lamps, that currently requires an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting

systems. This amendment adds an optional replacement of certain power units and power supplies with new technology parts as terminating action to the repetitive inspections. This amendment is prompted by the availability of new technology components. The actions specified by this AD are intended to prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft.

DATES: Effective December 4, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741; telephone (516) 563–6400, fax (516) 563–8781. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bradford Chin, Electronics Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., Third Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7507, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–14–06, Amendment 39–6640 (55 FR 27457, July 3, 1990), which is applicable to Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A, and Series 66 fluorescent lamps, was published in the Federal Register on January 4, 1995 (60 FR 382). That action proposed to continue to require an inspection, and adjustment or replacement of improperly installed, damaged, or improperly configured lamp connectors and fluorescent lamps used in cabin fluorescent lighting systems in accordance with ALC Information Bulletin No. IB 90–001, dated August 15, 1992. That AD also proposed to add an optional replacement of power units, and power supplies and dimmers, with new technology protected power units, and protected power supplies, as applicable. Installation of these protected power units and protected power supplies constitutes terminating action to the repetitive inspections. The actions required by that proposed AD would be required to be accomplished in accordance with the following ALC Installation Instructions (II): AL–11023M, Revision A, dated May 20, 1994; AL–11024M, dated March 15, 1992; and AL–11025M, dated March 15, 1992. These II's describe procedures for installing improved design protected power units, and protected power supplies, as applicable.

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

Three commenters support the rule as proposed.

One commenter suggests that the real problem lies with Series ''66'' lamps, which have spring tension split rings that cause arcing as the lamps wear. The commenter suggests that a terminating action need only require replacing all Series ''66'' lamps with Series ''AL–12'' lamps. The FAA does not concur. While the FAA agrees that replacing the Series ''66'' lamps will eliminate the lamp connection as a possible arcing site, the rest of the lamp output loop contains the same arcing potential as the lamp connector. The FAA has determined that replacing the Series ''66'' lamps is not a satisfactory terminating action as it does not completely prevent arcing in the aircraft from fluorescent lighting high voltage.

The manufacturer states that the economic analysis work hours and parts should be lowered to better reflect field practice. The FAA concurs and the economic analysis has been revised accordingly.

The manufacturer also states that the list of aircraft installations in the applicability should be revised to delete a Beech model and add certain Raytheon Corporate Jets, Inc. and Bombardier Inc. Canadair models. The FAA concurs and this final rule has been revised accordingly.

The manufacturer also commented that the ALC part numbers listed in paragraphs (d)(3) and (d)(4) of the proposed rule represented the same unit. The manufacturer suggests that paragraphs (d)(3) and (d)(4) can be combined into a single paragraph. The FAA concurs. The part number for ALC P/N 18–95D was changed in January 1991 to P/N AL–0598, and P/N 22–311 to P/N AL–0542. These old and new part number units are functionally and physically identical. ALC has integrated the dimmer functions of P/N 22–311 and P/N AL–0542 into power units P/N AL–5118 and P/N AL–5130. Because of these changes, the FAA has revised paragraphs (d)(3) and (d)(4) by combining them into a single paragraph (d)(3) in the final rule.

The manufacturer also states that the word ''removal'' should be deleted from paragraph (a)(2). The FAA does not concur. Operators are required to remove unserviceable parts and then replace those parts with serviceable parts. The FAA has, however, reworded paragraph (a)(2) for clarity and to update the referenced service information.

Lastly, the manufacturer states that paragraph (d)(2) should provide that the optional replacement actions constitute alternative methods of compliance with the AD. The FAA does not concur. The replacement actions in paragraph (d)(2) work to end an operator's obligation to continue repetitive inspections, and, therefore, compliance with those inspection requirements of the AD. The FAA views those actions as an end to the AD for that operator rather than as an alternate method of complying with the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. 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 it will take approximately 1 work hour per power unit or power supply to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $400 per power unit or $900 per power supply. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $460 per power unit or $960 per power supply.

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 39–6640 (55 FR 27457, July 3, 1990) and by adding a new airworthiness directive, Amendment 39–9408, to read as follows:

95–22–01 Aerospace Lighting Corporation: Amendment 39-9408. Docket 94–ANE–31. Supersedes AD 90–14–06, Amendment 39–6640.

Applicability: Aerospace Lighting Corporation (ALC) lamp connectors, Part Number (P/N) 31.85.1.A; Series 66 fluorescent lamps; power units, P/N's TR–991, TR–992, AL–0546, and AL–0514; and power supplies, P/N's 1895D and AL–0598. These products are utilized in cabin fluorescent lighting systems, and are installed on, but not limited to, the following aircraft: Airbus Industrie Model A310; Avion Marcel Dassault Breguet Aviation Model Falcon 10; Boeing Airplane Company Models 727, 737, 747, and 757; Raytheon Corporate Jets, Inc. (formerly British Aerospace) Model HS. 125–600A, –700A, –800A, and –1000A; Bombardier Inc. Canadair Ltd. Models CL–600–1A11, CL–600–2A12, CL–600–2B16, CL–600–2B19, CL–601, CL–601–3A, CL–601–3R; Cessna Aircraft Company Models 550 and 560; Dassault Aviation Models Mystere-Falcon 20 and 50; Empresa Brasileira de Aeronauctica S/A Model Embraer EMB–120; Gulfstream Aerospace Corporation Models G–159, G–1159, G–1159A, and G–IV; Israel Aircraft Industrie, Ltd. Models 1124 and 1125; Jetstream Aircraft, Ltd. Jetstream Model 310; Learjet Corporation Models Learjet 35 and 36; Saab Aircraft AB Model Saab 340A; and Sikorsky Aircraft Division Model S–76A.

Note: This airworthiness directive (AD) applies to each product 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 products 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 (e) 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 product from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent smoke, fire, electrical shock, and possible electromagnetic interference caused by high voltage arcing in the cabin which, if undetected, could result in personal hazard or loss of the aircraft, accomplish the following:

(a) Within 30 calendar days of the effective date of this airworthiness directive (AD), accomplish the following:

(1) Inspect the cabin fluorescent lighting system in accordance with ALC Information Bulletin No. IB 90–001, dated August 15, 1992, paragraph IV. ''Fluorescent Lighting System Components Identification and Inspection Procedure,'' subparagraphs B.1, 2., 3., 5., 6., and 7.

(2) After completing the inspection above in paragraph (a)(1) of this AD, remove and replace any part(s) found to be damaged or improperly configured in accordance with paragraph IV. B.4, 8., and 9., as required, of ALC Information Bulletin No. IB 90–001, dated August 15, 1992.

(b) Within 5 flights or 10 flight hours, whichever occurs first, of a cabin fluorescent lighting system components failure, repeat the removal and replacement procedures of paragraph (a)(2) of this AD.

(c) An alternative method of compliance with paragraphs (a)(1), (a)(2), and (b) of this AD would be to turn the fluorescent lighting system off and to placard the system to prevent unintentional activation.

(d) Replacement of the following ALC parts, in accordance with the following instructions, constitutes terminating action to the inspections required by paragraph (b) of this AD. These actions are:

(1) Remove power units, P/N TR–991 or AL–0546, and replace with protected power units, P/N AL–5117, in accordance with ALC Installation Instruction (II) No. AL–11025M, dated March 15, 1992.

(2) Remove power units, P/N TR–992 or AL–0514, and replace with protected power unit, P/N AL–5112, in accordance with ALC II No. AL–11024M, dated March 15, 1992.

(3) Remove power supplies, P/N 18–95D or AL–0598 and dimmer, P/N 22–311 or AL–0542, and replace with protected power supply, P/N AL–5118 or AL–5130, in accordance with ALC II No. AL–11023M, Revision A, dated May 20, 1994.

(e) 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. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

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

(f) 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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
ALC II AL–11023M	1–18	A	May 20, 1994.
Total pages: 18			
ALC II AL–11024M	1–9	Original	March 15, 1992.
Total pages: 9			
ALC II AL–11025M	1–9	Original	March 15, 1992.
Total pages: 9			
ALC No. IB90–001	1	Revision	August 15, 1992.
	2–8	Original	March 30, 1990.
	9	Revision	August 15, 1992.
	10–13	Original	March 30, 1990.
Total pages: 13			

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 Aerospace Lighting Corporation, 101–8 Colin Drive, Holbrook, NY 11741; telephone (516) 563–6400, fax (516) 563–8781. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 4, 1995.

Issued in Burlington, Massachusetts, on October 11, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–26723 Filed 11–2–95; 8:45 am]

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14 CFR Part 39

[Docket No. 95–NM–195–AD; Amendment 39–9418; AD 95–22–10]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes. This action requires replacement of the rear pintle pin of both main landing gears (MLG) with an improved pintle pin assembly. This amendment is prompted by the results of fatigue testing, which demonstrated that fatigue cracking can occur in the heads of these pintle pins. The actions specified in this AD are intended to prevent the initiation and propagation of such fatigue cracking, which could lead to the failure of the pintle pins and consequent collapse of the MLG.

DATES: Effective November 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during full-scale fatigue testing conducted by the manufacturer, fatigue cracks were found in the heads of the pintle pins of the main landing gears (MLG) of test airplanes at 118,700 simulated flights. Such fatigue cracking, if not corrected, could result in failure of the pintle pins and consequent collapse of the MLG.

Airbus has issued Service Bulletin A320–32–1024, dated January 29, 1990, which describes procedures for replacing the pintle pin assembly with an improved assembly. The pintle pins of the improved assembly have thicker heads and walls, making them less susceptible to fatigue cracking. This assembly also includes installation of an anti-rotation plate. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 940240–061(B), dated November 9, 1994, in order to assure the continued airworthiness of these airplanes in France. This replacement has been accomplished during production on airplanes having manufacturer's serial numbers (MSN) 022 and subsequent.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent initiation and propagation of fatigue cracking in the pintle pins of the MLG. This AD requires replacement of the rear pintle pin of both MLG's with an improved pintle pin assembly. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model A320 series airplanes affected by this action are 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 21 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $12,636 per airplane. Based on these figures, the total cost impact of this AD would be $13,896 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–195–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 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–22–10 Airbus: Amendment 39–9418. Docket 95–NM–195–AD.

Applicability: Model A320 airplanes; as listed in Airbus Service Bulletin A320–32–1024, dated January 29, 1990; 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 (b) 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 the initiation and propagation of fatigue cracking in the pintle pins of the main landing gear (MLG), which could lead to the failure of the pintle pins and consequent collapse of the MLG, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings, or at the next overhaul of the main landing gear, whichever occurs first, replace the rear pintle pin of both MLG with an improved pintle pin assembly in accordance with Airbus Service Bulletin A320–32–1024, dated January 29, 1990.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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.

(d) The replacement shall be done in accordance with Airbus Service Bulletin A320–32–1024, January 29, 1990. 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.

(e) This amendment becomes effective on November 20, 1995.

Issued in Renton, Washington, on October 24, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–26870 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–205–AD; Amendment 39–9421; AD 95–22–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an inspection to determine proper clamping and to detect damage of a wire bundle in the avionics compartment, and repair, if necessary. This amendment is prompted by a report of smoke and fire in the avionics compartment floor area that was caused by electrical arcing that occurred as the result of chafed wiring. The actions specified in this AD are intended to prevent smoke and fire in the avionics compartment due to such electrical arcing in the wire bundle; that condition could pose a hazard to the continued safe flight of the airplane.

DATES: Effective November 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1995.

Comments for inclusion in the Rules Docket must be received on or before January 2, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–205–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of a McDonnell Douglas Model MD–11 series airplane reported that chafing and subsequent electrical arcing of wires in the avionics compartment floor area caused damage to wiring, insulation blankets, and equipment rack structure. The arcing also caused fire and smoke in the avionics compartment. Investigation revealed that the wire bundle was outside of the wire clamp, which was the result of improper clamping during manufacturing. This condition allowed the wiring to chafe against the clamp hardware and equipment rack structure. Chafing and subsequent electrical arcing of the wire bundle, if not corrected, could result in fire and smoke in the avionics compartment area. This condition could pose a hazard to the continued safe flight of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 1995, which describes procedures for a visual inspection of the wire bundle in the avionics compartment for improper clamping or damage to the wiring. The service bulletin also contains procedures for repositioning of improperly clamped wire assemblies; and either splicing and replacing, or repairing damaged wiring. The alert service bulletin recommends that these actions be accomplished within six months.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas MD–11 series airplanes of the same type design, this AD is being issued to prevent fire and/or smoke due to chafing and arcing of the wire bundle in the avionics compartment area. This AD requires a one-time visual inspection of the wire bundle in the avionics compartment to determine proper clamping of the wire bundle and to detect any damage of the wiring. Improperly clamped wire bundles must be properly repositioned. Damaged wiring must be repaired. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Operators should note that, although the alert service bulletin recommends accomplishing the visual inspection within six months (after the release of the service bulletin), the FAA has determined that an interval of six months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds 30 days to be an appropriate compliance time for initiating the required actions in that it represents the maximum interval of time allowable for affected airplanes to continue to operate without compromising safety.

This AD also requires that operators report positive and negative results of the inspection to the FAA.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–205–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. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–22–13 McDonnell Douglas: Amendment 39–9421. Docket 95–NM–205–AD.

Applicability: Model MD–11 series airplanes having manufacturer's fuselage numbers 0447 through 0527, inclusive, 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 (c) 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 smoke and fire in the avionics compartment due to electrical arcing that results from chafing damage to wires, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection of the wire bundle in the avionics compartment for improper clamping and/or damage of the wiring, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 1995.

(1) If the wire bundle is properly clamped and no damage is detected, no further action is required by this AD.

(2) If the wire bundle is improperly clamped, prior to further flight, reposition the wire in the clamp in accordance with the alert service bulletin.

(3) If any wiring is damaged, prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD, as applicable:

(i) For wires (Loop A and B) having damage to any one fire detector controller (engines 1, 2, 3, and APU): Prior to further flight, splice one loop and replace the wire for the other loop in accordance with the alert service bulletin.

(ii) For wiring having damage other than that identified in paragraph (a)(3)(i) of this AD: Prior to further flight, repair the wiring in accordance with the alert service bulletin.

(b) Within 15 days after accomplishing the visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5200; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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

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

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

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A094, dated October 12, 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 20, 1995.

Issued in Renton, Washington, on October 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27075 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AWP–28]

Establishment of VOR Federal Airway V–514; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Federal Airway V–514 from the Mission Bay, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Boulder City, NV, VORTAC. Pilots are presently issued several airway segments between the Mission Bay, CA, VORTAC and the Boulder City, NV, VORTAC. The establishment of this airway will provide pilots with one airway segment between these two points. This action will improve traffic flow and reduce pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On April 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Federal Airway V–514 from the Mission Bay, CA, VORTAC to the Boulder City, NV, VORTAC (60 FR 19190).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) 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 airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Federal Airway V–514 from the Mission Bay, CA, VORTAC to the Boulder City, NV, VORTAC. This action will improve

traffic flow and reduce pilot/controller workload.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 6010(a)—Domestic VOR Federal Airways

* * * * *

V–514 [New]

From Mission Bay, CA; INT Mission Bay 091° and Julian, CA, 185° radials; Julian; Thermal, CA; Twentynine Palms, CA; INT Twentynine Palms 043° and Goffs, CA 200° radials; Goffs, INT Goffs 033° and Boulder City, NV, 165° radials; Boulder City.

* * * * *

Issued in Washington, DC, on October 24, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–27349 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 83G–0277]

α-Amylase Enzyme Preparation; Affirmation of GRAS Status as Direct Human Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that α-amylase enzyme preparation derived from *Bacillus stearothermophilus* is generally recognized as safe (GRAS) for use in the processing of starch to make maltodextrins and nutritive carbohydrate sweeteners. This action is based on a petition requesting such affirmation.

DATES: Effective November 3, 1995. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR part 184, effective November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Vincent E. Zenger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3105.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Federal Register of September 21, 1983 (48 FR 43096), FDA announced that a petition (GRASP 3G0284) had been filed by CPC International, Inc., International Plaza, Englewood Cliffs, NJ 07632, requesting that α-amylase enzyme from *B. stearothermophilus* used in the production of sweeteners from starch be affirmed as GRAS as a direct human food ingredient.

In a tentative final rule published in the Federal Register of December 5, 1994 (59 FR 62366), FDA announced its tentative decision to affirm as GRAS the use of this enzyme preparation to produce maltodextrins, as well as nutritive carbohydrate sweeteners from starch. The agency published a tentative final rule before proceeding to final action because the end products of the α-amylase hydrolysis of starch are maltodextrins, which are not sweet and are not used as sweeteners in food, as well as nutritive carbohydrate sweeteners. Maltodextrins may be used as a food ingredient or used as a raw material in the manufacture of nutritive carbohydrate sweeteners, for example, glucose syrups. Therefore, FDA found that the phrase ''production of maltodextrins and nutritive carbohydrate sweeteners from starch'' was a more accurate description of the petitioned use of the α-amylase enzyme preparation. FDA published the tentative final rule to afford interested persons the opportunity to comment on this change. FDA did not receive any comments in response to this tentative final rule. Therefore, the agency concludes that the tentative final rule should be issued as a final rule.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because no current activity is prohibited by this final rule, the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this final rule, total costs are also zero. Potential benefits include the wider use of this enzyme because of reduced uncertainty concerning its GRAS status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of this enzyme for this use. Thus the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory

Flexibility Act, no further analysis is required.

IV. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

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 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1012 is added to subpart B to read as follows:

§ 184.1012 α-Amylase enzyme preparation from Bacillus stearothermophilus.

(a) α-Amylase enzyme preparation is obtained from the culture filtrate that results from a pure culture fermentation of a nonpathogenic and nontoxicogenic strain of *Bacillus stearothermophilus*. Its characterizing enzyme activity is α-amylase (1,4 α-D glucan glucanohydrolase (E.C. 3.2.1.1)).

(b) The ingredient meets the general and additional requirements for enzyme preparations in the ''Food Chemicals Codex,'' 3d ed. (1981), pp. 107–110, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1110 Vermont Ave. NW., suite 1200, Washington, DC, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practices. The affirmation of this ingredient as GRAS as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme, as defined in § 170.3(o)(9) of this chapter, in the hydrolysis of edible starch to produce maltodextrins and nutritive carbohydrate sweeteners.

(2) The ingredient is used at levels not to exceed current good manufacturing practices.

Dated: October 19, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–27240 Filed 11–2–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I and Parts 1, 7, 9, 14, 20 and 64

RIN 1024–AC37

General Provisions, Definitions: Change in Organizational Title From Regional Director to Field Director

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending the General Provisions Definition of ''Regional Director'' to reflect a new organizational structure. With the recent reorganization of the NPS eliminating existing geographic regions (effective May 15, 1995), the term Regional Director is no longer an agency job position. The duties and responsibilities of these positions have been assumed by Field Directors. This amendment to the definition will replace the term Regional Director with Field Director wherever it appears in 36 CFR parts 1–199, as well as eliminate all reference to the former geographic regions.

This change is necessary because the terms Region and Regional Director are no longer recognized in the NPS reorganizational structure. Certain responsibilities and delegations of authority associated with the former Regional Directors are now assumed by the positions identified by the term Field Director. Publication of this change is also a requirement of the Federal Register Act (44 U.S.C. Chapter 15).

EFFECTIVE DATE: This rule is effective November 3, 1995.

ADDRESSES: Comments should be addressed to: Dennis Burnett, National Park Service, Ranger Activities Division, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, at the above address. Telephone (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

The National Park System of the United States comprises 368 areas covering over 80 million acres in 49 States, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan and the Virgin Islands. These areas of national significance justify special recognition and protection in accordance with various acts of Congress.

In an Act signed on August 25, 1916, Congress established in the Department of the Interior the National Park Service to provide cohesive administration of those federal parklands under the Department of the Interior's jurisdiction. This new agency assumed the responsibility for the management of 29 park units that had previously been designated by Congress. An Executive Order in 1933 transferred 63 national monuments and military sites from the Forest Service and the War Department to the NPS. With this rapid increase in the number of units entering the system, the NPS determined that an expanded management system was necessary to properly administer the parks.

In August of 1937, the NPS initiated the geographical concept of Regional Offices administered by Regional Directors by establishing four (4) Regional Offices: Region One in Richmond, VA; Region Two in Omaha, NE; Region Three in Santa Fe, NM; and Region Four in San Francisco. These four original regional offices provided assistance in the management and administration of the parks in their regions from 1937 until 1955 when Region Five was established in Philadelphia, PA. National Capital Parks became Region Six on January 22, 1962. Also in 1962, Region One was renamed Southeast Region and on January 9, 1972, the headquarters moved from Richmond to Atlanta, GA. A seventh regional office, Northwest Region, was added on December 30, 1969, in Seattle, WA. Region Eight, North Atlantic Region, was established on January 6, 1974, in Boston, MA. Region Nine, Rocky Mountain Region, was established on November 30, 1973, in Denver, CO. The tenth and final region,

Alaska Region, was added on December 2, 1980, in Anchorage, AK.

As a result of: (1) The NPS's own assessment of a need to change how it accomplished its essential work with increasing constraints; (2) the National Performance Review (NPR) which directed Federal agencies to cut red tape, put customers first, empower employees to get results and reduce layers in organizations; and (3) The Federal Workforce Restructuring Act of 1994 (P.L. 103–226), a government-wide workforce reduction, the NPS implemented a Servicewide restructuring of the organization. The reorganization effort drastically reduces central office staffs. The 10 NPS Regional Directors have been replaced by 7 Field Directors, who provide direction, oversight, budget formulation and assistance in media relations for the parks and support offices in their geographical field areas. With the change and revision of the regional concept, all national park units are now grouped into clusters to act collaboratively in sharing limited resources. A network of 16 system support offices provide services and support to the parks by cluster.

The President of the United States, through the Secretary of the Interior and the Director of the NPS allowed the Regional Directors of the ten Regional Offices certain delegated authorities in the management of the park units. 36 CFR Parts 1–199 contains many of these authorities. Because the term Regional Director is codified in the CFR, the definition of Regional Director must be replaced to reflect the new authorities now found in Field Directors as a result of the reorganization. Many of these authorities have the enforcement powers of law.

The NPS is adopting this final rule pursuant to the ''agency organization'' exception of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) from general notice and comment rulemaking. The NPS believes that this exception from rulemaking procedures is warranted because it is merely a change in agency organizational structure. The NPS finds that notice and comment are unnecessary and contrary to the public interest for this final rule.

The NPS has also determined, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), that the publishing of this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay would be contrary to the public interest and the interest of the agency. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this rulemaking is excepted from the 30-day delay in the effective date and shall therefore become effective on the date published in the Federal Register.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rule to the address noted at the beginning of this rulemaking.

Drafting Information. The primary author of this rule is Dennis Burnett of the Washington Office of Ranger Activities.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are negligible.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or

(d) cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) and by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Reporting and recordkeeping requirements.

36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way.

36 CFR Part 14

Electric power, Highways and roads, National parks, Public lands—rights-of-way.

36 CFR Part 20

Isle Royale National Park, Commercial fishing.

36 CFR Part 64

Grants and allocations for recreations and conservation use of abandoned railroad—rights-of-way.

In consideration of the foregoing, and under the authority at 18 U.S.C. 1 and 3, 36 CFR Chapter I is amended as follows:

1. 36 CFR Chapter I is amended by removing the term ''Regional Director'' and inserting the term ''Field Director'' in it place each time it appears.

PART 1—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 460 l-6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

3. Section 1.4 is amended in paragraph (a) by removing the definition of ''Regional Director'' and adding a new definition of ''Field Director'', in alphabetical order, to read as follows:

§ 1.4 Definitions.

* * * * *

(a) * * *

Field Director means the official in charge of a geographic area of the National Park Service.

* * * * *

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

4. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 80–137 (1981) and D.C. Code 40–721 (1981).

5. The Alphabetical listing of the national park units in part 7 is amended in the entry for § 7.96 by removing the words ''Region Parks'' and adding the word ''Area'' in its place.

§ 7.3 [Amended]

6. Section 7.3(b)(6) is amended by removing the words ''Midwest Region,'' in the first sentence.

§ 7.16 [Amended]

7. Section 7.16(h)(5) is amended by removing the words ''Region Four'' in the first sentence, and;

8. Section 7.16(j)(4) is amended by removing the words ''Western Region,'' in the second sentence.

§ 7.22 [Amended]

9. Section 7.22(c)(10) is amended by removing the words ''Region Two'' in the first sentence.

§ 7.63 [Amended]

10. Section 7.63(b)(10) is amended by removing the words ''Region Two'' in the first sentence.

§ 7.96 [Amended]

11. Section 7.96 is amended by changing the word ''Region'' in the section heading to ''Area'' and removing the word ''parks'', and;

12. Section 7.96(a) is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

13. Section 7.96(g)(1)(iii) is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

14. Section 7.96(g)(1)(viii) is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

15. Section 7.96(g)(1)(ix) is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

16. Section 7.96(g)(3) introductory text is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

17. Section 7.96(g)(5)(vi)(A) is amended by changing the word ''Region'' to ''Area'' in the first sentence, and;

18. Section 7.96(g)(5)(vi)(D) is amended by changing the word ''Region'' to ''Area'' and removing the word ''areas'' in the first sentence, and;

19. Section 7.96(g)(5)(xiv) is amended by changing the word ''Region'' to ''Area'' in the first sentence.

PART 9—MINERALS MANAGEMENT

20. The authority citation for part 9 continues to read as follows:

Authority: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 *et seq.*); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 *et seq.*).

§ 9.2 [Amended]

21. Section 9.2(l) is amended by changing the word ''region'' to ''area'' in the first sentence, and;

§ 9.31 [Amended]

22. Section 9.31(j) is amended by changing the word ''region'' to ''area'' in the first sentence, and;

§ 9.82 [Amended]

23. Section 9.82(d) is amended by changing the word ''Regional'' to ''Area'' in the first sentence.

PART 14—RIGHTS-OF-WAY

24. The authority citation for part 14 continues to read as follows:

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

§ 14.2 [Amended]

25. Section 14.2 is amended by removing paragraph (c) and redesignating paragraphs (d) through (i) as paragraphs (c) through (h).

PART 20—ISLE ROYALE NATIONAL PARK; COMMERCIAL FISHING

26. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 1–3, 39 Stat. 535, as amended, sec. 3,56 Stat. 133, secs 1, 2, 67 Stat. 495; 16 U.S.C. 1, 1b, 1c 2, 3, 408(k).

§ 20.1 [Amended]

27. Section 20.1(c) is amended by replacing the words ''Region Two'' with the words ''of the area'' and adding the words ''where the unit is located'' after ''National Park Service'', in the first sentence.

PART 64—GRANTS AND ALLOCATIONS FOR RECREATION AND CONSERVATION USE OF ABANDONED RAILROAD RIGHTS-OF-WAY

28. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 809(B) (2) and (3), 90 Stat. 145, Pub. L. 94–210; Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

§ 64.7 [Amended]

29. Section 64.7(c) is amended by removing the words ''Bureau of Outdoor Recreation'' in the first sentence.

Dated: September 12, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–27148 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH10

Determinations of Incompetency and Competency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning determinations of mental incompetency to make clear that only rating boards are authorized to make determinations of incompetency for purposes of VA benefits and VA insurance.

EFFECTIVE DATE: This amendment is effective November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On May 4, 1995, VA published in the Federal Register (60 FR 22016) a proposed rule intended to clarify that rating agencies have sole authority to make determinations of competency and incompetency for purposes of insurance and payment of VA benefits. Interested parties were invited to submit written comments on or before July 3, 1995. We received no comments.

Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted as a final rule with nonsubstantive changes to paragraph (b)(1) of § 3.353. These changes clarify that VA determinations of competency or incompetency affect only VA benefits, i.e., insurance, discontinuance and payment of amounts withheld because of an estate in excess of $1,500, and disbursement of benefits. This will ensure that this paragraph would not be interpreted to concern such things as the ability of the veteran to provide informed consent for medical treatment, or the ability of VA physicians and other VA medical professionals to determine a patient's mental capacity in support of guardianship and conservatorship petitions in state courts.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will directly affect VA beneficiaries but

will not affect small businesses. Therefore, pursuant to 5 U.S.C. 606(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: October 26, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.353 is amended by revising paragraph (b) to read as follows:

§ 3.353 Determinations of incompetency and competency.

* * * * *

(b) *Authority.* (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 (§ 3.557(b)), and, subject to § 13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent the Adjudication Officer will inform the Veterans Services Officer of jurisdiction of that fact. The Veterans Services Officer will develop information as to the beneficiary's social, economic and industrial adjustment and appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter, select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter. The Adjudication Officer will authorize disbursement of the benefit in the manner selected by the Veterans Services Officer.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Services Officer develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

* * * * *

[FR Doc. 95–27278 Filed 11–2–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 66–1–7113; A–1–FRL–5323–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Pertaining to the RACT Approval for Panther Creek Partners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 8, 1995, EPA published approval of a State Implementation Plan (SIP) revision submitted by Pennsylvania (60 FR 46768). This revision would have approved requirements to establish reasonably available control technology (RACT) for Panther Creek Partners, located in Carbon County. The intended effect of the action was to approve nitrogen oxide (NO_X) RACT for this major NO_X source located in Pennsylvania. Because EPA received adverse comment, EPA is amending the September 8, 1995 final action, only as it pertains to Panther Creek Partners.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337.

SUPPLEMENTARY INFORMATION: EPA approved this direct final rule without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the Federal Register with a provision for a 30 day comment period (60 FR 46768). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the Federal Register (60 FR 46802). The final rulemaking action would be withdrawn by publishing a document announcing withdrawal of this action. In this action, EPA is not withdrawing the final rule; but amending the final rule as it pertains to Panther Creek.

Adverse comments pertaining to Panther Creek Partners were submitted to EPA within the prescribed comment period. Therefore, EPA is amending the September 8, 1995 final rulemaking action, only as it pertains to Panther Creek Partners. All other RACT approvals contained in the September 8, 1995 are approved as described in that document. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 23, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

§ 52.2020 [Amended]

2. In § 52.2020, paragraph (c)(102)(i)(B)(*8*) is removed and reserved.

[FR Doc. 95–27290 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[MT32–1–7117a, ND6–2–7081a, UT21–1–6915a, WY7–1–7042a; FRL–5303–1]

Clean Air Act Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes; Montana, North Dakota, South Dakota, Utah, and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to the prevention of

significant deterioration (PSD) permitting regulations which were submitted as revisions to the State Implementation Plans (SIPs) for Montana, North Dakota, Utah, and Wyoming. The revisions were submitted mainly to address the replacement of the total suspended particulate (TSP) increments with increments for PM–10 (particulate matter 10 micrometers or less in diameter). Also, North Dakota and Wyoming submitted PSD program revisions to incorporate changes in the Federal PSD regulations for utility pollution control projects. All of the States except Montana made other minor revisions to their PSD programs. EPA is approving the SIP revisions because they are consistent with the corresponding Federal regulations. EPA is also removing the TSP area designation tables and revising and/or adding PM–10 area designation tables in 40 CFR part 81 for these States as well as for the State of South Dakota (which has been delegated authority to implement the Federal PSD regulations in 40 CFR 52.21). With the PM–10 increments becoming effective in these areas, the TSP area designations no longer serve any useful purpose relative to PSD.

DATES: This action is effective on January 2, 1996 unless adverse or critical comments are received by December 4, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the States' submittals and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Air Quality Division, Department of Health and Environmental Sciences, 836 Front Street, P.O. Box 200901, Helena, Montana 59620–0901; North Dakota Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502–5520; Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah, 84114–4820; Wyoming Air Quality Bureau, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

In this document, EPA is acting on revisions to the PSD permitting programs for the States of Montana, North Dakota, Utah, and Wyoming. The revisions were generally made to address the following changes in the Federal PSD permitting requirements in 40 CFR 51.166:

A. The replacement of the TSP increments with increments for PM–10, which were promulgated by EPA on June 3, 1993 (58 FR 31622–31638); and

B. The promulgation of revisions to the Federal PSD permitting requirements regarding utility pollution control projects that States could voluntarily adopt into their PSD regulations, which were promulgated by EPA on July 21, 1992 (57 FR 32314–32339).

Specifically, the following submittals were made:

The Governor of Montana submitted revisions to the Administrative Rules of Montana (ARM), rules 16.8.945, 16.8.947, 16.8.953, and 16.8.960, on May 22, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

The Governor of North Dakota submitted revisions to Chapter 33–15–15 of the North Dakota Air Pollution Control Rules on April 29, 1994 to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects and PM–10 increments. Also, the State incorporated the significance levels for the three municipal waste combustor pollutants, which EPA promulgated on February 11, 1991 (56 FR 5506). The April 1994 submittal also included other revisions to the North Dakota Air Pollution Control Rules, which EPA will act on separately.

The Governor of Utah submitted revisions to R307–1–1 and R307–1–3 of the Utah Air Conservation Regulations (UACR) on February 1, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments. The State also made some nonsubstantive changes to its PSD rules.

The Governor of Wyoming submitted revisions to Section 24 of the Wyoming Air Quality Standards and Regulations (WAQSR) on March 14, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and utility pollution control projects. The State also revised the minor source baseline date definition relative to particulate matter, which was previously required by State rule to be triggered no later than January 1, 1996 if not triggered earlier by the first complete PSD permit application, so that it now will be triggered no later than January 1, 2001. The State's March 14, 1995 submittal also included two new sections to address EPA's general and transportation conformity requirements, which EPA will be acting on separately.

This document evaluates the States' submittals for conformity with the corresponding Federal regulations and the requirements of the Act. In addition, this document provides justification regarding the removal of the TSP designation tables in 40 CFR part 81 for Montana, North Dakota, Utah, and Wyoming, as well as for the State of South Dakota which has been delegated authority to implement the Federal PSD permitting regulations in 40 CFR 52.21.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

Public hearings to entertain public comment on the initial PSD SIP revisions were held by Montana on September 16 and November 9, 1994; by North Dakota on September 28, 1993; by Utah on August 30, 1994; and by Wyoming on December 15, 1994. After these respective public hearings, the rule revisions were adopted by each State. The rule revisions were formally

submitted to EPA for approval on May 22, 1995 from Montana, April 29, 1994 from North Dakota, February 1, 1995 from Utah, and March 14, 1995 from Wyoming. Each SIP revision was reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated June 26, 1995, June 22, 1994, March 22, 1995, and May 26, 1995 were forwarded, respectively, to Montana, North Dakota, Utah, and Wyoming indicating the completeness of each submittal and the next steps to be taken in the processing of each SIP submittal.

2. Evaluation of States' Submittals

a. PM–10 Increment Revisions. As discussed above, EPA promulgated increments for PM–10 on June 3, 1993 (see 58 FR 31622–31638). EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. EPA or its delegated State programs were required to begin implementation of the increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (including Montana, North Dakota, Utah, and Wyoming) will be the date on which EPA approves each revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with SIP-approved PSD programs was required to adopt the PM–10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM–10 increments, see the June 3, 1993 Federal Register document.

(1) Montana's Submittal. In order to address the PM–10 increments, the State of Montana revised the following sections of its PSD permitting regulations in the Administrative Rules of Montana (ARM): 16.8.945(3)(c), 16.8.945(21)(d), 16.8.945(24)(d), 16.8.947(1), 16.8.953(7)(a)(iii), and 16.8.960(4). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt 40 CFR 51.166(i)(12), which provides an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect. Montana's rules do not contain this grandfathering clause, which is acceptable.

(2) North Dakota's Submittal. In order to address the PM–10 increments, the State of North Dakota revised the following sections of its PSD permitting regulations in Chapter 33–15–15–01 of the North Dakota Air Pollution Control Rules: Sections 1.c., 1.e.(4), 1.aa.(2)(c), 2.b., 4.d.(3)(a), and 4.j.(4)(b). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt 40 CFR 51.166(i)(12), which provides an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect. North Dakota's rules did not include this grandfathering clause, which is acceptable.

(3) Utah's Submittal. In order to address the PM–10 increments, the State of Utah revised the following sections of its PSD permitting regulations: the definition of ''net emissions increase'' in UACR R307–1–1 and Sections 3.6.3.A., 3.6.3.B., 3.6.3.D.(2) and (3), 3.6.4.C.(2), 3.6.4.D., 3.6.5.E.(2), and 3.6.5.F.(2) in UACR R307–1–3. EPA has reviewed these revisions and has found that the revisions adequately address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993.

(4) Wyoming's Submittal. In order to address the PM–10 increments, the State of Wyoming revised the following sections of its PSD permitting rules in Section 24 of the State's regulations: Subsections (a)(ix)(B)(III), (a)(xii)(D), (a)(xv)(B), (b)(i)(A)(I), (b)(i)(E)(VI)(1)(k), (b)(viii), and (b)(xii)(I). EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt the provision of 40 CFR 51.166(b)(14)(iv) which allows a State to rescind a minor source baseline date if it can be shown that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM–10 emissions. The State is thus being more stringent than the Federal regulations regarding this issue, which is acceptable.

EPA consequently finds that the revised PSD regulations for Montana, North Dakota, Utah, and Wyoming adequately address all of the required revisions of the June 3, 1993 Federal Register document for PM–10 increments. For further details, see the Technical Support Document (TSD) accompanying this action.

b. TSP Area Deletions. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, the EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as ''section 107 areas''), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

EPA revised the primary and secondary NAAQS for particular matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., ''PSD areas,'' and to provide the geographic

[1] The EPA did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments ''not more than 2 years after the date of promulgation of * * * standards.'' Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

link necessary for implementation of the PM–10 increments.[2]

Thus, in the June 3, 1993 Federal Register document in which EPA promulgated the PM–10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM–10 increments. For delegated PSD programs or in States where EPA administers the PSD program, the TSP area designations were to be deleted after the PM–10 increments became effective in those States (i.e., June 3, 1994). In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

(1) Montana's TSP Areas. Montana has four areas listed in 40 CFR part 81 as nonattainment for the TSP standards but which are not designated nonattainment for PM–10: the Colstrip area, the Billings area, the Great Falls area, and the East Helena area were all designated nonattainment for the secondary TSP standard. EPA has reviewed the existing approved particulate matter control strategies for these areas and has determined that the deletion of the TSP nonattainment status for these areas will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP designations for these areas. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for these areas, it must submit a SIP revision to EPA for approval that must meet all applicable requirements of the Act. EPA will retain for PM–10 these four section 107 areas listed in the current TSP table for Montana, consistent with the June 3, 1993 Federal Register document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

Montana has three areas in the State designated nonattainment for TSP which are also included in nonattainment designations for PM–10: the City of Missoula and the Missoula area (the City is designated nonattainment for the primary TSP standard and the Missoula area is designated nonattainment for the secondary TSP standard), the Butte area, and the City of Columbia Falls. The State has adopted PM–10 SIPs for all of these areas, and these plans have all been approved by EPA. (See 59 FR 2537–2540, January 18, 1994, for Missoula; 59 FR 11550–11554, March 11, 1994, for Butte; and 59 FR 17700–17703, April 14, 1994, for Columbia Falls.) Thus, EPA believes it is appropriate at this time to delete the TSP area designations for these areas. However, there are some discrepancies in the boundaries between the TSP nonattainment designations and the PM–10 nonattainment designations for the areas of Missoula and Butte. Specifically, the PM–10 nonattainment boundaries for the Missoula and Butte areas do not encompass the TSP nonattainment boundaries for those same areas. Thus, the area in between the TSP nonattainment boundary and the PM–10 nonattainment boundaries for these areas could be considered separate section 107 areas for PM–10. However, after discussing this issue with the State, it has been mutually agreed upon that these ''in-between'' areas would be incorporated into the ''rest of State'' section 107 designation.

As stated above, the State has adopted adequate provisions in its PSD program for the implementation of the PM–10 increments. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.327.

(2) North Dakota's TSP Areas. As stated above, North Dakota has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, North Dakota had no TSP areas designated as nonattainment. Thus, deletion of the TSP area designations will not result in relaxation of any TSP controls that would impact the PM–10 NAAQS. Since North Dakota also has no PM–10 nonattainment areas designated in the State, there is no PM–10 designation table currently in 40 CFR part 81 for North Dakota. Therefore, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table in 40 CFR 81.335. EPA will retain for PM–10 the two section 107 areas listed in the current TSP table for North Dakota, consistent with the June 3, 1993 Federal Register document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

(3) Utah's TSP Areas. As stated above, Utah has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, Utah has in place EPA-approved PM–10 SIPs for the two areas in the State which were previously designated nonattainment for TSP and which are currently designated nonattainment for PM–10: Salt Lake County and Davis County. See the July 8, 1994 Federal Register document for further details on EPA's approval of the PM–10 SIPs for those areas (59 FR 35036). Since the State has adopted, and EPA has approved, PM–10 SIPs for the State's two areas that were designated nonattainment for TSP, EPA believes it is appropriate at this time to delete the TSP area designations. Therefore, EPA is deleting the State's existing TSP designation table in 40 CFR 81.345.

(4) Wyoming's TSP Areas. As stated above, Wyoming has adopted and submitted adequate PSD revisions for PM–10 increments. Wyoming has one area listed in 40 CFR part 81 as nonattainment for the TSP secondary standards: the Trona Industrial Area. However, this area was not subsequently designated nonattainment for PM–10. EPA has reviewed the existing approved particulate matter control strategy for the Trona Industrial Area and has determined that the deletion of the TSP nonattainment status for that area will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP area designations for Wyoming. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for the Trona Industrial Area, it must submit a SIP revision to EPA meeting all applicable requirements of the Act.

As discussed further in the TSD, EPA established at the State's request three new separate areas under section 107 of the Act for particulate matter on January 14, 1993 (see 58 FR 4348), and a fourth area was designated under section 107 of the Act on September 12, 1995. Since the June 3, 1993 Federal Register document requires retention of the TSP baseline areas for PM–10 (unless revised by the State in accordance with 40 CFR 51.166), EPA will incorporate those areas, as well as the Trona Industrial area, into the existing table for Wyoming PM–10 area designations in 40 CFR 81.351.

(5) South Dakota's TSP Areas. The State of South Dakota was delegated authority to implement and enforce the Federal PSD permitting regulations in 40 CFR 52.21 on July 6, 1994 (see 59 FR 47260, September 15, 1994). As

[2] It should be noted that 40 CFR part 81 does not presently list all section 107 areas for PM–10. Only those areas designated ''nonattainment'' appear in the State listings. This is because under the listings published by EPA in the Federal Register on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM–10 nonattainment areas designated by operation of law, EPA did not include a new PM–10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

discussed above, the PM–10 increments were thus effective in South Dakota on June 3, 1994. Therefore, it is appropriate at this time for EPA to delete the TSP area designations in 40 CFR part 81 for South Dakota. South Dakota has one area listed in 40 CFR part 81 as nonattainment for the TSP primary standard: the Rapid City Area. However, this area was not subsequently designated nonattainment for PM–10. EPA has reviewed the existing approved particulate matter control strategy for the Rapid City Area and has determined that the deletion of the TSP nonattainment status for that area will not result in a relaxation of any controls that would adversely impact the PM–10 NAAQS. Consequently, EPA believes it is appropriate at this time to delete the TSP area designations for South Dakota. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for the Rapid City Area, it must submit a SIP revision to EPA meeting all applicable requirements of the Act.

Since South Dakota also has no PM–10 nonattainment areas designated in the State, there is no PM–10 designation table currently in 40 CFR part 81 for South Dakota. Therefore, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table in 40 CFR 81.342. EPA will retain for PM–10 the two section 107 areas listed in the current TSP table for South Dakota, consistent with the June 3, 1993 Federal Register document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 52.21.

c. Utility Pollution Control Projects. On July 21, 1992, EPA promulgated revisions to Federal PSD and nonattainment new source review (NSR) permitting requirements, as well as to the Federal new source performance standard (NSPS) requirements in 40 CFR part 60, regarding utility pollution control projects (57 FR 32314–32339). Specifically, EPA made changes to the definition of ''major modification'' in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement, or use at existing utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to a less polluted fuel where the primary purpose of the switch will be the reduction of air pollutants) will or will not subject the source to preconstruction review. Refer to the July 21, 1992 Federal Register document for further information. States were not required to adopt revisions to implement these changes regarding utility pollution control projects, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Both North Dakota and Wyoming opted to adopt revisions to their PSD programs implementing the July 21, 1992 Federal Register document.

(1) North Dakota's Submittal. In order to address the new provisions for utility pollution control projects, the State revised the following sections of its PSD permitting regulations in Chapter 33–15–15–01 of the North Dakota Air Pollution Control Rules: Sections 1.a.(3) and (4), 1.h., 1.i., 1.m., 1.x.(2)(h)–(k), 1.bb., 1.dd., 1.ee., and 1.ff. EPA has reviewed these revisions and has found that the revisions address all of the regulatory revisions for utility pollution control projects promulgated by EPA on July 21, 1992. However, there are two definitions in which the State used the term ''administrator of EPA'' when, in fact, EPA's PSD regulations allow the State to have authority for those decisions. Therefore, EPA is delegating the State authority for the following decisions:

(a) In the definition of ''major modification'' in 33–15–15–01.1.x.(2)(h)[1] and [2], the State will have authority (rather than EPA as stated in North Dakota's rule) to determine whether the addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit can be excluded from being considered a physical change or change in the method of operation; and

(b) In the definition of ''repowering'' in 33–15–15–01.1.ff.(2), the State will be the authority (rather than EPA as stated in the State's rule) to give expedited consideration to permit applications for any source that satisfies the ''repowering'' requirements and is granted an extension under section 409 of the Act.

(2) Wyoming's Submittal. In order to address the new provisions for utility pollution control projects, the State revised the following sections of its PSD permitting regulations in Section 24 of the State's rules: Subsections (a)(x)(H)–(K), (a)(xix) (D) and (E), (a)(xxviii), (a)(xxix), (a)(xxx), (a)(xxxi), (a)(xxxii), (a)(xxxiii), (a)(xxxiv), and (a)(xxxv). EPA has reviewed these revisions and has found that the revisions adequately address all of the regulatory revisions for utility pollution control projects promulgated by EPA on July 21, 1992.

Consequently, EPA is approving the PSD revisions regarding utility pollution control projects submitted by North Dakota and Wyoming.

d. Other PSD SIP Revisions. (1) North Dakota's Submittal. In order to address the PSD provisions for municipal waste combustors promulgated by EPA on February 11, 1991 (see 56 FR 5506), the State of North Dakota revised the definition of ''significant'' in Section 33–15–15–01.1.hh. of the State's rules. EPA has reviewed the revision and has found it consistent with the municipal waste combustor pollutant significance levels in 40 CFR 51.166(b)(23). Therefore, EPA is approving this revision.

(2) Utah's Submittal. The State of Utah also made minor administrative revisions in its PSD program to the definitions of ''baseline date,'' ''baseline area,'' and ''significant'' in UACR R307–1–1 and Sections 3.6.2.B., 3.6.2.D., 3.6.2.E., 3.6.4.A.(1), 3.6.4.C.(1) and (2), 3.6.5.A., 3.6.5.B.(1)(a), 3.6.5.C., 3.6.5.D., 3.6.5.E.(1), 3.6.5.F.(1), and 3.6.6 of UACR R307–1–3. EPA has reviewed these minor changes and finds the changes approvable.

(3) Wyoming's Submittal. In Wyoming's March 14, 1995 SIP submittal, the State revised the definition of ''minor source baseline date'' so that it will be triggered no later than January 1, 2001. The State had previously set the minor source baseline date to be triggered no later than January 1, 1996. In any case, the State is not required by EPA to set a mandatory minor source baseline date. The State is only required to have the minor source baseline date be triggered by the first complete PSD permit application for a major stationary source or major modification locating in or significantly impacting an attainment/unclassifiable area designated under section 107 of the Act, and the State's definition of ''minor source baseline date'' meets that requirement. Thus, since the State definition is more stringent than the Federal definition, it is approvable.

III. Final Action

Based on the review and justification provided in this document, EPA is approving the SIP revisions regarding PSD permitting submitted by the States of Montana, North Dakota, Utah, and Wyoming on May 22, 1995, April 29, 1994, February 1, 1995, and March 14, 1995, respectively.

In addition, EPA is deleting the TSP area designation tables and/or revising the PM–10 area designation tables in 40 CFR part 81 as follows:

A. For Montana, EPA is deleting the TSP area designation table and is adding the Colstrip area, the Billings area, the Great Falls area, and the East Helena area to the existing PM–10 area designation table as unclassifiable for

PM–10 in 40 CFR 81.327.[3] In addition, EPA is incorporating the area in between the TSP nonattainment boundary and the PM–10 nonattainment boundary for the Missoula and Butte areas into the ''rest of State'' section 107 designation.

B. For North Dakota, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table listing the ''Metropolitan Fargo-Moorhead (Minn.), AQCR 130'' area and the ''Rest of State, AQCR 172'' area as unclassifiable for PM–10 in 40 CFR 81.335.[4]

C. For Utah, EPA is deleting the TSP area designation table in 40 CFR 81.345.

D. For Wyoming, EPA is deleting the TSP area designation table and is adding the ''Powder River Basin'' area, the ''Pacific Power and Light'' area, the ''Hampshire Energy'' area, the ''Kennecott/Puron PSD Baseline Area,'' and the ''Trona Industrial'' area to the existing PM–10 area designation table as unclassifiable for PM–10 in 40 CFR 81.351.[5]

E. For South Dakota, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table listing the ''Rapid City'' area and the ''Rest of State'' area as unclassifiable for PM–10 in 40 CFR 81.342.[6]

In all of these State's PM–10 area designation tables, EPA is clarifying that the ''Rest of State'' areas denote a single area designation for PSD baseline area purposes. In addition, EPA is revising the headings of all of the PM–10 area designation tables in 40 CFR part 81 to read as follows: ''[Name of State]—PM–10.''

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective January 2, 1996 unless, by December 4, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 2, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

[3] EPA is designating the PM–10 areas as unclassifiable, rather than attainment, at this time to be consistent with section 107(d)(4)(B) of the Act which stated that any area which was not initially designated as nonattainment for PM–10 shall be designated unclassifiable. EPA will consider redesignating these areas to ''attainment'' status at a later date. Both ''unclassifiable'' and ''attainment'' areas have the same status for PSD purposes.

[4] See footnote number 4.

[5] See footnote number 4.

[6] See footnote number 4.

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1320 is amended by adding paragraph (c)(42) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(42) On May 22, 1995, the Governor of Montana submitted revisions to the prevention of significant deterioration regulations in the Administrative Rules of Montana to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

(i) Incorporation by reference.

(A) Revisions to Administrative Rules of Montana (ARM), rules 16.8.945(3)(c), 16.8.945(21)(d), 16.8.945(24)(d), 16.8.947(1), 16.8.953(7)(a), and 16.8.960(4), effective 10/28/94.

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Subpart JJ—North Dakota

3. Section 52.1820 is amended by adding paragraph (c)(27) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(27) On April 29, 1994, the Governor of North Dakota submitted revisions to the prevention of significant deterioration regulations in chapter 33–15–15 of the North Dakota Air Pollution Control Rules to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects, PM–10 increments, and municipal waste combustors.

(i) Incorporation by reference.

(A) Revisions to Chapter 33–15–15 of the North Dakota Air Pollution Control Rules, Section 33–15–15–01, Subsections 1.a.(3) and (4), 1.c, 1.e.(4), 1.h, 1.i, 1.m, 1.x.(2)(h)–(k), 1.aa.(2)(c), 1.bb, 1.dd, 1.ee, 1.ff, 1.hh, 2.b, 4.d.(3)(a), and 4.j.(4)(b), effective 3/1/94.

Subpart TT—Utah

4. Section 52.2320 is amended by adding paragraph (c)(31) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(31) On February 1, 1995, the Governor of Utah submitted revisions to the prevention of significant deterioration permitting regulations in R307–1–1 and R307–1–3 of the Utah Air Conservation Regulations to incorporate changes in the Federal PSD permitting regulations for PM–10 increments and to make other minor, administrative changes.

(i) Incorporation by reference.

(A) Revisions to the Utah Air Conservation Regulations, R307–1–1, the definitions of ''baseline area,'' ''baseline date,'' ''net emissions increase,'' and ''significant,'' effective 9/22/94, printed 10/24/94.

(B) Revisions to the Utah Air Conservation Regulations, R307–1–3, Sections 3.6.2.B, 3.6.2.D, 3.6.2.E, 3.6.3.A, 3.6.3.B, 3.6.3.D.(2) and (3), 3.6.4.A.(1), 3.6.4.C, 3.6.4.D, 3.6.5.A, 3.6.5.B.(1)(a), 3.6.5.C, 3.6.5.D, 3.6.5.E, 3.6.5.F, and 3.6.6, effective 10/1/94, printed 10/24/94.

Subpart ZZ—Wyoming

5. Section 52.2620 is amended by adding paragraph (c)(26) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(26) On March 14, 1995, the Governor of Wyoming submitted revisions to the prevention of significant deterioration permitting regulations in Section 24 of the Wyoming Air Quality Standards to incorporate changes in the Federal PSD permitting regulations for utility pollution control projects, PM–10 increments, and to make other minor changes.

(i) Incorporation by reference.

(A) Revisions to Section 24 of the Wyoming Air Quality Standards, subsections (a)(ix)(B), (a)(x)(H)–(K), (a)(xii)(D), (a)(xv), (a)(xix)(D) and (E), (a)(xxviii)–(xxxv), (b)(i)(A)(I), (b)(i)(E)(VI)(1), (b)(viii), and (b)(xii)(I), effective 2/13/95.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

§§ 81.302, 81.303, 81.305, 81.306, 81.307, 81.313, 81.314, 81.315, 81.320, 81.323, 81.327, 81.329, 81.332, 81.336, 81.338, 81.339, 81.344, 81.345, 81.348, 81.349, 81.351 and 81.355 [Amended]

2. In each of the following sections, in the heading of the table for PM–10 nonattainment areas, the words ''Nonattainment Areas'' are removed: §§ 81.302, 81.303, 81.305, 81.306, 81.307, 81.313, 81.314, 81.315, 81.320, 81.323, 81.327, 81.329, 81.332, 81.336, 81.338, 81.339, 81.344, 81.345, 81.348, 81.349, 81.351 and 81.355.

§§ 81. 327, 81. 335, 81.342, 81.345 and 81.351 [Amended]

3. Sections 81.327, 81.335, 81.342, 81.345, and 81.351 are further amended as follows:

3–1. By removing the table in each section for TSP;

3–2. In §§ 81.327, 81.345, and 81.351 by revising the newly renamed table for PM–10 to read as set forth below;

3–3. In §§ 81.335 and 81.342 by adding a new table for PM–10 to read as set forth below.

§ 81.327 Montana.

* * * * *

MONTANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Cascade County, Great Falls area	11/15/90	Unclassifiable		
Flathead County:				

MONTANA—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN.	11/15/90	Nonattainment	11/15/90	Moderate.
Columbia Falls and vicinity	11/15/90	Nonattainment	11/15/90	Moderate.
Township T30N, R20W—Sections 7, 8, 9, 16, 17, and 18				
The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmercator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	11/18/93	Nonattainment	11/18/93	Moderate.
Lake County, Ronan, Polson	11/15/90	Nonattainment	11/15/90	Moderate.
Lincoln County, Libby and vicinity	11/15/90	Nonattainment	11/15/90	Moderate.
T30N, R31W—Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, 35, and west ½ of Section 24, west ½ of Section 25, and west ½ of Section 36; plus T31N, R31W—Sections 26, 27, 29, 32, 33, 34, 35 and the east ½ of Section 30.				
Lewis and Clark County, East Helena area	11/15/90	Unclassifiable	.....	
Missoula County, Missoula and vicinity including the following sections:	11/15/90	Nonattainment	11/15/90	Moderate.
T13N, R19W—2, 8, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, and 34; T12N, R19W—Sections 4, 5, 6, 7; T13N, R20W—Sections 23, 24, 25, 26, 35, and 36.				
Rosebud County:				
Lame Deer	11/15/90	Nonattainment	11/15/90	Moderate.
Colstrip area	11/15/90	Unclassifiable	.....	
Sanders County (part)	1/20/94	Nonattainment	1/20/94	Moderate.
Thompson Falls and vicinity: Including the following Sections: R29W, T21N—Sections 5, 6, 7, 8, 9, 10, 15, and 16.				
Silver Bow County, Butte	11/15/90	Nonattainment	11/15/90	Moderate.
The following area of Butte-Silver Bow excluding the territorial limits of the City of Walkerville: Beginning at the Northwest corner of Section 2, T.3N., R.8W., thence Easterly to Northeast corner Section 5, T.3N., R.7W.; then Southerly to Northwest corner Section 9, T.3N., R.7W.; thence Easterly to Northeast corner Section 10, T.3N., R.7W.; thence Southerly to Southeast corner Section 22, T.2N., R.7W.; thence Westerly to Southwest corner Section 19, T.2N., R.7W.; thence Northerly to Northwest corner Section 19, T.2N., R.7W.; thence Westerly to Southwest corner Section 14, T.2N., R.8W.; thence Northerly to Southwest corner Section 35, T.3N., R.8W.; thence Westerly to Southwest corner Section 34, T.3N., R.8W.; thence Northerly to Northwest corner Section 27, T.3N., R.8W.; thence Westerly to Southwest corner Section 20, T.3N., R.8W.; thence Northerly to Northwest corner Section 17, T.3N., R.8W.; thence Easterly to Northwest corner Section 14, T.3N., R.8W.; thence Northerly to the point of beginning.				
Yellowstone County, Billings area	11/15/90	Unclassifiable	.....	
Rest of State[1]	11/15/90	Unclassifiable	.....	

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.335 North Dakota.

* * * * *

NORTH DAKOTA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Metropolitan Fargo-Moorhead (Minn.), AQCR 130	11/15/90	Unclassifiable	.....	
Rest of State, AQCR 172[1]	11/15/90	Unclassifiable	.....	

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.342 South Dakota.

* * * * *

SOUTH DAKOTA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Rapid City Area	11/15/90	Unclassifiable		
Rest of State [1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.345 Utah.

* * * * *

UTAH—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Salt Lake County	11/15/90	Nonattainment	11/15/90	Moderate.
Utah County	11/15/90	Nonattainment	11/15/90	Moderate.
Ogden Area Weber County (part) City of Ogden	9/26/95	Nonattainment	9/26/95	Moderate.
Rest of State [1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for PSD baseline area purposes.

* * * * *

§ 81.351 Wyoming.

* * * * *

WYOMING—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Sheridan County:				
City of Sheridan	11/15/90	Nonattainment	11/15/90	Moderate.
Trona Industrial Area	11/15/90	Unclassifiable		
Campbell County (part)				
Converse County (part), That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light attainment area and the Hampshire Energy attainment area.—Powder River Basin.	11/15/90	Unclassifiable		
Campbell County (part), That area bounded by NW1/4 of Section 27, T50N, R71W, Campbell County, Wyoming.—Pacific Power and Light Area.	11/15/90	Unclassifiable		
Campbell County (part), That area bounded by Section 6 excluding the SW¼; E½ Section 7; Section 17 excluding the SW¼; Section 14 excluding the SE¼; Sections 2, 3, 4, 5, 8, 9, 10, 11, 15, 16 of T48N, R70W and Section 26 excluding the NE¼; SW¼ Section 23; Sections 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35 of T49N, R70W.—Hampshire Energy Area.	11/15/90	Unclassifiable		
Campbell County (part), That area described by the W½SW¼ Section 18, W½NW¼, NW¼SW¼ Section 19, T47N, R70W, S½ Section 13, N½, N½SW¼, N½SE¼ Section 24, T47N, R71W.—Kennecott/Puron PSD Baseline Area.	11/15/90	Unclassifiable		
Rest of State[1]	11/15/90	Unclassifiable		

[1] Denotes a single area designation for baseline area purposes.

* * * * *

[FR Doc. 95–27062 Filed 11–2–95; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 414–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted October 6, 1995, and released October 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2–3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 257C3 and adding Channel 257C2 at Central Valley.

4. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 296A and adding Channel 296C at Caldwell.

5. Section73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 240C2 and adding Channel 240C3 at Estherville and by removing Channel 255A and adding Channel 255C3 at Jefferson.

6. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 269C2 and adding Channel 269A at Emporia and by removing Channel 240C2 and adding Channel 240C3 at Winfield.

7. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 291A and adding Channel 291C3 at Tawas City.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 237C and adding Channel 237C1 at Grand Marais.

9. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 224A and adding Channel 225C3 at Malden.

10. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 296C and adding Channel 296C2 at Armijo.

11. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 246C1 and adding Channel 246C2 at Hatteras.

12. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 300A and adding Channel 300C3 at Altus.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 228C3 and adding Channel 228C2 at Lakeview.

14. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 256C1 and adding Channel 256A at Huron.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27261 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1215, 1252 and 1253

[Docket OST–95–776]

RIN 2105–AC–32

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department is revising the Transportation Acquisition Regulation (TAR) to make minor editorial or administrative corrections including changes to the TAR Matrix to adhere to the Federal Acquisition Regulation (FAR) guidance for incorporating provisions and clauses in solicitations and contracts by reference to the maximum practical extent.

DATES: This rule is effective November 3, 1995. Written and signed comments must be received on or before December 4, 1995.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. OST–95–776, Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C., 20590. Please cite TAR administrative revisions in all correspondence concerning this rule.

FOR FURTHER INFORMATION CONTACT: Elaine Wheeler, Office of Acquisition and Grant Management, M–61, 400 Seventh Street, S.W., Washington, D.C., 20590: (202) 366–4272.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Transportation (DOT) 1994 edition of the TAR was effective on October 1, 1994. Use of this document has indicated that some editorial corrections and administrative changes are necessary including a change to the TAR Matrix to reflect the FAR guidance to incorporate provisions and clauses by reference to the maximum practical extent.

B. Regulatory Flexibility Act

This interim final rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and only editorial corrections or administrative changes are being made.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the TAR do not impose additional

recordkeeping or information collection requirements, or additional collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Justification To Issue Interim Final Rule

As stated above, this rule essentially adopts current FAR guidance and provides editorial and administrative changes. Therefore, a notice of proposed rulemaking would not result in comments that could have a significant impact on the content of the rule. Such an effort would be impractical, unnecessary, and contrary to the public interest.

List of Subjects in 48 CFR Parts 1215, 1252 and 1253

Government procurement.

This Interim Final Rule is issued under delegated authority under 49 CFR part 1.59(q). This authority has been redelegated to the Senior Procurement Executive.

Issued this 26th day of October 1995, at Washington, D.C.

David J. Litman,

Senior Procurement Executive.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR chapter 12 is amended as set forth below:

1. The authority citation for 48 CFR chapter 12 Parts 1215, 1252, and 1253 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); and 48 CFR 3.1.

PART 1215—CONTRACTING BY NEGOTIATION

2. and 3. Section 1215.413–2 is amended by revising paragraph (f) to read as follows:

1215.413–2 Alternate II.

* * * * *

(f) Proposals may be released outside of the Government if it is necessary to receive competent technical and/or management evaluation as long as the requirements of (FAR) 48 CFR 15.413–2(f) are met.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1252.217–81 is amended by revising paragraph (b) of the clause to read as follows:

1252.217–81 Guarantee.

* * * * *

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

* * * * *

PART 1253—FORMS

5. In the appendix to subpart 12533, the TAR Matrix is revised to read as follows:

Appendix to Subpart 1253.3

* * * * *

TAR MATRIX

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.209–70 Disclosure of Conflicts of Interest.	1209.507	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210–70 Brand Name or Equal.	1210.011	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.210–71 Index for Specifications.	1210.011	C	Yes	I	A	A	A				A	A				A		A	A		A	
1252.215–70 Key Personnel and/or Facilities.	1215.106	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.216–70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.	1216.203–470	P	Yes	M	A		A		A		A		A	A	A	A	A	A	A	A		A
1252.216–71 Determination of Award Fee.	1216.405(a)	C	No	I		A		A		A		A	A		A	A			A	A		
1252.216–72 Performance Evaluation Plan.	1216.405(b)	C	No	I		A		A		A		A	A		A	A			A	A		
1252.216–73 Distribution of Award Fee.	1216.405(c)	C	Yes	I		A		A		A		A	A		A	A			A	A		
1252.216–74 Settlement of Letter Contract.	1216.603–4	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.217–71 Delivery and Shifting of Vessel.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–72 Performance.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–73 Inspection and Manner of Doing Work.	1217.7000(b) and (c).	C	Yes	I					A													
1252.217–74 Subcontracts.	1217.7000 (b) and (c).	C	Yes	I					A													
12542.217–75 Lay Days.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–76 Liability and Insurance.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–77 Title.	1217.7000 (b) and (c).	C	Yes	I					A													

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.217–78 Discharge of Liens.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–79 Delays.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–80 Department of Labor Safety and Health Regulations for Ship Repair.	1217.7000 (b) and (c).	C	Yes	I					A													
1252.217–81 Guarantee.	1217.7000(d)	C	Yes	I					A													
1252.219–70 Small Business and Small Disadvantaged Business Subcontracting Report.	1219.708–70	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.222–70 Strikes or Picketing Affecting Timely Completion of the Contract Work.	1222.101–71(a) ...	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.222–71 Strikes or Picketing Affecting Access to a DOT Facility.	1222.101–71(b) ...	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223–70 Removal or Disposal of Hazardous Substances—Applicable Licenses and Permits.	1223.303	C	No	K					A	A	A	A	A			A		A			A	
1252.223–71 Accident and Fire Reporting.	1223.7000(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.223–72 Protection of Human Subjects.	1223.7000(b)	C	Yes	I	A	A	A	A	A	A			A						A		A	
1252.228–70 Loss of or Damage to Leased Aircraft.	1228.306–70 (a) and (b).	C	Yes	I					A	A			A								A	
1252.228–71 Fair Market Value of Aircraft.	1228.306–70 (a) and (c).	C	No	I					A	A			A								A	
1252.228–72 Risk and Indemnities.	128.306–70 (a) and (d).	C	Yes	I					A	A			A								A	
1252.231–70 Date of Incurrence of Costs.	1231.205–32	C	No	I		A		A		A		A										
1252.236–70 Special Precautions for Work at Operating Airports.	1236.570	C	Yes	I							A	A	A			A	A	A			A	A
1252.237–70 Qualifications of Employees.	1237.110	C	Yes	I					A	A					A						A	
1252.242–70 Dissemination of Information—Education Institutions.	1242.203–70(a) ...	C	Yes	I			A	A														
1252.242–71 Contractor Testimony.	1242.203–70(b) ...	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
1252.242–72 Dissemination of Contract Information.	1242.203–70(c) ...	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
1252.242–73 Contracting Officers Technical Representative.	1242.7000	C	Yes	I	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	
1252.245–70 Government Property Reports.	1245.505–70	C	Yes	I	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	
1252.247–1 Acceptable Service at Reduced Rates.	1247.104–370	C	Yes	I		A				A												

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.247–2 F.O.B. Origin Information.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–3 F.O.B. Origin Only.	1247.307–70	P	Yes	L	A									A					A		A	
1252.247–4 F.O.B. Destination Only.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–5 Shipments to Ports and Air Terminals.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–6 F.O.B. Designated Air Carrier's Terminal, Port of Exportation.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–7 Nomination of Additional Ports.	1247.305–70	P	Yes	L	A									A					A		A	
1252.247–8 Supply Movement in the Defense Transportation System.	1247.305–71	C	Yes	F	A									A					A		A	
FAA 1252.225–90 Buy American Certificate-Steel and Manufactured Products.	FAA 1225.9005 ...	P	No	I	A	A	A	A			A	A						A				
FAA 1252.225–91 Buy American Steel and Manufactured Products.	FAA 1225.9005 ...	C	Yes	I	A	A	A	A			A	A						A				
USCG 1252.210–90 Bar Coding Requirement.	USCG 1210.011–90 and 1213.507–90.	C	Yes	I	A	A													A		A	
USCG 1252.213–90 Evaluation Factor for Coast Guard Performance of Bar Coding Requirement.	USCG 1213.107–90.	P	No	M																	A	
USCG 1252.220–90 Local Hire.	USCG 1220.9001	C	Yes	I					A	A	A	A			A		A		A			A
USCG 1252.228–90 Notification of Miller Act Payment Bond Protection.	USCG 1228.9000	C	No	I							A	A										
USCG 1252.237–90 Requirements.	USCG 1237.9000	C	No	I					A	A									A			
USCG 1252.237–91 Area of Performance.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–92 Performance and Delivery.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–93 Subcontracting.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–94 Termination for Default.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–95 Group Interment.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–96 Permits.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–97 Facility Requirements.	USCG 1237.9000	C	Yes	I					A	A									A		A	

TAR MATRIX—Continued

Provision or clause	Prescribed in	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
USCG 1252.237–98 Preparation History.	USCG 1237.9000	C	Yes	I					A	A									A		A	
USCG 1252.237–99 Award to Single Offeror.	USCG 1237.9000	P	Yes	I					A	A									A		A	

Key
P or C=Provision or Clause.
IBR=Is Incorporation By Reference authorized?
UCF=Uniform Contract Format Section, when applicable.
Principle type and/or purpose of contract
R=Required.
A=Required-When-Applicable.
O=Optional.
X=Revision.
FP SUP=Fixed-Price Supply.
CR SUP=Cost-Reimbursement Supply.
FP R&D=Fixed-Price Research and Development.
CR R&D=Cost-Reimbursement Research and Development.
FP SVC=Fixed-Price Service.
CR SVC=Cost Reimbursement Service.
FP CON=Fixed-Price construction.
CR CON=Cost Reimbursement Construction.
T&M LH=Time & Material/Labor Hours.
LMV=Leasing of Motor Vehicles.
COM SVC=Communication Services.
DDR=Dismantling, Demolition, or Removal of Improvements.
A–E=Architect-Engineering.
FAC=Facilities.
IND DEL=Indefinite Delivery.
TRN=Transportation.
SP=Small Purchases.
UTL SVC=Utility Services.

[FR Doc. 95–27249 Filed 11–2–95; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 94113–4354; I.D. 103095C]

Reef Fish Fishery of the Gulf of Mexico; Red Snapper

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

ACTION: Reopening of a fishery.

SUMMARY: NMFS announces the period during which the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico is reopened. Reopening of the fishery is necessary, because the 1995 annual commercial quota for red snapper has not been taken. The fishery is reopened for a period of 36 hours.

EFFECTIVE DATE: Reopening of the commercial red snapper fishery is effective at 12:01 a.m., local time, November 1, 1995, through 12, noon, local time, November 2, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Sadler or Michael Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*.).

On October 31, 1995, NMFS published an announcement proposing that the commercial fishery for red snapper in the EEZ of the Gulf of Mexico be reopened for a period of 36 hours, because the annual commercial quota for red snapper had not been taken. The background and rationale for this action and the basis for the selection of the specific dates of the reopening were contained in that announcement and are not repeated here.

Based on projected weather conditions, the Southeast Region, NMFS, selected October 30 and 31, 1995, for the reopened period, and an announcement of those dates was filed with the Office of the Federal Register on October 27, 1995. However, weather conditions in much of the Gulf of Mexico deteriorated significantly on October 29. The U.S. Coast Guard advised NMFS that Gulf weather conditions as of October 30 were unsafe for fishing operations, and recommended a 48 hour delay in the fishery reopening. Accordingly, the reopening of the commercial fishery for red snapper has been postponed for 48 hours for vessel safety reasons. The commercial fishery for red snapper in the EEZ of the Gulf of Mexico is reopened for the period specified (see **EFFECTIVE DATE**).

During the reopening, a vessel with a red snapper endorsement on its reef fish permit may not land in any day red snapper in excess of 2,000 lb (907 kg) and other permitted vessels may not land in any day red snapper in excess of 200 lb (91 kg).

Classification

This action is taken under 50 CFR 641.26 and is exempt from review under E.O. 12866.

Dated: October 31, 1995.

Richard W. Surdi,

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

[FR Doc. 95–27327 Filed 10–31–95; 12:53 pm]
BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095E]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Bering Sea Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Bering Sea

subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Pacific ocean perch in the Bering Sea subarea be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Pacific ocean perch total allowable catch (TAC) in the BSAI has been caught.

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

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20 (a)(7)(ii), the Pacific ocean perch TAC for the Bering Sea subarea was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995), and increased by an apportionment from the reserve (60 FR 32278, June 21, 1995) to 1,850 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific ocean perch in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

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

Dated: October 31, 1995.

Richard W. Surdi,

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

[FR Doc. 95–27345 Filed 10–31–95; 2:55 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095D]

Groundfish of the Bering Sea and Aleutian Islands Area; Rockfish by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1995 prohibited species bycatch mortality allowance of Pacific halibut specified for the trawl rockfish fishery in the BSAI.

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

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 bycatch mortality allowance of Pacific halibut for the BSAI trawl rockfish fishery, which is defined at § 675.21(b)(1)(iii)(D), was established as 110 metric tons (mt) by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the 1995 apportionment of the Pacific halibut bycatch mortality allowance for the trawl rockfish fishery has been caught. Therefore, NMFS is prohibiting directed fishing for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

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

Dated: October 31, 1995.

Richard W. Surdi,

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

[FR Doc. 95–27344 Filed 10–31–95; 2:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 213
Friday, November 3, 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 1421

RIN 0560–AE28

Extension of Maturing 1994 and Subsequent Crop Year Wheat and Feed Grain Price Support Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations with respect to the price support loan programs for wheat and feed grains, which are administered by the Commodity Credit Corporation (CCC) in accordance with the Agricultural Act of 1949, as amended (the 1949 Act), and other acts. Implementation of the changes made by this proposed rule will provide CCC authority to allow producers to extend maturing wheat, corn, grain sorghum, barley, oat, and rye loans during times of abnormal marketing conditions.

DATES: Comments must be received on or before December 4, 1995, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Grady Bilberry, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture, room 3628, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 7:30 a.m. to 5:00 p.m., Monday through Friday, in room 3628, South Building, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, CFSA, USDA, room 3627, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–8481.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

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 Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC 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 have no significant impact on the quality of human environment.

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).

Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The amendments to 7 CFR part 1421 set forth in this proposed rule do not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Numbers 0560–0087 and 0560–0129.

Comments

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

Discussion

Producers with regular 9-month nonrecourse wheat and feed grain price support loans currently are authorized extension of the loan maturity date to such date as CCC determines necessary to participate in the farmer-owned reserve (FOR) program conducted in accordance with §§ 1421.200 through 1421.217.

CCC allows producers with outstanding wheat and feed grain CCC price support loans that mature during times of natural disasters to request an extension of the original maturity date of such loans until marketing and movement of commodities return to normal levels.

Although extensions are available to producers to allow participation in the FOR program or during times of natural disasters, producer's options are limited at maturity when these conditions do not exist. Giving CCC the authority to extend loans during times of abnormal marketing conditions to a date that will allow affected producers to market such commodities in a normal manner may prevent a significant number of loan forfeitures, strengthen markets, and increase economic opportunities for affected producers.

This proposed rule would amend 7 CFR part 1421 to provide CCC authority to allow producers to extend maturing wheat, corn, grain sorghum, barley, oat, and rye loans when CCC has determined abnormal marketing conditions are present.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1421 is proposed to be amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c. Subpart—Rice Marketing Certificate Program is also issued under authority of 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

2. Section 1421.6 is amended by revising paragraph (e) to read as follows:

§ 1421.6 Maturity and expiration dates.

* * * * *

(e) Notwithstanding any other provision of this section, CCC may allow producers with wheat, corn, grain sorghum, barley, oat, and rye loans maturing during times of abnormal marketing conditions, as determined by CCC, to extend such loans beyond the maturity date specified in paragraph (a) of this section. If CCC determines that the commodity pledged as collateral for such loans cannot be marketed because of such abnormal marketing conditions, CCC may authorize such loans to be extended to a date that will allow affected producers to market such commodity in a normal manner.

Signed in Washington, DC, on October 26, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–27283 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Workshop on the Regulation of Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Meeting notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop on the method for improving NRC's regulation of fuel cycle facilities under 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material.'' The workshop is open to the public; however, for efficient conduct of the workshop, participation will be in the format of a roundtable discussion among invited representatives from affected interested parties. The NRC has prepared a workshop agenda and documents that identify regulatory issues of concern in the regulation of NRC-licensed fuel cycle facilities. These documents are available for review prior to the workshop, and interested parties are encouraged to review this information. The NRC will accept and consider written comments from interested parties on these regulatory issues.

DATES: The workshop will be held on November 30, 1995, from 9 am to 5 pm. The workshop will continue, if necessary, on December 1, 1995, from 8:30 am to 12 noon. Comments on these regulatory issues should be received no later than December 11, 1995.

ADDRESSES: The workshop will be held at the U.S. Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.) Written comments can be provided at the workshop or by December 11, 1995, to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the agenda and related documents can be obtained from the NRC's Public Document Room, 2120 L Street NW., Washington, D.C. 20037; Phone: 202–634–3273; FAX: 202–634–3343.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Mail Stop O–15 B18, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Phone: 301–415–1642; FAX: 301–415–3200; INTERNET:FXC@NRC.GOV.

SUPPLEMENTARY INFORMATION: The occurrence of several serious incidents at NRC-licensed fuel cycle facilities led the NRC to conclude that improvements in regulating these facilities were needed. Accordingly, the NRC is currently reviewing its regulatory requirements for licensing the possession and use of special nuclear material, including general requirements for the content of license applications, in 10 CFR Part 70. The Commission has directed the staff to continue a dialogue with affected interested parties with the goal of improving the regulation of fuel cycle facilities. This workshop will focus on a number of issues related to the NRC's effort to establish a firm regulatory base for fuel cycle facility licensing and inspection activities and to ensure the adequacy of licensee performance.

The workshop will be an information exchange between the NRC and a diverse group of individuals who might be affected by subsequent changes to the method in which the NRC regulates fuel cycle facilities licensed under Part 70. This exchange should provide the NRC and workshop participants an opportunity to express their concerns and views on the method for improving NRC's regulation of fuel cycle facilities, how specific goals and objectives of improving NRC's safety regulations can be met, and the level of risk that is considered adequate for the protection of the public health and safety.

For efficient conduct of the workshop, the meeting format will be a roundtable discussion among invited representatives from affected interests, e.g., fuel cycle industry, other Federal and state government agencies, and citizen groups. The workshop will be open to the public, and the public will be provided opportunities throughout the workshop to comment on the issues presented for discussion.

Dated at Rockville, Maryland, this 30th day of October, 1995.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 95–27291 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 114

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize the entire Part 114 covering administrative claims under the Federal Tort Claims Act to make it more clear and easier to use. It would also amend the Part to streamline the review and adjustment of claims and provide for the use of alternative dispute resolution in appropriate cases.

DATES: Written comments must be submitted on or before December 4, 1995.

ADDRESSES: Written comments may be sent to David R. Kohler, Regulatory Reform Team Leader (114), Small Business Administration, 409 3rd Street S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Jeff Lane, Office of General Counsel, at (202) 205–6879.

SUPPLEMENTARY INFORMATION: Part 114 of chapter 1, 13 CFR contains policies governing the presentment, review and handling of administrative claims brought against the Federal Government for money damages for injuries or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration. The rule would reorganize the entire Part 114 to make it more clear and easier to use and amend it to create a more

efficient administrative process. It would eliminate from the process the various boards of survey that now investigate and review claims, and give Field District Counsel authority to review and adjust claims of $5,000 or less and use alternative dispute resolution in appropriate cases. (Boards of Survey would retain all other existing responsibilities.)

Specifically, the rule would amend:

1. Section 114.100 by deleting definitions of the various boards of survey that would be eliminated under the proposed rule.

2. Section 114.102, which sets forth the rule for when and where a claim should be presented, by clarifying that claims must be presented at the SBA office nearest to where the incident occurred and within the same state in which the incident occurred. The proposed section also specifies the statutory deadline.

The rule would reorganize:

1. Section 114.104 relating to SBA's investigatory powers under new subsection 114.105(a).

2. Section 114.105, which states what evidence and information claims should include, as section 114.104.

3. Sections 114.106, 114.106–1, 114.107 and 114.108 relating to SBA's procedure for investigating and processing claims under new sections 114.105 through 114.109. These proposed sections also eliminate the boards of surveys and create a streamlined process for review. Field Counsel would have authority to review and adjust claims of $5,000 or less and to use alternative dispute resolution mechanisms in appropriate cases. The proposed section specifies the General Counsel as the Administrator's designee for purposes of determining claims in excess of $5,000. The rule would still require SBA to seek written consent from the Department of Justice before it approves claims in excess of $25,000 and to consult with the Department of Justice in certain other circumstances.

4. Section 114.109 relating to SBA's authority to ask another Federal agency to conduct physical exams of claimants under proposed section 114.105, which describes generally SBA's investigatory authority.

5. Section 114.110 relating to SBA's denial of claims as new section 114.109. The proposed section informs claimants of their right to sue SBA not later than six months after SBA mails the notification of denial.

6. Section 114.111 relating to the approval of claims as new section 114.108.

7. Section 114.112 relating to indemnification and representation of SBA employees as new section 114.110. It would add a paragraph—§ 114.110(a)(3)—that specifically states SBA may pay for, or request that the Department of Justice provide, representation for SBA employees.

8. Section 114.113 relating to attorney-client privilege as new section 114.111.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 114

Claims.

Accordingly, pursuant to the authority set forth in sections 5 (b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634 (b)(1) and (b)(6), 28 U.S.C. 2672, and 28 CFR 14.11 (31 FR 16616), SBA hereby proposes to revise part 114 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES

Subpart A—Administrative Tort Claims

Sec.

§ 114.100 Definitions.
§ 114.101 What do these regulations cover?
§ 114.102 When and where do I present a claim?
§ 114.103 Who may file a claim?
§ 114.104 What evidence and information may SBA require relating to my claim?
§ 114.105 Who investigates and considers my claim?
§ 114.106 What if my claim exceeds $5,000?
§ 114.107 What if my claim exceeds $25,000 or has other special features?
§ 114.108 What if my claim is approved?
§ 114.109 What if my claim is denied?

Subpart B—Representation and Indemnification of SBA Employees

§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?
§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

Authority: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

Subpart A—Administrative Tort Claims

§ 114.100 Definitions.

As used throughout this part 114, ''date of accrual'' means the date you know or reasonably should have known of your injury. The date of accrual will depend on the facts of each case. ''Site'' means the geographic location where the incident giving rise to your claim occurred.

§ 114.101 What do these regulations cover?

This part applies only to monetary claims you assert under the Federal Tort Claims Act, 28 U.S.C. 2671, *et. seq.*, for injury to or loss of property, personal injury, or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration (SBA) while acting within the scope of his or her employment.

§ 114.102 When and where do I present a claim?

You must present your claim within two years of the date of accrual at the SBA office nearest to the site and within the same state as the site. You must use Standard Form 95 (which may be obtained from SBA) or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. Your claim will be considered presented when SBA receives this information.

§ 114.103 Who may file a claim?

(a) If a claim is based on factors listed in the first column, then it may be presented by persons listed in the second column.

Claim factors	*Claim presenters*
Injury to or loss of property.	the owner of the property, his or her duly authorized agent, or legal representative.
Personal injury	the injured person, his or her duly authorized agent, or legal representative.
Death	the executor or administrator of the decedent's estate, or any other person entitled to assert the claim under applicable state law.
Loss wholly compensated by an insurer with rights as a subrogee.	the parties individually as their interests appear, or jointly.

(b) An agent or legal representative may present your claim in your name, but must sign the claim, state his or her title or legal capacity, and include documentation of authority to present the claim on your behalf.

§ 114.104 What evidence and information may SBA require relating to my claim?

(a) For a claim based on injury to or loss of property:

(1) Proof you own the property.

(2) A specific statement of the damage you claim with respect to each item of property.

(3) Itemized receipts for payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Full information about potential insurance coverage and any insurance claims or payments relating to your claim.

(6) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(b) For a claim based on personal injury, including pain and suffering:

(1) A written report from your health care provider stating the nature and extent of your injury and treatment, the degree of your temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity.

(2) A written report following a physical, dental or mental examination of you by a physician employed by SBA or another Federal Agency. If you want a copy of this report, you must request it in writing, furnish SBA with the written report of your health care provider, if SBA requests it, and make or agree to make available to SBA any other medical reports relevant to your claim.

(3) Itemized bills for medical, dental and hospital expenses you have incurred, or itemized receipts of payment for these expenses.

(4) Your health care provider's written statement of the expected expenses related to any necessary future treatment.

(5) A statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and the wages or salary you actually lost.

(6) Documentary evidence showing the amount of earnings you actually lost if you are self-employed.

(7) Information about the existence of insurance coverage and any insurance claims or payments relating to the claim in question.

(8) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(c) For a claim based on death:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Evidence of decedent's employment or occupation at the time of death, including monthly or yearly salary or earnings, and the duration of such employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent upon the decedent for support at the time of his or her death.

(4) Evidence of the support provided by the decedent to each dependent survivor at the time of his or her death.

(5) A summary of the decedent's general physical and mental condition before death.

(6) Itemized bills or receipts for payments for medical and burial expenses.

(7) For pain and suffering damage claims, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other information that may be relevant to the government's alleged liability or the damages claimed.

§ 114.105 Who investigates and considers my claim?

(a) SBA may investigate, or ask another Federal agency to investigate, your claim. SBA also may request any Federal agency to conduct a physical examination of you and provide a report to SBA. SBA will reimburse the Federal agency for the costs of that examination when authorized or required by statute or regulation.

(b) In those cases in which SBA investigates your claim, the SBA District Counsel with jurisdiction over the site will conduct an investigation and make recommendations or a determination with respect to your claim. The District Counsel may negotiate with you and is authorized to use alternative dispute resolution mechanisms when they may promote the prompt, fair and efficient resolution of your claim.

(c) The District Counsel may approve or deny an award, compromise, or settlement of any claim for $5,000 or less. If your claim is for $5,000 or less, the District Counsel may deny the claim, or may recommend approval, compromise, or settlement of the claim to a Senior Area Counsel who may take final action. The District Counsel first must refer the claim to SBA's General Counsel for review if SBA should consult with the Department of Justice before approving the claim, as required under §114.107.

§ 114.106 What if my claim exceeds $5,000?

The District Counsel must review and investigate your claim and forward it with a report and recommendation to the General Counsel, who may approve or deny an award, compromise, or settlement of claims in excess of $5,000, but not exceeding $25,000. The General Counsel will handle claims in excess of $25,000 as required by § 114.107.

§ 114.107 What if my claim exceeds $25,000 or has other special features?

(a) The U.S. Attorney General (or designee) must approve in writing any award, compromise, or settlement of a claim in excess of $25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel determines:

(1) The claim involves a new precedent or a new point of law; or

(2) The claim involves or may involve a question of policy; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or

(4) Approval of a claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) SBA must consult with the Department of Justice before adjusting,

determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel, must make any referrals to the Department of Justice for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

§ 114.108 What if my claim is approved?

SBA will notify you in writing if it approves your claim. The District Counsel will forward to you or your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative, of any award, compromise or settlement of your claim is final and conclusive under the Federal Tort Claims Act. It binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to your counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

§ 114.109 What if my claim is denied?

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

Subpart B—Representation And Indemnification of SBA Employees

§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator (or designee) determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding.

(2) Settle or compromise the claim.

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely, written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation adverse information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

Dated: October 19, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–26669 Filed 11–2–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–90–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require an inspection to detect moisture and migrated bushings of the guide fittings of the safety locking pins of the passenger doors, removal of any moisture, application of grease, and reinstallation of any migrated bushing. This proposal also would require installation of a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. This proposal is prompted by reports of difficulty opening the passenger doors due to jamming of the locking pin. The actions specified by the proposed AD are intended to prevent such jamming of the locking pin, which could result in inability to open the passenger door. This condition, if not corrected, could impede or delay passengers from exiting the airplane during an emergency.

DATES: Comments must be received by December 18, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–90–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that it has received reports indicating that operators of Model A320 series airplanes have experienced difficulty opening the passenger doors due to freezing of the locking mechanism during cold weather conditions. Investigation revealed that moisture and water accumulates and freezes between the upper bushings of the vertical guide fitting of the doors. This condition causes expansion of the bushings and compromises the tolerances of the guide. Consequently, the safety locking pin that fits in the guide can become jammed, which can result in inability to open the passenger door. This condition, if not corrected, could impede or delay passengers from exiting the airplane during an emergency.

Airbus Industrie has issued All Operators Telex (AOT) 52–06, dated February 4, 1994, which describes procedures for a one-time inspection to detect moisture and migrated bushings of the guide fittings of the upper safety locking pins of the passenger doors, removal of any moisture that may have accumulated between the bushings, application of low temperature grease, and reinstallation of any migrated bushing.

Airbus Industrie has issued Service Bulletin No. A320–52–1057, dated July 26, 1994, which describes procedures for installing a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. Accomplishment of the installation will prevent jamming of the locking pin.

The DGAC classified the AOT and the service bulletin as mandatory and issued French airworthiness directive 94–239–060(B), dated November 9, 1994, in order to assure the continued airworthiness of these airplanes in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect moisture and migrated bushings of the guide fittings of the upper safety locking pins of the passenger doors, removal of any moisture, application of grease, and reinstallation of any migrated bushing. The proposed AD also would require installation of a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors. The actions would be required to be accomplished in accordance with the AOT and the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane (1 work hour per door; 4 doors per airplane) to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $25,920, or $240 per airplane.

The FAA estimates that it would take approximately 40 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this proposed action on U.S. operators is estimated to be $259,200, or $2,400 per airplane.

Based on these figures, the total cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $285,120, or $2,640 per airplane.

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

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:

Airbus Industrie: Docket 95–NM–90–AD.

Applicability: Model A320 series airplanes on which Airbus Industrie Modification No. 24389 (Airbus Industrie Service Bulletin No. A320–52–1057, dated July 26, 1994) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (c) 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 jamming of the upper safety locking pin on the passenger door, which could result in inability to open the passenger door and, subsequently, could impede or delay passengers from exiting the airplane during an emergency, accomplish the following:

(a) Prior to the accumulation of 450 hours time-in-service after one year from the delivery date of the airplane, or within 450 hours time-in-service after the effective date of this AD, whichever occurs later: Perform an inspection to detect moisture or migrated bushings of the guide fittings of the upper safety locking pins on each passenger door, in accordance with Airbus Industrie All Operators Telex (AOT) 52–06, dated February 4, 1994.

(1) If any moisture is found in the guide fitting, prior to further flight, remove the moisture, dry the guide fitting, fill it with low temperature grease, and reinstall the guide fitting with bolts, washers, and nuts in accordance with the AOT.

(2) If any migrated bushing is found, prior to further flight, reinstall the bushing using Loctite 672 in accordance with the AOT. If the bushing cannot be reinstalled prior to further flight, the airplane may be operated without the upper locking pin for an additional 50 hours time-in-service or three days after accomplishing the inspection, whichever occurs first, provided that the requirements specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD are accomplished. This compliance time applies to each passenger door.

(i) The connecting rod to the locking shaft shall be removed.

(ii) The guide fitting shall remain installed.

(iii) The cavity in the guide fitting (which results from the removal of the upper locking pin) shall be covered with high speed tape to prevent moisture ingress.

(b) Within 15 months after the effective date of this AD, install a greasing nipple on the guide fitting of the locking pin and on three telescopic rods on the passenger doors in accordance with Airbus Industrie Service Bulletin No. A320–52–1057, dated July 26, 1994.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with 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.

Issued in Renton, Washington, on October 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27306 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–AWP–36]

Proposed Amendment of Class E Airspace; Page, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Page, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Page Municipal Airport, Page, AZ.

DATES: Comments must be received on or before December 13, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–36, 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–36.'' 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.

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 (14 CFR part 71) by amending the Class E airspace area at Page, AZ. The development of a GPS SIAP at Page Municipal 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 15 SIAP at Page Municipal Airport, 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. 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 Page, AZ [Revised]

Page Municipal Airport, AZ
(Lat. 36°55′34″ N, long. 111°26′54″ W)
Page VOR/DME
(Lat. 36°55′41″ N, long. 111°27′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Page Municipal Airport; and within 3-miles either side of the Page VOR 340° radial, extending from the 6.5-mile radius to 10 miles northwest of the Page VOR/DME. That airspace extending upward from 1,200 feet above the surface within 6.5 miles northeast and 10 miles southwest of the Page VOR/DME 340° radial and 160° radial, extending from the 18-miles northwest to 8-miles southeast of the Page VOR/DME and that airspace bounded by a line beginning at lat. 37°11′00″ N, long. 111°41′00″ W; to lat. 37°22′00″ N, long. 111°46′00″ W; to lat. 37°26′00″ N, long. 111°35′00″ W; to lat. 37°19′30″ N, long. 111°20′30″ W; to lat. 37°10′30″ N, long. 111°25′00″ W; to lat. 37°15′00″ N, long. 111°27′00″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 36°56′00″ N, long. 111°18′00″ W; to lat. 36°35′00″ N, long. 111°09′30″ W; to lat. 36°35′00″ N, long. 111°30′00″ W; to lat. 36°41′00″ N, long. 111°32′00″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 23, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–27348 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ACE–3]

Proposed Amendment to Class E Airspace; Fremont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Fremont, NE. A new standard instrument approach procedure (SIAP) is being developed to Runway 13 at Fremont Municipal Airport, Fremont, NE, utilizing the Scribner VOR, which would provide pilots additional controlled airspace at Fremont, NE.

DATES: Comments must be received on or before December 4, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95-ACE-4, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

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

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, 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 Docket No. 95-ACE-3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Fremont Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. 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 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. 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 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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (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. 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 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 From 700 Feet or More Above the Surface of the Earth

* * * * *

ACE NE E5 Fremont, NE [Revised]

Fremont Municipal Airport, NE.
(Lat. 41°26′49″N, long. 96°31′03″W)
Fremont NDB
(Lat. 41°27′01″N, long. 96°31′05″W)
Scribner VOR
(Lat. 41°36′19″N, long. 96°37′44″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Fremont Municipal Airport and within 2.6 miles each side of the 306° bearing from the Fremont NDB extending from the 6.4-mile radius to 7 miles northwest of the airport, and within 2 miles each side of the Scribner VOR 153° radial extending from the Scribner VOR to the 6.4-mile radius of the Fremont Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 4, 1995.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 95–27347 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 764 and 942

Receipt of a Petition To Designate Lands Unsuitable for Mining and To Prepare a Petition Evaluation Document and Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare a combined petition evaluation document/environmental impact statement, and notice of scoping meeting and scoping comment period for the petition.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) for the decision on a petition to designate certain lands within the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining and reclamation operations in accordance with Section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. OSM has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSM requests that other Federal and state agencies and the public submit written comments or statements on the need for an EIS on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. (est), December 18, 1995. Oral comments may be presented at the scoping meeting to be held on Thursday, November 16, 1995, at 7 p.m. (CST).

ADDRESSES: Written comments must be mailed or hand delivered to the Office

of Surface Mining, Permitting Team, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902, Attn. Willis Gainer. Copies of the petition are available upon request from the Office of Surface Mining at the above address. The public record on the petition is available for review during normal working hours (8 a.m. to 4:30 p.m.) at the OSM office listed above. The November 16 scoping meeting will be held at the Fall Creek Falls State Park Inn, Rt. 3, Pikeville, Tennessee.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, at the OSM office listed above (telephone: 615–545–4065).

SUPPLEMENTARY INFORMATION: On July 14, 1995, 49 citizens, Save Our Cumberland Mountains, and Tennessee Citizens for Wilderness Planning petitioned OSM to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area in Van Buren and Bledsoe Counties, Tennessee, as unsuitable for surface coal mining operations pursuant to SMCRA. The petition was amended on August 18 and September 5, 1995, and determined administratively complete and accepted for processing on October 5, 1995. The petition as accepted is an 80 page document with 55 exhibits and amendments. The Federal Program for Tennessee, as administered by OSM, applies to all surface coal mining operations in Tennessee including the processing of lands unsuitable for mining petitions (49 FR 38874, October 1, 1984).

The petition area covers approximately 83,740 acres of the watershed and viewshed in Van Buren and Bledsoe Counties. The petition boundary is as follows: beginning at the Park boundary due north of Bradden Knob lookout tower, roughly paralleling Highway 30 northwesterly to a point on Cane Creek just south of the Highway 30 crossing, then extending due west with the boundary of the Park's new addition and extending westward to a point approximately at the city limits of the town of Spencer, from that point southward roughly following the path of Highway 111 to Pine Grove school, then south-southwest to the community of Welchland, then southeast to the peak of Smartt Mountain, then extending southeasterly following the Tennessee Valley Divide, and following the Divide as it curves back to the northeast to a point approximately 2 miles north of Basin Mountain, then following a divide between Flat Creek and Pole Bridge Creek in a northwesterly direction to the beginning.

The major allegations of the petition can be summarized as follows:

1. Surface coal mining operations would affect fragile or historic lands, in which such operations could result in significant damage to important historic, cultural, scientific, or esthetic values.

2. Surface coal mining operations would affect renewable resource lands in which the operations could result in a substantial loss or reduction in the long-range productivity of water supply or of food or fiber products.

3. Surface coal mining operations would affect natural hazard lands in which such operations could substantially endanger life and property.

4. Surface coal mining operations would be incompatible with existing state and local land use plans or programs.

5. Reclamation is not technologically and economically feasible.

OSM has identified four possible alternatives that the combined PED/EIS would evaluate:

Alternative 1—Designate the entire petition area as unsuitable for surface coal mining operations if OSM determines that reclamation is not technologically and economically feasible.

Alternative 2—Not designate any of the area as unsuitable for surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for all surface coal mining operations:

A. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect fragile or historic lands and result in significant damage to important historic, cultural, scientific, or esthetic values.

B. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would result in a substantial loss or a reduction in the long-range productivity of water supply or food or fiber products.

C. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect natural hazard lands and could substantially endanger life and property.

D. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would be incompatible with existing local land use plans and programs.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow underground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. OSM seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments should be specific and confined to issues pertinent to the petition. The public comments received during the scoping period will assist OSM in making decisions on the petition evaluation and in preparing the PED/EIS. OSM believes that the proposed action is a major Federal action that may significantly affect the quality of the human environment and may require the preparation of an EIS. OSM additionally gives notice here that should information or analysis show that the proposed action does not require an EIS, it will terminate the environmental impact statement process through an appropriate notice in the Federal Register, prepare an environmental assessment, and continue processing of the petition under 30 CFR Part 764 and 942 regulations.

Dated: October 31, 1995.

Mary Josie Blanchard,

Director, Program Support.

[FR Doc. 95–27338 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 552

[USAARMC Reg 210–1]

Control of Firearms and Weapons on the Installation of Fort Knox, KY

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: This action establishes 32 CFR Part 552, Subpart O, Control of Firearms and Weapons, and authenticates Fort Knox regulation, USAARMC Reg 210–1. This subpart establishes weapons authorized, prohibited, and restricted on the Fort Knox military reservation, and the conditions applicable to the use, possession, sale, purchase, loss, registration, storage, and disposal of weapons authorized on the reservation. This regulation is applicable to all

personnel assigned, residing, working, or visiting on the Fort Knox reservation.

DATES: Comments must be received by December 4, 1995.

ADDRESSES: Commander, U.S. Army Armor Center and Fort Knox, Office of the Staff Judge Advocate, Fort Knox, Kentucky 40121.

FOR FURTHER INFORMATION CONTACT: William G. Lacey, Operations Officer, telephone: (502) 624–4335 or 1776.

SUPPLEMENTARY INFORMATION: Supplementation of this subpart by subordinate units is prohibited.

Executive Order 12291

This proposed rule is not affected by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act has no bearing on this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 552

Arms and munitions, Federal buildings and facilities, Government employees, Military personnel.

It is proposed to add Subpart O to 32 CFR Part 552 as set forth below:

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

32 CFR Part 552 is amended by adding a new Subpart O as follows:

Subpart O—Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

Sec.
552.192 Purpose
552.193 Applicability
552.194 Definitions
552.195 Prohibitions
552.196 Requirements for possession, storage, transportation, and registration
552.197 Requirements for carrying and use
552.198 Disposal and disposition of confiscated/ seized or surrendered weapons.

Appendix A to Subpart O—Partial List of Publications Applicable to the Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

Authority: 10 U.S.C. Ch. 47.

Subpart O—Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

§ 552.192 Purpose.

This subpart establishes the criteria for possessing, carrying, transporting, and disposing of firearms and/or other deadly or dangerous weapons and instruments on the Fort Knox installation.

§ 552.193 Applicability.

(a) The provisions of this subpart apply to all Department of Defense (DoD) military; civilian personnel; U.S. Army Reserve/National Guard (USAR/NG) personnel on post for active duty training or inactive training; military family members; and civilians employed on, visiting, or traveling through or on the Fort Knox installation.

(b) This subpart will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

(c) This subpart is punitive. Military violators of the regulations in this subpart may be prosecuted under the Uniform Code of Military Justice, applicable Federal law, other regulations, and/or administrative action. Civilian visitors may be barred from the installation of Fort Knox and prosecuted under appropriate Federal or State laws.

§ 552.194 Definitions.

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, tracer, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullets, powder, and primer.

(b) *BB and pellet guns.* Any type rifle, pistol, or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO2, or any other compressed gas cartridge.

(c) *Cantonment area.* The central portion of the Fort Knox Reservation excluding field training sites, firing ranges and hunting areas, which includes commercial and government facilities and activities, installation and unit headquarters, troop billets, and family housing.

(d) *Dangerous instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) ''Constant companion'' or any similar weapon designed or redesigned, made or remade, modified or remodified to be worn as a belt buckle, brass knuckles, ''Knucklers,'' and ''Knucks.''

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Black jacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes/weapons.

(4) ''Nanchaku'' (num-chucks), two or more sticks connected by rope, cord or chain, and normally used as a martial arts weapon. ''Shuriken,'' a disc or any geometrical object designed to be thrown as a weapon. ''Manrikigusari'' or ''Kusari,'' a rope or cord joined to a weight at each end and designed to be used as a weapon.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) All prohibited firearms.

(e) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas (to include chemical mace) or smoke bomb, grenade, rocket, missile, mine, blasting cap, ''dummy'' and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottle rockets, and star clusters.

(f) *Firearms.* Any type of weapon which is designed or redesigned, made or remade, modified or remodified to expel a projectile by action of any explosion, and the frame or receiver of any such weapon. This does not include antique firearms, antique replicas, and those modern firearms which have been rendered permanently incapable of being fired.

(g) *Handgun.* Any pistol or revolver originally designed to be fired by the use of a single hand, or any other firearm originally designed to be fired by the use of a single hand.

(h) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(i) *Minor.* A person who has not reached the full legal adult age of 18.

(j) *Machine gun and automatic weapon.* A weapon designed or redesigned, made or remade, modified or remodified to automatically fire more than one shot by single pull of the trigger.

(k) *Rifle.* A firearm with a rifled bore designed to be fired from the shoulder.

(l) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder,

and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(m) *Sawed-off or shortened shotgun.* A shotgun or any weapon made from a shotgun whether by alteration, modification, or otherwise having one or more barrels less than 18 inches in length or if such weapon as modified has an overall length of less than 20 inches.

(n) *Sawed-off rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only as a single projectile through a rifle bore for each single pull of the trigger, and which has a barrel or barrels of less than 16 inches or has an overall length of less than 26 inches.

(o) *Silencer.* Any device used for suppressing or diminishing the report of any firearm.

(p) *Weapon.* Any instrument used in a offensive or defensive manner.

(q) *Workplace.* Any building, room, or establishment or part thereof, owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing official duties.

§ 552.195 Prohibitions.

(a) Prohibited items. It is prohibited to possess, carry, conceal, transport, store, transfer, or sell any of the following weapons or devices on, through, or within the confines of the installation unless specifically allowed elsewhere in this subpart:

(1) Sawed off/shortened barrel shotguns, which are not generally recognized as suitable for lawful purposes.

(2) Sawed off/shortened barrel rifle.

(3) Machine gun and automatic weapons (unless properly permitted under federal law).

(4) Silencers.

(5) Dangerous instruments as defined in § 552.194.

(6) Explosives, incendiary, gas, and pyrotechnic devices, as defined in § 552.194.

(7) Knives with automatic blade openers (i.e., switch blades, gravity knives, stilettos) of any blade length.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, ''taser,'' or ''public defenders.''

(b) *Carrying a concealed weapon.* A person commits the offense of carrying a concealed weapon when they knowingly have or carry about their person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside their home.

(c) *Possession of a firearm in a posted Federal workplace.*

(1) Per the provisions of 18 U.S.C. Section 930a, firearms are prohibited in all Federal workplaces when such notice is posted at each entrance. The sign at USAARMC Regulation 210–1, appendix B, when posted at each public entrance to a facility or activity, will serve as notice required by 18 U.S.C. Section 930a. Any person entering such a posted facility, in possession of a firearm, will be in violation of 18 U.S.C. 930a, and subject to apprehension.

(2) All buildings and structures on Fort Knox, which provide a customer service function will display the notice sign at USAARMC Regulation 210–1, appendix B. Commanders and building managers may post notice at other buildings as they deem appropriate. Other buildings may include, but are not limited to, command and headquarters, and mission essential facilities not having customer service orientation.

(3) The provisions of this paragraph do not apply to firearms carried by law enforcement and security personnel while performing official duties.

(d) Prohibited possession and storage. It is prohibited for a person, military or civilian, to possess or store ammunition, firearms, knives with blades more than 3½ inches long, bows and arrows, crossbows, and BB and pellet guns in locations other than those locations specified in § 552.196 except under conditions specified in § 552.197. Prohibited locations for these items include but are not limited to, living spaces and common areas of billets, squad rooms, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, unit staff duty personnel, i.e., Staff Duty Officer (SDO), Charge of Quarters (CQ), etc., will ensure the weapon is properly secured. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate. Unless otherwise authorized, weapons may NOT be stored in vehicles.

(e) *Exemptions.* Nothing in this subpart shall prohibit:

(1) Soldiers or DoD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties or for training or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DoD civilian personnel, while in the performance of official law enforcement duties, from possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county, or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives, or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, per the provisions of their contract and as determined by the Contracting Officer.

(5) Individuals with Federal Firearms Licenses from possessing, carrying, and transporting weapons per Federal regulations; however, they are prohibited from concealing such weapons.

§ 552.196 Requirements for possession, storage, transportation, and registration.

(a) *Possession, transportation, and registration.* DoD military and civilian personnel, their family members, USAR/NG personnel and civilians employed on, visiting, or traveling through this installation may possess privately-owned firearms, ammunition, BB and pellet guns, knives, bows and arrows, and crossbows (excluding prohibited items) under the following conditions:

(1) Privately owned firearms, crossbows, BB and pellet guns possessed or stored on the installation must be registered within at the installation Provost Marshal's Office within 3 working days after arrival on the installation, or after obtaining the weapon, except:

(i) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(ii) Firearms carried by Federal, state, county, or local law enforcement personnel when in the performance of official law enforcement duties.

(iii) Firearms carried or transported, in full compliance with Kentucky State Laws, by personnel traveling through the installation.

(2) Minors may not purchase, register, or have in their possession any weapon, including a firearm, other than an ordinary pocket knife. Persons under 21 years of age shall not possess a privately-owned handgun, except:

(i) Soldiers, older than 18 years of age, but under the age of 21, with written approval and certification of the unit commander may, for the purpose of participating in official hunting or target shooting activities in an authorized area register, transport, possess, and use a firearm to include a handgun. The commander's certification/approval must be presented at the time the firearm is registered, and be available upon demand at any time the firearm is carried, used or transported on the installation.

(ii) Persons under the age of 18 while hunting or target shooting on the installation must be accompanied by a person over the age of 21 who will be responsible for compliance with the requirements of this subpart.

(b) *Storage.* Personnel residing in family housing, Bachelor Officer/Enlisted Quarters and guest housing, may store authorized ammunition, knives with a blade measuring more than 3½ inches, bows and arrows, registered crossbows, registered BB and pellet guns, and registered firearms within their quarters. Firearms should be stored in a locked container or otherwise secured by a locking device that immobolizes the trigger and/or action.

(1) Personnel residing in troop billets may store authorized ammunition, knives and blades measuring more that 3½ inches, bows and arrows, registered crossbows, registered BB and pellet guns, and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(2) Persons must be in compliance with Federal and state law regarding possession (i.e., age, criminal record restrictions, etc.).

(3) Storage, accountability, and registration procedures will be per Army Regulation 190–11 and supplements.

§ 552.197 Requirements for carrying and use.

(a) *Carrying and use.* Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 ½ inches), bows and arrows, and crossbows, may carry or transport weapons under the following conditions:

(1) For the purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area or Pass and Permit Office and return. Individuals must have in their possession a weapon registration (if applicable), valid state hunting license, valid Fort Knox hunting permit, and an area access pass (if applicable).

(2) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Individuals must have in their possession at all times their registration (if applicable).

(i) When carried, weapons will be carried in an open manner or in a case designed by the manufacturer to specifically store a firearm (not concealed). Firearms will be unloaded when carried (i.e., projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned knife with a blade over 3½ inches to field duty, provided it is carried fully exposed to view in a sheath/scabbard. The Provost Marshal may authorize the carrying of a privately owned, sheathed, lock blade knife on military and DoD police officers' pistol belts.

(ii) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (i.e. locked tool box secured to bed of truck). Firearms will be unloaded and the ammunition physically separated from the firearms. The glove compartment of a vehicle is NOT an authorized compartment for storing or transporting pistols on the installation.

(iii) Firearms, bows and arrows, crossbows, BB and pellet guns will not be loaded, fired or used within the cantonment areas of the installation; within 50 yards of any public highway, street, or Fort Knox numbered road or across same; within 100 yards of any designated recreation area, managed waters, building, or similar structures; any aircraft landing facility (to include currently used landing or stage fields); any ammunition storage area (except on approved firing range when properly authorized).

(b) *Kentucky Revised Statute 527.020—Carrying concealed deadly weapon.* Persons not affiliated with DoD or this installation when carrying or transporting weapons through the installation must be in full compliance with Kentucky State Law governing possession, use, and transportation of said weapons which mandates the following:

(1) A person is guilty of carrying a concealed weapon when he carries concealed a firearm or other deadly weapon on or about his person.

(2) Peace officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their persons.

(3) Policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so by the government employing the officer.

(4) A deadly weapon shall not be deemed concealed on or about the person if it is located in a glove compartment, regularly installed in a motor vehicle by its manufacturer regardless of whether said compartment is locked, unlocked, or does not have a locking mechanism.

(5) Carrying a concealed weapon is a Class A misdemeanor unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used or displayed in which case it is a Class D felony.

§ 552.198 Disposal and disposition of confiscated/seized or surrendered weapons.

(a) *Disposal.* Any person may dispose of unwanted firearms by relinquishing the weapon in person to the on-duty Military Police Desk Sergeant located at Building 204, Fort Knox. Any firearm, to include dangerous instruments or prohibited items, may be disposed of anonymously by placing the weapon or item in the amnesty container located adjacent to the front entrance of Building 1384, One-Stop Processing Center. All personnel are encouraged to safely dispose of any unwanted or undesired firearm/weapon by either of the methods in this paragraph.

(b) *Disposition of weapons and ammunition.* All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated

pursuant to the commission of a crime, violation of this or other regulation, voluntarily surrendered or found unsecured/unattended on the installation, will be immediately turned over to the Military Police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other lawful disposition. When retention for investigation or evidence is no longer required by Military Police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the provisions of AR 195–5, Evidence Procedures.

(c) *Forfeiture.* Upon conviction of any person for the violation of any law or statute in which a weapon was used, displayed, or unlawfully possessed by such person, the court of competent jurisdiction may order the weapon to be forfeited and destroyed according to law.

Appendix A to Subpart O—Partial List of Publications Applicable to the Control of Firearms and Weapons on the Installation of Fort Knox, Kentucky

1. Control of Firearms and Weapons, USAARMC Regulation 210–1.
2. Physical Security of Arms, Ammunition, and Explosives, Army Regulation 190–11 and supplements.
3. Evidence Procedures, Army Regulation 195–5.

These publications are available for inspection at the Office of the Staff Judge Advocate, Fort Knox, Kentucky 40121.

[FR Doc. 95–27297 Filed 11–2–95; 8:45 am]

BILLING CODE 3710–08–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT32–1–7117b, ND6–2–7081b, UT21–1–6915b, WY7–1–7042b; FRL–5303–2]

Clean Air Act Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration; Designation of Areas for Air Quality Planning Purposes; Montana, North Dakota, South Dakota, Utah, and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the State Implementation Plans (SIPs) submitted by the States of Montana, North Dakota, Utah, and Wyoming. The submittals included revisions to the prevention of significant deterioration (PSD) permitting rules of these States mainly to address the replacement of the total suspended particulate (TSP) increments with increments for PM–10 (particulate matter 10 micrometers or less in diameter), but also to address other changes in the Federal PSD permitting regulations and to make other minor revisions. EPA is also proposing to delete the TSP area designation tables and to revise and/or create PM–10 area designation tables in 40 CFR part 81 for these States as well as for the State of South Dakota (which has been delegated authority to implement the Federal PSD regulations in 40 CFR 52.21). In the final rules section of this Federal Register, the EPA is acting on the States' SIP submittals in a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this documents should do so at this time.

DATES: Comments on this proposed action must be received in writing by December 4, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Air Quality Division, Department of Health and Environmental Sciences, 836 Front Street, P.O. Box 200901, Helena, Montana 59620–0901; North Dakota Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502–5520; Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah, 84114–4820; and Wyoming Air Quality Bureau, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this Federal Register.

Dated: September 19, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–27063 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–160; RM–8710]

Radio Broadcasting Services; Kewanee, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Virden Broadcasting Corporation proposing the substitution of Channel 230A for Channel 221A at Kewanee, Illinois, and the modification of Station WJRE(FM)'s license accordingly. Channel 230A can be allotted to Kewanee in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) west at petitioner's requested site. The coordinates for Channel 230A at Kewanee are North Latitude 41–14–15 and West Longitude 89–56–15.

DATES: Comments must be filed on or before December 21, 1995 and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20554 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–160, adopted October 16, 1995, and released October 30, 1995. The full text

of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., 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. 95–27260 Filed 11–2–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–161, RM–8709]

Radio Broadcasting Services; Las Vegas, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by William R. Sims seeking the allotment of Channel 244A to Las Vegas, NM, as the community's third local commercial FM service. Channel 244A can be allotted to Las Vegas in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–36–00 North Latitude and 105–13–00 West Longitude.

DATES: Comments must be filed on or before December 21, 1995, and reply comments on or before January 5, 1996.

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: Barry D. Wood, Esq., Jones, Waldo, Holbrook & McDonough, P.C., 2300 M Street, NW., Washington, DC 20037 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 95–161, adopted October 13, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 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. 95–27257 Filed 11–2–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–162, RM–8714]

Radio Broadcasting Services; Wellsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Erin Communications, Inc., seeking the substitution of Channel 278A for Channel 228A at Wellsville, NY, and the modification of Station WJQZ(FM)'s license accordingly. The substitution of channels could enable Station WJQZ(FM) to operate with full Class A facilities of 6 kW instead of its present 3 kW. Channel 278A can be allotted to Wellsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) southwest, at coordinates 42–13–24 NL; 78-00-34 WL. Canadian concurrence in the allotment is required since Wellsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The Commission will not accept competing expressions of interest in use of Channel 278A at Wellsville since the procedures set forth in 1.420(g) of the Commission's Rules do not apply in this case as the Commission generally considers channels of the same class to be equivalent.

DATES: Comments must be filed on or before December 21, 1995, and reply comments on or before January 5, 1996.

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: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., Three Bethesda Metro Center, Suite 640, Bethesda, MD 20814–5330 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–162, adopted September 18, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 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. 95–27259 Filed 11–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–159; RM–8711]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Rule Communications proposing the allotment of Channel 244A at Laramie, Wyoming, as the community's fifth local commercial FM transmission service. Channel 244A can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 244A at Laramie are North Latitude 41–18–42 and West Longitude 105–35–06.

DATES: Comments must be filed on or before December 21, 1995 and reply comments on or before January 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20554 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–159, adopted October 16, 1995, and released October 30, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., 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. 95–27258 Filed 11–2–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 100

[IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–443]

Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking that proposes a number of new rules for the Direct Broadcast Satellite (''DBS'') service, including the use of competitive bidding to resolve mutually exclusive applications for DBS resources. The Commission seeks comment on all of its tentative conclusions and proposed rules.

As part of its decision in *Advanced Communications Corporation,* FCC 95–428 (released October 18, 1995), the Commission reclaimed for the public 51 channels of DBS spectrum at two orbital locations (27 channels at 110° W.L. and 24 channels at 148° W.L.) that had previously been assigned to Advanced Communications Corporation (''ACC''). The Commission proposes to revise rules and policies in the DBS service in order to update the current ''interim'' rules and to reassign, by auction or other means, channels at orbital locations previously assigned to ACC.

DATES: Comments must be submitted on or before November 20, 1995; reply comments must be submitted on or before November 30, 1995. Written comments by the public on the proposed and/or modified information collections are due November 20, 1995. Written comments must be submitted by the Office of Management and Budget (''OMB'') on the proposed and/or modified information collections on or before January 2, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street NW., Washington, DC 20503 or via the Internet to faint@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bill Wiltshire or Suzanne Hutchings, International Bureau, (202) 418–0420; or Diane Conley, Wireless Telecommunications Bureau, (202) 418–0660. For additional information concerning the information collections, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 95–168; PP Docket No. 93–253; FCC 95–443, adopted October 27, 1995 and released October 30, 1995. The complete text of this Notice of Proposed Rulemaking (*Notice*) is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (''PRA''), Pub. L. No. 104–13. It has been submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

Synopsis of the Notice of Proposed Rule Making

I. Introduction

1. Over six years ago, in *Continental Satellite Corporation,* 4 FCC Rcd 6292 (1989), the Commission stated that

existing DBS permittees would have first right to additional channel assignments upon surrender or cancellation of a DBS construction permit. the *Notice* tentatively concludes that this reassignment policy, adopted in an era before Congress explicitly authorized the Commission's use of auctions and well before any DBS system actually went into operation, no longer serves the public interest, and therefore should be abandoned.

2. Accordingly, the Notice proposes new rules for reassigning DBS resources. In the Notice, the Commission tentatively concludes that it has the statutory authority to auction DBS construction permits if the Commission receives mutually exclusive applications, and that the objectives of Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be served by doing so. Specifically, the Notice proposes to auction two DBS construction permits: one for all 28 channels now available at the 110° orbital location (27 channels from ACC plus 1 channel that was never assigned), and another for all 24 channels now available at the 148° orbital location. The Commission tentatively concludes that these two permits should be awarded through a sequential, oral outcry auction. The Notice seeks comment on both the proposed use of auctions in the DBS service and the proposed auction rules.

3. The *Notice* also proposes new rules for the DBS service. In particular, the proposed rules would: (1) Establish additional performance criteria for new permittees; (2) guard against potential anticompetitive conduct by DBS providers; and (3) ensure timely DBS service to Alaska and Hawaii. The *Notice* also requests comment on existing Commission policy governing the extent to which DBS resources may be put to alternative uses. These rules are proposed in order to foster swift utilization of DBS orbital/channel assignments, and to ensure that the public reaps the full benefit of DBS spectrum resources. The *Notice* seeks comment on these proposed service rules as well.

II. Proposed Service Rules

A. Due Diligence Milestones

4. The Notice tentatively concludes that combining existing due diligence requirements with additional milestones for construction and operation of DBS systems by new permittees will prevent unnecessary delays in the commencement of service. Accordingly, the Notice proposes rules to add two additional performance criteria for those receiving DBS construction permits after the effective date of the proposed rule: (1) Completion of construction of the first satellite in a DBS system within four years of authorization; and (2) launch and operation of all satellites in a DBS system within six years of authorization.

B. Use of DBS Capacity

5. The Notice requests comment on the Commission's existing policy for non-conforming uses of DBS resources. That policy requires each DBS licensee to begin DBS operations before the end of its first license term, but allows otherwise unrestricted use during that term. After expiration of the first term, a DBS operator may continue to provide non-DBS service only on those transponders on which it also provides DBS service, and only up to half of the use of each transponder each day. As an example of the comments sought, the *Notice* suggests that the existing restrictions on each DBS transponder could be restated in terms of capacity rather than time, so as to accomplish the same goals without unduly restricting decisions as to satellite configuration and operation, and further invites comment on whether and how to formulate a rule to better account for the flexibility of digital transmission and compression.

6. The Notice also refers to the possibility that, as a result of a separate proceeding, operators using DBS channels and orbital locations may be permitted to provide both domestic and international service. In light of that possibility, and the discussion of the permissible non-standard uses of DBS channels, the Notice requests comment on whether the U.S. has the authority to auction permits which may include the provision of international service.

C. Pro-Competitive Rules and Policies Spectrum Aggregation Limitations

7. In order to promote competition and prevent undue concentration of limited DBS resources, the Notice tentatively concludes that it may now be prudent and appropriate to adopt rules designed to further those goals, especially when DBS resources are controlled by the provider of a competing, non-DBS service. The analysis begins by tentatively concluding that the market in which multichannel video programming distributors (''MVPDs'') compete—the market for the delivery of multichannel video programming—is an appropriate ''product market'' in which to determine the competitive effect of having DBS resources under the control of the provider of another type of multichannel video distribution service. The Notice also tentatively concludes that (1) DBS service rules should address competitive issues relating to the use of DBS spectrum to provide the wholesale distribution of DBS services to cable operators and other MVPDs; (2) the effect of DBS competition in the broader MVPD market will principally be felt in essentially local markets; and (3) cross-ownership between DBS operators and other MVPDs may present opportunities for anticompetitive strategic conduct that potentially has adverse effects at the firm or national level.

8. Accordingly, the Notice proposes that any DBS licensee or operator affiliated with another MVPD be permitted to control or use DBS channel assignments at only one of the four orbital locations capable of serving the entire contiguous United States (''full-CONUS''), and seeks comment on whether the proposed spectrum limitations should be related to the size of the MVPD involved and whether such limitations should differentiate between cable operators and other MVPDs. The Notice also proposes that aggregation of DBS channel assignments by any DBS permittee or licensee be limited to a total of 32 channels at any combination of full-CONUS orbital locations, and further seeks comment on whether the Commission should impose a limitation on an operator owning a significant number of channels at each of multiple full-CONUS orbital locations—*e.g.*, prohibiting a DBS permittee or licensee holding more than 16 channels at one full-CONUS orbital location from holding channels at any other full-CONUS location.

9. The Notice proposes that any permittee or licensee that acquires control over channels in excess of the proposed spectrum limitations be given ninety days from the date of Commission approval of such acquisition in which to either surrender to the Commission its excess channels, or file with the Commission a transfer or assignment application in order to divest sufficient channels to bring the applicant into compliance with all applicable spectrum limitations.

10. For purposes of implementing the proposed spectrum aggregation limitations, the Notice proposes to consider four orbital locations—61.5° W.L., 101° W.L., 110° W.L., and 119° W.L.—to be capable of full-CONUS service. The Notice tentatively concludes that applying the spectrum cap to these four orbital locations will ensure that there is sufficient channel capacity for a minimum of four full-CONUS DBS providers. It also

concludes that channels at the other four DBS orbital locations, which are not capable of full-CONUS service, probably cannot match the economies of scale in domestic service achieved by full-CONUS operators, and thus should be exempt from the proposed spectrum limitations.

11. In order to maintain the integrity of the channel aggregation limitations, the Notice tentatively concludes that it is necessary to count against the spectrum limitations all channels held by DBS operators that share some level of common ownership or control. Because of concerns that entities could engage in anticompetitive conduct not only through control of DBS channels, but also through use of such channels, the Notice concludes that it is appropriate to apply spectrum limits not only to DBS permittees and licensees, but also to DBS operators, defined as any person or group of persons who provide services using DBS channels and directly or through one or more affiliates own an attributable interest in such satellite system; or who otherwise control or are responsible for, through any arrangement, the management and operation of such a satellite system. For purposes of implementing the spectrum aggregation limitations, the Notice proposes to attribute both controlling interests and any interest of five percent or more in a DBS permittee, licensee, or operator. The Notice proposes to rely on existing case law for making control determinations where such issues arise. Specifically, the Notice proposes to adopt rules that attribute to the holder any interest of five percent or more, whether voting or nonvoting, and all partnership interests, whether general or limited. In addition, the Notice proposes to adopt attribution rules that (1) attribute any interest of ten percent or more held by an institutional investor or investment company, rather than a five percent interest; (2) employ a multiplier for determining attribution of interests held through intervening entities; (3) provide for attribution of interests held in trust; (4) attribute the positional interests of officers and directors; (5) attribute limited partner interests based not only upon equity but also upon percentages of distributions of profits and losses; and (6) provide for attribution based upon certain management agreements and joint marketing agreements. For purposes of the spectrum limitations, the Notice also proposes to identify any individual or entity as an affiliate of a licensee, permittee, or operator, or of a person holding an attributable interest in a licensee, permittee, or operator, if such individual or entity: (i) Directly or indirectly controls or has the power to control the licensee, permittee, or operator; (ii) is directly or indirectly controlled by the licensee, permittee, or operator; or (iii) is directly or indirectly controlled by a third party or parties that also has the power to control the licensee, permittee, or operator. The Notice also seeks comment on whether the definition of an affiliate should also include individuals or entities that have an identity of interest with the licensee, permittee, or operator.

Conduct Rules To Protect Competition

12. In addition to the structural solutions designed to promote competition by preventing the potential for undue concentration of DBS and MVPD resources, the Notice also proposes conduct limitations on the use of DBS channels and orbital locations to encourage, to the maximum extent possible, rivalry among MVPDs. Specifically, the Notice further proposes to (1) extend the conditions placed on Tempo Satellite, an existing DBS permittee that is wholly owned by a cable operator, to all MVPD providers that own DBS resources, such that they cannot offer DBS service primarily as an ancillary service to their own programming distribution services, or provide DBS service to subscribers of their non-DBS systems under different terms than are being offered to non-subscribers; and (2) prevent a DBS operator from selling, leasing, or otherwise providing transponder capacity to any entity that enters into an agreement with an MVPD granting that MVPD the exclusive right to distribute DBS services within, or adjacent to, its service area. The Notice also requests comment on whether existing program access and program carriage rules adequately address vertical integration concerns arising from common ownership among DBS operators, other MVPDs, and program vendors, especially in connection with ''headend in the sky'' wholesale distribution from DBS satellites.

Other Concerns

13. The Notice observes that in the *Advanced Communications Corporation* proceeding, commenters raised a number of other concerns about potential strategic conduct that could arise from cable-affiliated ownership of full-CONUS DBS spectrum. Those commenters argued that cable-affiliated ownership of full-CONUS DBS spectrum should be prohibited, or in the alternative, that several remedial conditions should be imposed. The Notice seeks comment on the extent to which those and related concerns are implicated by the proposed auction of DBS construction permits, and if so, whether additional DBS service rules might be appropriate to address those concerns.

East/West Paired Assignments

14. The Notice tentatively concludes that progress in the DBS service since *Continental* was issued has rendered unnecessary the policy, developed in that decision, of assigning DBS channels only in east/west pairs, with eastern half-CONUS service permitted only from the four eastern orbital locations and western half-CONUS service permitted only from the four western orbital locations.

D. Service to Alaska and Hawaii

15. The Notice proposes: (1) To require that all new permittees must provide service to Alaska and Hawaii if such service is technically feasible from their orbital locations; and (2) to condition the retention of channels assigned to current permittees at western orbital locations on provision of such service, from either or both of their assigned orbital locations.

E. License Term

16. The Notice proposes to increase the term of a non-broadcast DBS license from 5 years to 10 years, the maximum allowed under the Communications Act, which better reflects the useful life of a DBS satellite and is consistent with the current proposal for extending the term of satellite licenses in other services.

III. Proposed Auctioning of DBS Permits

A. Authority To Conduct Auctions

17. The Notice tentatively concludes that the Commission has authority under Section 309(j) to use competitive bidding to award construction permits for the DBS spectrum reclaimed from ACC as well as other available DBS spectrum. The Notice tentatively concludes that construction permits available for reclaimed DBS spectrum are ''initial'' within the meaning of Section 309(j). The Notice also tentatively concludes that it is likely that mutual exclusivity will exist among applications for the DBS channels reclaimed from ACC as well as other DBS channels that may become available in the future. The Notice further tentatively concludes that there are no means of avoiding mutual exclusivity in the DBS service that are consistent with the objectives of Section 309(j). The Notice proposes to consider mutual exclusivity to occur only when the number of DBS channels sought at a given orbital location exceeds the

number available there, and it asks for possible alternative criteria for identifying mutually exclusive applications. The Notice also tentatively concludes that the ''principal use'' requirement of Section 309(j) is satisfied because DBS is likely to be primarily a subscription-based service, and that using competitive bidding to award DBS authorizations would promote the objectives of Section 309(j).

B. Competitive Bidding Design

18. The Notice explains that the Commission has previously concluded that the objectives of Section 309(j) will generally best be achieved by auctions designed to award authorizations to the parties that value them most highly. Such parties are most likely to deploy new technologies and services rapidly, and to promote the development of competition for the provision of those and other services.

19. The Notice proposes that available channel assignments be auctioned sequentially in two blocks: one block of 28 channels at 110°, including the 27 channels reclaimed from ACC and one channel that has never been assigned; and one block of 24 channels at 148°, which were reclaimed from ACC. The Notice tentatively decides not to divide the available blocks into smaller parcels because it appears from the configuration of current DBS systems that channels are most effectively utilized when they are available in a substantial quantity at a given orbital location. The Notice also tentatively concludes that there would be little to gain by conducting simultaneous auctions of the DBS channels reclaimed from ACC because the channels at 110° and those at 148° are not likely to be close substitutes in the near term and there is no evidence of synergies between the channels at the two orbital locations. If sequential auctioning is used, the Notice proposes to auction the channels at 110° first because all of the information available indicates that the channels at 110° have the highest value of those currently available. The Notice asks whether the channels at 110° and at 148° should be offered in a different configuration, and whether there are foreseeable circumstances in which simultaneous auctions of DBS permits would be more appropriate than sequential auctions. The Notice also seeks comment on any general principles that may be used to determine the sequence of future DBS auctions that may be held if construction permits are auctioned sequentially.

20. The Notice tentatively concludes that multiple round bidding would be the best method of auctioning the channels reclaimed from ACC, because the value of the construction permits is likely to be very high and at the same time may be somewhat uncertain. Single round sealed bidding would be a simple method of awarding DBS construction permits, but bidders would have to guess about the value that other bidders place on the permits and there is a substantial risk that the party that values a permit most highly may not submit the winning bid. The Notice requests comment on the advantages and disadvantages of both single round, sealed bidding and multiple round bidding as a method of auctioning DBS permits in the future.

21. The Notice also tentatively concludes that oral outcry would be the best method of submitting bids in the case of DBS, and that this method should be used for the channels reclaimed from ACC. An oral outcry auction has the advantage of being simple and rapid, and it avoids the additional complications associated with electronic filing. The Notice seeks comment on whether an oral outcry auction could pose problems for bidders that need time between bidding rounds to arrange for additional financing if bidding goes higher than anticipated. The Notice also seeks comments on whether a combined sealed bid-oral outcry auction may be appropriate for the channels available at 110° and 148° to help reduce the risk of collusion while retaining the benefits of a multiple round auction.

C. Bidding Procedures

22. In the event multiple round auctions are used, imposing a minimum bid increment would speed the progress of the auction and help to ensure that the auction concludes within a reasonable period. If oral outcry is used, the Notice tentatively concludes that the auctioneer should have discretion to establish bid increments—and raise or lower them in the course of an auction—consistent with directions provided by the Commission. The Notice also asks for suggestions as to how bid increments should be determined if bids are submitted electronically. The *Notice* also proposes to establish a minimum opening bid for the 28 channels available at 110°, both to help ensure that the auction proceeds quickly and to increase the likelihood that the public receives fair market value for the spectrum. The Notice asks interested parties to suggest the appropriate level of a minimum opening bid for the channels at 110°, and it seeks comment on whether and how a minimum bid should be established for the channels at 148° and other channels that may become available in the future.

D. Procedural and Payment Issues

23. The *Notice* proposes to apply its general procedural and payment rules for auctions to the DBS service, along with certain modifications discussed below. In keeping with previous practice, the *Notice* also proposes that the Commission retain discretion to implement or modify certain procedures that would be announced by Public Notice prior to particular auctions, including rules governing the timing of application and payment requirements and any activity and stopping rules that may be appropriate.

24. Under the procedures proposed in the Notice, applicants for DBS auctions would file a short-term application, FCC Form 175, with the Commission prior to the auction in which they wish to participate. The *Notice* also tentatively concludes that it would be appropriate to allow only for manual filing of these forms for the proposed auction of spectrum available at 110° and 148°, because a small number of participants is anticipated.

25. The Notice proposes that entities that would exceed proposed spectrum caps as a result of successful bidding in the proposed auctions should be given 90 days following the date of grant of a construction permit won through an auction to either surrender to the Commission their excess channels or file an application that would result in divestiture of the excess channels.

26. The Notice proposes to require an upfront payment in all DBS auctions to help ensure that only serious, qualified bidders participate. The Notices seeks comment on how the size of an upfront payment should be determined and asks whether it would be appropriate to establish an upfront payment of five percent of the spectrum's estimated value. The Notice further asks how the value of spectrum should be estimated. The Notice also asks whether a single upfront payment should qualify parties to bid on both the 110° and 148° channel blocks, and, if not, what the appropriate amount of an upfront payment would be for each of the two channel blocks. The Notice further asks if only the winner of the first permit should be required to submit an additional upfront payment if it wishes to bid on the second permit. With respect to the collection of upfront payments, the Notice proposes that prospective bidders deposit their payments in the Commission's lock-box bank by a date certain that would allow the Commission sufficient time to verify the availability of the funds before the

auction. The Notice tentatively concludes that such a procedure would minimize the risk of defaults that could force the reauctioning of spectrum and asks for comment on alternative collection methods.

27. The Notice also proposes that every DBS auction winner should be required to submit to the Commission an amount sufficient to bring its total deposit up to 20 percent of its winning bid within 10 business days of the announcement of winning bidders. By the same deadline, winning bidders would be required to file information in conformance with Part 100 of the Commission's Rules and a signed statement describing their efforts to date and future plans to come into compliance with the proposed spectrum caps. In addition, the Notice proposes that winning bidders be required to submit the balance of their winning bid within five business days of an announcement that the Commission had dismissed or denied any and all petitions to deny. Under this proposal, if a winning bidder failed to submit the balance of the winning bid or the permit was otherwise denied, a default payment would be assessed.

28. If oral outcry auctions are used, the Notice proposes to rely on default payments to deter insincere bidding and provide an incentive for bidders wishing to withdraw their bids to do so before bidding ceases. Under this proposal, a default payment would be assessed if a winning bidder fails to pay the full amount of its 20 percent down payment or the balance of its winning bid in a timely manner, or is disqualified after the close of an auction. The Notice proposes that the amount of such a default payment should be equal to the difference between the defaulting auction winner's ''winning'' bid and the amount of the winning bid the next time the license is offered for auction by the Commission, if the latter bid is lower. In addition, the defaulting auction winner would be required to submit a payment of three percent of the subsequent winning bid or three percent of its own ''winning'' bid, whichever is less.

29. If single round, sealed bid auctions for DBS used, the item proposes to require no payments for withdrawing a bid (1) before the bids are opened, or (2) after bids are opened but before the high bidder has been notified. However, a payment equal to the difference between the high bid and the next highest bid would be required of any party that defaults after being notified that it has submitted the high bid in a sealed bid DBS auction.

E. Regulatory Safeguards

30. The Notice proposes that any entity that acquires a DBS authorization through competitive bidding, and seeks to transfer that authorization within six years of the initial license grant, would be required to file, together with its application for FCC consent, the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration received in return for the transfer of its authorization.

31. The Notice tentatively concludes that the performance requirements proposed as part of the DBS service rules are sufficient to achieve the statutory goals of ensuring prompt delivery of service to rural areas, preventing the stockpiling of spectrum, and promoting investment in and rapid deployment of new services, and that it is unnecessary to adopt any further performance rules in connection with the proposed auction procedures.

32. Consistent with the Commission's general practice, the Notice proposes that bidders be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the competitive bidding process. Bidders also would be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

33. The Notice further proposes to require winning bidders to submit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they have entered into relating to the competitive bidding process prior to the close of bidding. After short-form applications are filed, and prior to the time the winning bidder has submitted its lump-sum payment of the balance of its bid, all applicants would be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids of bidding strategies with other applicants for licenses serving the same or overlapping geographical areas, unless such bidders were members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. Applicants would nonetheless be allowed to (1) modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided that such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses for channels that may be used to cover the same or overlapping geographical areas; and (2) make agreements to bid jointly for licenses after the filing of short-form applications, provided that the parties to the agreement have not applied for licenses that may be used to serve the same or overlapping geographical areas. Under the proposal, the holder of a non-controlling attributable interest in an entity submitting a short-form application would be allowed to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses that may be used to serve the same or overlapping geographical areas after the filing of short-form applications, provided that (1) the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has a consortium or joint bidding arrangement, and which have applied for licenses that may be used to serve the same or overlapping geographical areas, and (2) the arrangements do not result in any change in control of an applicant.

F. Designated Entities

34. Because of the extremely high implementation costs associated with satellite-based services, the Notice tentatively concludes that no special provisions should be made for designated entities for the channels currently available at 110° and 148°. The Notice seeks comment on whether special provisions should be made for designated entities in future DBS auctions, and requests comment on whether future auctions of smaller blocks of DBS spectrum or technological advances in the delivery of DBS service might reduce capital requirement barriers for designated entities.

Paperwork Reduction Act

This Notice contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to

comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due 60 days from date of publication of this Notice in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

47 CFR Part 100

OMB Approval Number: None.
Title: Direct Broadcast Satellite Service.
Form No.: None.
Type of Review: Approval of existing collection.
Respondents: Businesses or other for profit.
Number of Respondents: 8.
Estimated Time Per Response: 400 hours.
Total Annual Burden: 3200 hours.
Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting DBS authorizations, and in determining the technical, legal, and financial qualifications of a satellite applicant, permittee or licensee. Existing information collection requirements are set forth in Part 100 of the Commission's Rules and in Commission orders. *See e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*. 90 FCC 2d 676 (1982), *recon. denied*, 53 RR 2d 1637 (1983); *CBS, Inc.*, 98 FCC 2d 1056 (1983); *Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986), *United States Satellite Broadcasting Co.*, 3 FCC Rcd 6858, 6861–62 (1988).

Under the existing information collection requirements in the Commission's Rules, an entity awarded a DBS Authorization would be required to submit the information required pursuant to 47 CFR 100.13, 100.19, 100.21, 100.51. The Commission proposed to require that DBS auction winners submit: (1) Ownership information to determine compliance with Parts 1 and 100 of the Commission's Rules; (2) a statement describing their efforts to comply with the proposed spectrum aggregation limitations; (3) an explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership, or other agreement or arrangement they enter into relating to the competitive bidding process prior to the close of bidding; and (4) any agreements or contracts pertaining to the transfer of the DBS authorization acquired through auction during the six years following grant of the authorization.

Ordering Clauses

Accordingly, *It is Ordered* that, pursuant to Sections 1, 4(i), 4(j), 7, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, and 309(j), *Notice is Hereby Given* of the proposed amendments to Part 100 of the Commission's Rules, 47 CFR Part 100, in accordance with the proposals in this Notice of Proposed Rulemaking, and that *Comment is Sought* regarding such proposals.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 20, 1995 and reply comments on or before November 30, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW. Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202)739–0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the Notice and is not published in the Federal Register. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 100

Radio, Satellites.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 95–27346 Filed 11–2–95; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

48 CFR Parts 1213, 1237 and 1252

[Docket OST–95–775; Notice 95–13]

RIN 2105–AC–30

Revision of Department of Transportation Acquisition Regulation

AGENCY: Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The proposed rule implements a Department of Transportation Office of the Inspector General recommendation resulting from a review on the acquisition of commercial training services. The Department is proposing to amend the Transportation Acquisition Regulation (TAR) to: Require all offerors to certify that the data provided concerning company qualifications, background, etc. is current, accurate and complete; and prohibit contractors from soliciting or advertising private, non-Government training while under contract to the Department.

DATES: Comments must be received on or before December 4, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments, preferably in triplicate, to Docket Clerk, Docket No. OST–95–775, Department of Transportation, 400 Seventh Street, S.W., Room 4107, Washington, D.C. 20590. Please cite TAR revision in all correspondence concerning this proposal.

FOR FURTHER INFORMATION CONTACT: Barbara Perreault Weakley, Office of Acquisition and Grant Management, M–61, 400 Seventh Street, S.W., Washington, D.C. 20590: (202) 366–4967.

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 desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the proposed approach (obtaining certification of data submitted with offers, bids or proposals), including suggested alternative approaches to obtaining the required information from industry. In particular, the Department is exploring ways to reduce paperwork burden on small businesses. 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. Background

It is the policy of the Department of Transportation to require prospective training service contractors (educational institutions, large and small businesses) to certify the data provided concerning qualifications, background statements, etc., are current, accurate, and complete at the time of submitting a quotation or an offer. In addition, DOT considers inappropriate the soliciting, advertising or marketing of related or unrelated training during the conduct of training (i.e., courses, seminars, classes) while under contract to DOT. Solicitation provisions and a contract clause will be incorporated into the TAR requiring offeror certification and prohibiting the marketing of an institution's or vendor's training resources while conducting training under contract to DOT.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

B. Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department Regulatory Policies and Procedures. The Department does not believe that there would be sufficient Federalism implications to warrant the preparation of a Federalism assessment. This rule will not have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

C. Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. 2105–AC–30; Administration: Office of the Secretary of Transportation; Title: Amendment to Transportation Acquisition Regulation; Need for Information: To require certification of capability statements and background data submitted per the requirements of the solicitation or request for quotation; Proposed Use of Information: To verify accuracy and completeness of offerors' capability statements and data submitted per the requirements of the solicitation or request for quotation; Frequency: On occasion; Burden Estimate: 792 hours; Forms: None; Average Burden Hours Per Respondent: 1 hour, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the certification requirements. Comments on the proposed information collection requirement should be sent to the DOT rulemaking docket for this proposed action and comments may also be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Department of Transportation.

This proposal revises record keeping and information collection requirements and require approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1213, 1237 and 1252

Government procurement.

This NPRM is issued under the delegated authority of 49 CFR Part 1.59(q). This authority has been redelegated to the Senior Procurement Executive. Issued this 26th day of October 1995, at Washington, D.C.

David J. Litman,

Senior Procurement Executive.

Adoption of Amendments

For the reasons set out in the preamble, 48 CFR Chapter 12 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR chapter 12, Parts 1213, 1237, and 1252 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

PART 1213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Part 1213 is amended by adding subpart 1213.71, Department of Transportation Procedures for Acquiring Training Services as follows:

Subpart 1213.71—Department of Transportation Procedures for Acquiring Training Services

1213.7100 Applicability.

(a) DOT policy at (TAR) 48 CFR 1237.7000 also applies to the Standard Form (SF) 182, Request, Authorization, Agreement and Certification of Training, which may be used to acquire training services; however, the policy does not apply to training services acquired by the Government purchase/credit card. The Government purchase/credit card can only be used to acquire training services valued at $2,500 or less.

(b) As reflected in (TAR) 48 CFR 1237.7002, this policy does not apply to training attended by DOT employees which is scheduled and conducted by Government sources of supply, educational institutions, or private entities where DOT does not control or sponsor the training. Examples of when the policy does and does not apply include:

(1) When SF 182s are issued for three DOT employees to attend a one week course at a university or other private entity, the policy does not apply. DOT does not control this course because the university or private entity has a contract in place with the training provider and DOT is placing an order under an existing contract; and

(2) When DOT awards a contract to a university or other private entity to provide training for DOT and/or other Government personnel, the policy applies. DOT controls this course;

therefore, no soliciting or advertising of private, non-Government training while conducting the contracted-for training is permitted.

1213.7101 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in all solicitations and requests for quotations, and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations, requests for quotations, and all contracts (e.g., purchase orders, SF 182s) for training services when the content and/or presentation of the training is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1237—SERVICE CONTRACTING

3. Subpart 1237.70, Department of Transportation Procedures for Acquiring Training Services, is added as follows:

SUBPART 1237.70—DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1237.7000 Policy.

When training services are provided under contract to DOT, it is the policy of DOT that all prospective contractors:

(a) Certify that the data provided concerning company qualifications, background statements, etc., is current, accurate, and complete; and

(b) Agree to not solicit or advertise private, non-Government training while conducting a training course.

1237.7001 Certification of data.

Towards fulfilling DOT's policy at (TAR) 48 CFR 1237.7000(a), contracting officers shall request information from prospective contractors for certification purposes. The type of information requested is dependent upon the criticality of the service and/or any unique or essential qualification requirements.

1237.7002 Applicability.

The policy at (TAR) 48 CFR 1237.7000 applies to all DOT contracts as defined in FAR 2.101 for training services when DOT controls the content and/or the presentation of the course. This policy does not apply to courses attended by DOT employees which are offered and sponsored by Government sources of supply, educational institutions, or private entities where DOT does not control the course content or presentation. (See (TAR) 48 CFR 1213.7100 for examples.)

1237.7003 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at (TAR) 48 CFR 1252.237–71, Certification of Data, in solicitations and the clause at (TAR) 48 CFR 1252.237–72, Prohibition on Advertising, in solicitations and contracts for training services when the content and/or presentation of the course is controlled by DOT.

(b) Contracting officers shall incorporate the successful offeror's certified data into any resultant contract(s). Certified data may be incorporated by reference, if the contracting officer determines it contains sufficient descriptive information (i.e., dated material such as resumes, company and/or personnel qualifications) to reliably describe the certified data submitted.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1252 is amended to add sections 1252.237–71 and 1252.237–72 to read as follows:

1252.237–71 Certification of data.

As prescribed in (TAR) 48 CFR 1213.7101 and 1237.7003, insert the following provision:

CERTIFICATION OF DATA (OCT 1995)

(a) The offeror represents and certifies that to the best of its knowledge and belief, the information and/or data (e.g., company profile, qualifications, background statements, brochures) submitted with its offer is current, accurate, and complete as of the date of its offer.

(b) The offeror understands that any inaccurate data provided to the Department of Transportation may subject the offeror, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) enforcement action for false claims or statements pursuant to the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 and 49 CFR Part 31 and/or; (3) termination for default under any contract resulting from its offer and/or; (4) debarment or suspension.

(c) The offeror agrees to obtain a similar certification from its subcontractors.

Signature: _____

Date: _____

Typed Name and Title _____

Company Name _____

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

1252.237–72 Prohibition on advertising.

As prescribed in (TAR) 48 CFR 1213.7001 and 1237.7003, insert the following clause:

PROHIBITION ON ADVERTISING (OCT 1995)

The contractor or its representatives (including training instructors) shall not advertise or solicit business for private, non-Government training while conducting training services under this contract. This prohibition extends to oral comments, distribution or sales of written materials, and/or sales of promotional videos or audio tapes regarding non-Government training opportunities.

The contractor agrees to insert this clause in its sub-contracts.

(End of clause)

5. In the appendix to subpart 1253.3, the TAR Matrix is amended by adding 1252.237–71, Certification of Data, and 1252.237–72, Prohibition on Advertising, immediately following 1252.237–70, Qualifications of Employees, as follows:

Appendix To Subpart 1253.3

* * * * *

TAR MATRIX

Provision or clause	Prescribed In	P or C	IBR	UCF	Principle type and/or purpose of contract																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SP	UTL SVC
1252.237–71 Certification of Data.	1237.7003	P	No	K					A	A					A				A		A	
1252.237–72 Prohibition on Advertising.	1237.7003	C	No	I					A	A					A				A		A	

* * * * *

[FR Doc. 95–27248 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–62–P

Notices

Federal Register
Vol. 60, No. 213
Friday, November 3, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Province Advisory Committee will meet on November 15 and 16, 1995, for a field trip and meeting. The field trip portion of the meeting will start at 10:00 a.m. November 15, at the Forest Service Ranger District Office, on Forest Road off Highway 89, McCloud, California. The focus of the field trip will be: (1) An overview on Ecological Unit Inventory process; (2) Late Successional Reserve Assessment; (3) Watershed Analysis process; (4) Plantation conditions, (5) Matrix land management; and (6) Market conditions. The field trip will return to the Ranger District Office in McCloud, CA between 4:30 p.m. and 5:30 p.m. The meeting on November 16, 1995 will begin at 8:00 a.m. at the conference room in the Tree House Best Western, near the intersection of I–5 and Lake Street, Mt. Shasta, CA. Agenda topics include: (1) Subcommittee work group time on key issues; (2) PAC subcommittee report on the joint meeting with S–CERT and PIEC; (3) Klamath Resource Information System; (4) Update on current resource management research; (5) Technical/financial assistance briefings; (6) Update on interfacing with other PAC's; (8) Public participation to be available between 3:20 p.m. and 3:50 p.m.; (9) Agenda for next meeting. All Northwest Sacramento 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 David E. Howell, Designated Federal Official Northwest Sacramento Province, USDI, Bureau of Land Management, 2550 North State Street, Ukiah, CA 95482–3023, (707–468–4000), or Duane Lyon, Province Coordinator, USDA, Shasta Trinity National Forests, 2400 Washington, Redding, CA, 96001 (916–246–5499).

Dated: October 24, 1995.

David E. Howell,

Designated Federal Official, Northwest Sacramento Province.

[FR Doc. 95–27311 Filed 11–3–95; 8:45 am]

BILLING CODE 9410–FK–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 November 29 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 include wrap-up discussion of the recreation impacts in riparian areas topic, and detailed information on the forest health in dry eastern Cascades forests topic. 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: October 25, 1995.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 95–27339 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyard Administration

North American Export Association Inc., Grades and Weights Committee; Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of participation in public meeting.

The Grain Inspection Packers and Stockyards Administration (GIPSA) will attend and participate in the North American Export Grain Association Incorporated (NAEGA) Grades and Weights Committee Meeting to be held on November 29, 1995, at 1 p.m. at the Vista International Hotel, 1400 ''M'' Street NW., Washington, DC 20050. GIPSA will attend this meeting for the purpose of providing information and answering questions regarding ''Regulatory Guidelines For Automated Supervisory Weighing Systems,'' ''Automated Cu-sum Ship Loading Plans,'' and proposed plans for the introduction of the Metric System for official weighing at export port locations. The emphasis will be on GIPSA's regulatory needs and expectations in the design, installation, and operating characteristics of these systems. GIPSA will also gather information on the grain industries needs for real time official inspection and the state of technology that may be applicable to real time inspection.

This portion of the NAEGA Grades and Weights Committee meeting is open to any and all interested parties, contractors, hardware and software vendors, and companies that may be interested in the topics on the agenda.

ADDITIONAL INFORMATION: Questions regarding GIPSA attendance and presentations at this meeting should be addressed to Richard Pforr, USDA, GIPSA, FGIS, FMD, WEB, Room 1640–S, P.O. Box 96454, Washington, DC 20090–6454; Telephone (202) 720–0262. General questions regarding the meeting and intention of attendance should be directed to: W. Kirk Miller, North American Export Grain Association Incorporated, 1300 ''L'' Street NW., Suite 900, Washington, DC 20005; Telephone (202) 682–4030; Telefax (202) 682–4033.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 30, 1995.

James R. Baker,

Administrator.

[FR Doc. 95–27326 Filed 11–2–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Louis Akhtab Haneef, Also Known as Louis Sinclair Coleman; Order Denying Permission To Apply for or use Export Licenses

On December 12, 1991, Louis Akhtab Haneef, also known as Louis Sinclair Coleman (Haneef), was convicted in the United States District Court for the Southern District of Florida of violating section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990)) (the AECA) and the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 and Supp. 1995)) (the Act),[1] among other crimes. Specifically, Haneef was convicted on one count of knowingly and willfully exporting and causing to be exported from the United States to Port of Spain, Republic on Trinidad and Tobago, firearms and ammunition, without obtaining the required license or written approval from the Department of State; and one count of knowingly and willfully exporting and causing to be exported from the United States to the Republic of Trinidad and Tobago, shotguns, without having obtained the required validated export license from the U.S. Department of Commerce.

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA or the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA or the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Haneef's conviction for violating the AECA and the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Haneef permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 12, 2001. I have also decided to revoke all export licenses issued pursuant to the Act in which Haneef had an interest at the time of his conviction.

Accordingly, it is hereby Ordered

I. All outstanding individual validated licenses in which Haneef appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Haneef's privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 12, 2001, Louis Akhtab Haneef, also known as Louis Sinclair Coleman, 2431 N.W. 7th Street, Pompano Beach, Florida 33069, and currently incarcerated at Federal Correctional Facility, Register Number 28899–004, Post Office Box 888, Ashland, Kentucky 41105–0888, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Haneef by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until December 12, 2001.

VI. A copy of this Order shall be delivered to Haneef. This Order shall be published in the Federal Register.

Dated: October 24, 1995.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 95–27214 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act, 50 U.S.C.A. 1701–1706 (1991 and Supp. 1994).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the ''Director, Office of Export Licensing,'' should be read as meaning ''Director, Office of Exporter Services.''

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Final Court Decision and Amended Final Determination

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

ACTION: Notice of final court decision and amended final determination.

SUMMARY: On August 11, 1995, in the case of *Laclede Steel Co.* v. *United States,* Cons. Ct. No. 92–12–00784, Slip Op. 95–144 (''*Laclede*''), the United States Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) results of redetermination on remand of the final determination of sales at less than fair value of circular welded non-alloy steel pipe from Korea. As there is now a final and conclusive court decision in this action, we are amending our final determination in this matter and will instruct the U.S. Customs Service to change cash deposit rates accordingly.

EFFECTIVE DATE: November 3, 1995.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 482–0922.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992, the Department published its final determination of sales at less-than-fair-value. Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 57 FR 42942 (Sept. 17, 1992). On November 2, 1992, the Department published its amendment to the final determination of sales at less-than-fair-value. Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 57 FR 49453 (Nov. 2, 1992).

Subsequent to the Department's final determination, petitioners and three of the investigated companies filed lawsuits with the Court challenging this determination. Thereafter, the Court issued an Order and Opinion dated October 12, 1994, in *Laclede Steel Co.* v. *United States,* Cons. Ct. No. 92–12–00784, Slip Op. 94–160, remanding three issues to the Department. The Court instructed the Department to (1) reconsider its original determination that certain overrun pipe sales were within the ordinary course of trade; (2) grant duty drawback adjustments on all U.S. sales, including those compared to constructed value; and (3) conduct a correlation test, utilizing only the price factor, to determine whether there was a correlation between price and levels of trade for the subject merchandise.

The Department filed its remand results on March 3, 1995. On March 9, 1995, the Department filed amended results to correct certain typographical errors. In the remand results, the Department found the overrun pipe sales at issue to be outside the ordinary course of trade. In accordance with the Court's instructions, the Department granted adjustments for duty drawback for all U.S. sales. Additionally, as the results of the correlation test were inconclusive, the Department calculated foreign market value without regard to level of trade.

On August 11, 1995, the Court sustained the Department's remand results. *See Laclede Steel Co.* v. *United States,* Cons. Ct. No. 92–12–00784, Slip Op. 95–144 (CIT Aug. 11, 1995).

On September 1, 1995, the Department published a notice of court decision pursuant to 19 U.S.C. 1516a(e). Court Decision and Suspension of Liquidation: Circular Welded Non-Alloy Steel Pipe From Korea, 60 FR 45700 (Sept. 1, 1995). In that notice, we stated that we would suspend liquidation until there was a ''conclusive'' decision in the action. Since publication of that notice, the domestic industry has filed an appeal challenging the Court's order granting intervention to two Korean producers of the subject merchandise. No other appeal was filed. Since the domestic industry's appeal challenges a decision of the Court which is not a decision ''not in harmony'' with the agency's decision, there is now a ''conclusive'' decision in this action.

Amendment to Final Determination

Pursuant to 19 U.S.C. 1516a(e), we are now amending the final determination in circular welded non-alloy steel pipe from Korea.

The recalculated weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percentage)
Hyundai Steel Pipe Co., Ltd	4.62
Korea Steel Pipe Co., Ltd	4.08
Masan Steel Tube Co.	11.63
Pusan Steel Pipe Co., Ltd	5.35
All others	4.80

The Department will instruct the U.S. Customs Service to change the cash deposit requirements in accordance with the above rates.

Dated: October 30, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 95–27354 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–DS–P

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of open meeting. Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council public teleconference will be held on Monday, November 20, 1995 from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The NII Advisory Council teleconference meeting will take place in the Forum 2 Conference Room, 1320 North Courthouse Road., Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and

Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–501–6360; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

Agenda

To discuss and approve KickStart, a document the Council is preparing for local leaders who want to connect their communities to the Information Superhighway.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–27335 Filed 11–2–95; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION ON IMMIGRATION REFORM

Announcement of Commission Roundtables

AGENCY: U.S. Commission on Immigration Reform.

This notice announces three roundtables to be held by the U.S. Commission on Immigration Reform in San Francisco and Fresno, California on November 15–16, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. Interim reports, U.S. Immigration Policy: Restoring Credibility, and U.S. Immigration Policy: Setting Priorities, were issued on September 30, 1994 and August 25, 1995 respectively; the Commission's final report is due at the end of fiscal 1997.

The roundtable participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The November 15 San Francisco roundtable will focus on the impact, adaption and integration of immigrants in the San Francisco community, with particular attention on housing, education and language issues.

The November 15 roundtable in Fresno will examine the effects of immigration on Fresno, including agricultural worker issues. The discussion will include participation of both industry and labor representatives, as well as the perspective of government officials.

The November 16 San Francisco roundtable will focus on the non-immigrant visa issues. The particular needs the circumstances of the health care and computer industries, including both hardware and software manufacturers, will be discussed.

Wednesday, November 15, 1995

9 am–12 pm—Roundtable on Effects of Immigration on Fresno, including Agricultural Worker Issues, Fresno Hilton, Sierra Nevada Room, 1055 Van Ness Avenue, Fresno, CA 93271

9 am–12:30 pm—Roundtable on Effects of Immigration in San Francisco, McClaren Room 252, 2130 Fulton Street, San Francisco, CA 94117

Thursday, November 16

9 am–12 pm—Roundtable on Non-Immigration Visa Programs, University of San Francisco, McClaren Room 252, 2130 Fulton Street, San Francisco, CA 94117.

FOR FURTHER INFORMATION CONTACT: Paul Donnelly, (202) 776–8642.

Dated: October 23, 1995.

Susan Martin,

Executive Director.

FR Doc. 95–27280 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–97–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 4, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 18, 25 and September 8, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 F.R. 43126, 44320 and 46820) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in

connection with the commodities and service proposed for addition to the Procurement List. Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Case, Flag
8345–00–178–8492

Case, Flag
8345–00–178–8495

Cap, Water Canteen
8465–00–930–2077

Service

Janitorial/Custodial, Morgantown U.S. Army Reserve Center, Route 19 South, Comfort Inn Drive, Morgantown, West Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27342 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 4, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Cord Assembly, Elastic
4020–01–072–4557
NPA: Alpha Opportunities, Inc., Jamestown, North Dakota

Gloves, Patient Examining
6515–01–364–8553
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana

Sign Kit, Contaminate
9905–01–363–0871
9905–01–363–0874
9905–01–363–0878
9905–01–363–0879
9905–01–363–0880
9905–01–363–0881
9905–01–363–0882
NPA: Ability Building Center, Inc., Rochester, Minnesota

Military Resale Commodity

Pad, Scouring
M.R. 561
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas

Services

Data Entry/Data Base Management
General Services Administration
National Capital Area, Federal Supply Service Bureau
Washington, DC
NPA: Virginia Industries for the Blind, Richmond, Virginia

Janitorial/Custodial
for the following Springfield, Illinois locations:
Paul Findley Federal Building, 600 E. Monroe Street
Sarah Cook House, 508 S. 8th Street
Henson Robinson House, 520 S. 8th Street
NPA: Challenge Unlimited, Inc., Alton, Illinois

Storage/Distribution of Clothing & Other Items
Corporation for National Service
Americorps
Washington, DC
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Switchboard Operation
Samuel S. Stratton Veterans Affairs Medical Center
Albany, New York
NPA: Central Association for the Blind & Visually Impaired, Utica, New York

Toner Cartridge Remanufacturing
Naval Training Center
Great Lakes, Illinois
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired Chicago, Illinois.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–27343 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Patent No.	Title	Issue date
5,411,653	Separated Electrode System in Electrolytically Setting or Hardening Reactive Cement Pastes	05/02/95
5,414,197	Method of Containing and Isolating Toxic or Hazardous Wastes	05/09/95
5,415,493	Snow Plow Compatible Speed Bumps	05/16/95
5,419,652	Snow Plow Compatible Speed Bumps	05/30/95
5,422,164	Shallow Arch Cover for Fighting Position	06/06/95
5,423,142	Weather-Proof, Vandal-Proof, Changeable Display Sign	06/13/95
5,436,385	Method of Performing Land Reclamation at a Hazardous Wastework	07/25/95
5,441,362	Concrete Armor Unit For Protecting Coastal and Hydraulic Structures and Shorelines	08/15/95
5,446,448	River Ice Motion Detector	08/29/95
5,447,065	High-Fidelity Particle Velocity Gauge for Measuring Strong Motions in a Solid Medium	09/05/95
5,450,302	Exterior High Intensity Discharge Illumination System and Method For Use	09/12/95

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland or Alease J. Berry, (703) 355–2160.

SUPPLEMENTARY INFORMATION: USP 5,411,653 is a moulding apparatus for hardening, finishing, and shaping reactive cement paste by utilizing electrolysis and electrophoresis without contact between the paste and the electrodes and prevents the gases generated in the electrolysis process from distorting the surface of the paste.

USP 5,414,197 is a method of containing and isolating toxic or hazardous wastes by forming an aggregate of the waste in asphalt or other polymers and subsequently incorporating the aggregate in a cementitious matrix.

USP 5,415,493 is self-explanatory.

USP 5,419,652 is self-explanatory.

USP 5,422,164 is a lightweight foxhole cover which can withstand mortar fire and is capable of withstanding dead load of at least 18 inches of soil.

USP 5,423,142 is an improved display sign which is protected against inclement weather and vandalism, and which provides for easy servicing of internal lighting and changing of the message.

USP 5,436,385 is a method for performing land reclamation at a hazardous waste work site without the escape of the hazardous waste into the environment utilizing a reusable, movable dome structure.

USP 5,441,362 is an improved erosion protection module for protecting coastal and hydraulic structures and shorelines that is configured to provide a high degree of interlocking while minimizing the internal stress levels within each module.

USP 5,446,448 is an automated system for detecting river ice run conditions in order to warn downstream communities of possible flooding from ice jams.

USP 5,447,065 is a particle velocity gauge for measuring particle velocities in solids, such as soil, natural rock, or concrete and is capable of operating at medium normal stresses to 90,000 psi and at accelerations exceeding 50,000 g's.

USP 5,450,302 is a high intensity discharge illumination system containing a microprocessor based dimming/photocontrol unit responsive to changes in time of day and in ambient light.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 CFR 404.8.

Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) Manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27333 Filed 11–2–95; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 4, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and

frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 30, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Statewide Family Literacy Program.
Frequency: One Time.
Affected Public: State, Local, or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 50.
Burden Hours: 400.
Abstract: State and local government to plan and implement statewide family literacy initiatives to coordinate and integrate existing Federal, State, and local resources.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Migrant Education Program State Performance Report.
Frequency: One Time.
Affected Public: State, Local, or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 51.
Burden Hours: 4080.
Abstract: Information will be develop estimates for funding purposes of the number of migratory children resident in each State, and to assess and report on the effectiveness of the Migrant Education Program on an ongoing basis.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Part B Complaint Procedures.
Frequency: Weekly.
Affected Public: State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Burden:
Responses: 1,137.
Burden Hours: 4,548.
Abstract: States are required to implement complaint procedures to process any complaints regarding a state (grantee) or a subgrant that is participating in the program funded under Part B of the Individuals with disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Vocation Rehabilitation Program/Cost Report.
Frequency: Annually.
Affected Public: State, Local or Tribal Governments.
Annual Reporting and Recordkeeping Burden:
Responses: 84.
Burden Hours: 395.
Abstract: State vocational rehabilitation agencies provide data from the Department on the Annual Vocational Rehabilitation Program/Cost Report. The Department uses this information to management and administer the Basic Support Program and Title VI.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Supported Employment Augmentation to VR Longitudinal Study.
Frequency: Annually.
Affected Public: Individuals or households; Not for Profit institutions; State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 1.
Burden Hours: 260.
Abstract: This augmentation to the VR Longitudinal Study will evaluate the effects of supported employment (SE) services on the economic and noneconomic outcomes of SE consumer, through interviews with a sample of SE consumers and extended services providers.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Part B Complaint Procedures.
Frequency: One Time.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden
Responses: 1,079.
Burden Hours: 14,027.
Abstract: States are required to implement complaint procedures to process any complaints regarding a State (grantee) or a subgrantee that is participating in the program funded under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: LEA Application Under Part B of the Individuals with Disabilities Education Act.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 15,376.
Burden Hours: 445,904.
Abstract: State must require local educational agencies to submit an approvable LEA application for a subgrant in order to distribute funds under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: LEA Application under Part B of the Individuals with Disabilities Act.
Frequency: Annually.
Affected Public: State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Burden:
Responses: 15,434.
Burden Hours: 432,152.
Abstract: States must require local educational agencies to submit an approval LEA application for a subgrant in order to distribute funds under Part B of the Individuals with Disabilities Education.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Financial Status Report for State-Administered Vocational Education Programs.
Frequency: Annually.
Affected Public: Federal Government; State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 53.
Burden Hours: 4,729.5.
Abstract: This State Financial Status Report is needed to assist in determining each State's compliance with the enabling statute, to close out each year's grant and to provide information for the Secretaries Report to Congress on the status of Vocational Education. The respondents are the State Educational agencies.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Final Performance Report for LSCA Title VI.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Annual Reporting and Recordkeeping Burden:
Responses: 233.
Burden Hours: 1,165.
Abstract: This report form is needed to obtain information on expenditures of grant funds and to evaluate project performance of grantees under the

Library Literacy Program (Title VI of the Library Services and Construction Act).

Office of Educational Research and Improvement

Type of Review: New.

Title: Assessment of the Role of School and Public Libraries in Support of the National Education Goals.

Frequency: Pretest.

Affected Public: Not for Profit institutions; State, Local or Tribal Government.

Annual Reporting and Recordkeeping Burden:

Response: 400.

Burden Hours: 279.

Abstract: The library and education communities need to know more about the role of libraries in supporting education in order to plan for and direct resources. This data collection effort is the field test of the survey instruments. The respondents are librarians in public libraries and public and private schools.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New.

Title: A Descriptive Study of ESEA Title VIII Educational Services for Secondary School Limited English Proficiency Students (LEP).

Frequency: One Time.

Affected Public: State, Local or Tribal Governments.

Annual Reporting and Recordkeeping Burden:

Responses: 100.

Burden Hours: 65.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study consists of a literature review and a survey of a sample of 100 Title VII grantees having 10 or more LEP secondary school students in grades 9–12. The survey will consist of a mail survey and a follow up telephone interview to verify, correct or add information available in the grantee applications monitoring reports and evaluation reports. This effort will help in future policy development and demographic knowledge.

[FR Doc. 95–27263 Filed 11–2–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–1–84–001]

Caprock Pipeline Company; Notice of Tariff Filing

October 30, 1995.

Take notice that on October 25, 1995, Caprock Pipeline Company (Caprock) tendered for filing Substitute Third Revised Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1 in accordance with the Commission's October 18, 1995 Letter Order. The tendered sheet corrects a reference to interruptible service effective October 1, 1995.

Caprock states that copies of the filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

FR Doc. 95–27271 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–22–000]

Granite State Gas Transmission, Inc.; Notice of Refund Report

October 30, 1995.

Take notice that on October 25, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing a report of the disposition of refunds received from the Gas Research Institute (GRI) for overcollections of the GRI surcharge during 1994.

According to Granite State, it received a total refund of $113,306.00 from GRI on September 29, 1995, which Granite State allocated between its firm transportation customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). According to Granite State, these customers' proportionate shares were credited to their invoices rendered October 10, 1995. Granite State further states that Bay State and Northern Utilities are its only firm transportation customers.

According to Granite State, its filing has been served on Bay State and Northern Utilities and the regulatory agencies of the States of Maine, New Hampshire and Massachusetts.

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, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions to intervene or protests should be filed on or before November 6, 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. 95–27272 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–032]

Great Lakes Gas Transmission Limited Partnership; Notice of Update to Compliance Filing

October 30, 1995.

Take notice than on October 19, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed with the Commission on Update to its Preliminary Refund/Surcharge Plan, in compliance with the Commission's July 26, 1995, Order on Remand in Docket No RP91–143–027.

Great Lakes stated in its filing that the Preliminary Refund/Surcharge Plan originally filed on August 25, 1995, did not include August and September, 1995, data. That data has now become available and Great Lakes has recalculated the schedules in Volumes 3 and 4 to include August and September, 1995, services. Great Lakes states that the tariff sheets in Volume 1, which reflect prospective rolled-in rates, have not been recalculated and therefore Volume 1 has not been reproduced in the Update. Great Lakes also states that only those sheets requiring revision have been reproduced from Volume 2. Great Lakes further states that the end of period adjustment for Transporter's

Use gas on a rolled-in basis has been included in this submission. Great Lakes has requested confidentiality of the Update Volumes 3 and 4 to protect data concerning individual customers' proprietary information.

All parties to the proceedings in Docket No. RP95–422–000, *et al.* are automatically parties to this proceeding. Any other person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 6, 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. Copies of this filing are on file and available for public inspection in the public inspection room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27273 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–37–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

October 30, 1995.

Take notice that on October 25, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–37–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to abandon delivery point facilities and construct and operate replacement facilities in Douglas County, Oregon, to accommodate deliveries of natural gas to the Washington Water Power Company (WWP), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to modify its existing Winston-Dillard Meter Station by replacing 2 obsolete 2-inch regulators to better accommodate deliveries to WWP and to increase the capacity of the meter station. It is stated that construction of the meter station was authorized by the Commission in Docket No. CP62–265. The cost of the proposed modification of facilities is estimated at $1,959, including both removal and construction. It is asserted that Northwest is authorized to provide a firm transportation service for WWP under the terms of its Rate Schedule TF–1, with maximum daily delivery obligations for up to 1,070 dt equivalent of gas per day. It is explained that the replacement regulators would increase the capacity of the meter station from 2,633 dt equivalent per day to 3,438 dt equivalent per day. It is asserted that no significant impact on Northwest's peak day or annual deliveries will result from the proposed modification of the Winston-Dillard Meter Station.

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 Section 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 to be 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. 95–27268 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–21–000]

Texas Eastern Transmission Corporation; Notice of Refund Report

October 30, 1995

Take notice that on October 25, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a refund report of 1994 GRI amounts credited to customers' on October 10, 1995 invoices, as well as GRI amounts refunded for discounted capacity release transactions.

Texas Eastern states that copies of the filing were served on Texas Eastern's 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, 888 First 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 November 6, 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. 95–27269 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–18–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 30, 1995.

Take notice that on October 26, 1995, in compliance with the Stipulation and Agreement filed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-captioned docket (Settlement),[1] and Section 26 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, Texas Eastern submitted for filing certain tariff sheets as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. Such tariff sheets reflect a decrease in the PCB component of Texas Eastern's currently effective rates.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.*, (Phase II/PCBs).

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, 888 First Street NE., 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 November 6, 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

[1] The Settlement was filed on December 17, 1991, and approved without modification by the Commission on March 18, 1992.

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27270 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–391–018 and RP93–162–004]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Reporting

October 30, 1995.

Take notice that on October 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) filed its report of cash-out purchases for the annual period August 1, 1994 through July 31, 1995. Transco states that the report is being filed in accordance with the Commission's June 19, 1991 ''Order Approving Settlements as Modified and Issuing Certificates'' in Docket No. CP88–391–004, *et al.*, and the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993 in Docket No. RP93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement (PIBA) during the above period.

In addition Transco filed a report comparing Transco's cash-out and PIBA revenues received with costs incurred for the same period. Transco states that the report shows that for the annual period ended July 31, 1995, Transco incurred costs of $3,081,390 in excess of revenues received. Transco states that in accordance with Section 15, it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Ssection 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27266 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–32–000]

Viking Gas Transmission Company; Notice of Application

October 30, 1995.

Take notice that on October 24, 1995, Viking Gas Transmission Company (Applicant), 825 Rice Street, St. Paul Minnesota 55117–5485 has filed under Section 7(c) of the Natural Gas Act (NGA), and Section 157.7 of the Commission's Regulations for a certification of Public Convenience and Necessity authorizing the following:

(1) Construct, own, and operate 9.1 miles of 24-inch pipeline loop, in Kittson County, Minnesota, extending from milepost 2201 − 2 + 0.00, to milepost 2201 − 2 + 9.08;

(2) Construct own and operate 4.4 miles of 24-inch pipeline loop, in Norman County, Minnesota, extending from milepost 2207 − 2 + 0.00, to milepost 2207 − 2 + 4.43;

Applicant also requests that an Order contain the following statements by the Commission:

(3) that the proposed facilities will be eligible for rolled-in treatment at the time Applicant files its next Section 4 general rate case;

(4) that the proposed facilities will not be subject to an at-risk certificate condition; and

(5) that the Commission will not suspend the effective date of the limited Section 4 filing the Applicant will make to establish rates for the proposed expansion service.

The proposed looping would be used to provide additional firm transportation capacity from the Emerson Interconnection for the following shippers:

Customer	Delivery point	Dth/Day
City of Perham, Minnesota.	Perham	250
American Crystal Sugar.	E Grand Forks, MN.	4,680
	Crookston, MN .	3,120
	Moorhead, MN .	3,120
City of Randall, Minnesota.	.....	507
ProGold LLC	Fergus Falls, MN.	7,500
Unsubscribed ...	.....	243
Total	.....	19,420

Applicant holds precedent agreements with each of these prospective shippers. Applicant states that this project will also provide greater reliability and additional operating flexibility for existing system customers. The estimated cost of the facilities is $8.4 million.

Any person desiring to be heard or to make any protest with regard to this application should on or before November 20, 1995, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 the 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 a grant of the certificate is 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 Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27267 Filed 11–2–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: U.S. Department of Energy.

ACTION: Correction.

SUMMARY: In document #95–26592, published on October 17, 1995, page 53770, third column, replace the first sentence with the following:

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

Issued in Washington, D.C. on October 30, 1995.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–27328 Filed 11–2–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5230–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 16, 1995 Through October 20, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–SCS–K36113–HI Rating EO2, Lower Hamakua Ditch Watershed, Agricultural Water Management Plan, Funding and COE Section 404 Permit Issuance, Hawaii County, HI.

Summary: EPA expressed environmental objection with the project's potential impacts to groundwater and fish and wildlife. EPA requested that these issues be more fully discussed in the final EIS.

ERP No. D–TVA–E09801–00 Rating EC2, Programmatic EIS—Energy Vision 2020, Integrated Resource Plan, Implementation of Long-Term Plan and Short-Term Action, TN, AL, KY, GA, MS, NC and VA.

Summary: EPA expressed environmental concern regarding potential long term impacts because of the uncertainty of predicting energy sources and impacts through the year 2020 and has requested some additional information.

ERP No. D–USN–K11064–CA Rating EC2, Mare Island Naval Shipyard Disposal and Reuse, Implementation, City of Valley, Solano County, CA.

Summary: EPA expressed environmental concerns regarding wetlands dredging, submerged hazardous waste, air quality information, and cumulative impacts.

ERP No. DS–COE–K36100–CA Rating EU2, American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Updated and Additional Information, Sacramento, Placer and Sutter Counties, CA.

Summary: EPA believed that the Dry Detention Dam alternative is environmentally unsatisfactory due to significant unacceptable impacts to water quality and unique natural resources. The other alternatives are less damaging and appear to be practicable. While these two alternatives may cause degradation to sensitive habitats and fisheries, mitigation measures are available.

ERP No. DS–NIH–D81023–MD Rating LO, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Implementation, Montgomery County, MD.

Summary: EPA had no objection to the action as proposed.

Final EISs

ERP No. F–COE–K36111–CA Santa Paula Creek Flood Control Project, Improvements, Ventura County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–E22000–SC Savannah River Site Waste Management Facilities, Implementation, Aiken, Allendale and Barnwell Counties, SC.

Summary: EPA comments on the draft EIS were adequately addressed in the final document.

ERP No. F–USN–K11028–CA Long Beach Naval Hospital Base Disposal and Reuse, Implementation and NPDES Permit, City of Long Beach, CA.

Summary: EPA expressed environmental concern over the selection of the Retail Alternative due to its implications on the South Coast Air Quality Management District's SIP attainment.

Dated: October 30, 1995

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–27352 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5230–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed October 23, 1995 Through October 27, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950490, Final EIS, FHW, WI–13 Marshfield Regional Mobility Study for Transportation Improvements, Funding and COE Section 404 Permit, City of Marshfield, Wood and Marathon Counties, WI, Due: December 8, 1995, Contact: Richard C. Madrzak (608) 264–5968.

EIS No. 950491, Draft EIS, AFS, ID, Beaver/Cedar Land Change Project, Implementation, Clearwater National Forest, North Fork and Palause Ranger Districts, Clearwater and Latah Counties, ID, Due: December 18, 1995, Contact: Bill Jones (208) 476–4541.

EIS No. 950492, Final EIS, FHW, VA, Madison Heights Bypass/US 29 Construction, US 50 south of the City of Lynchburg to US 29 south of the Town of Amherst, Funding and COE Permit, Amherst and Campbell Counties, VA, Due: December 4, 1995, Contact: Roberto Fonseca-Martinez (804) 281–5100.

EIS No. 950493, Draft EIS, USN, CA, Camp Pendleton Marine Corps Air Stations (MCAS) Tustin and EL Toro Marine Corps Base (MCB) Realignment, Implementation, COE Section 404 Permit, San Diego County, CA, Due: December 18, 1995, Contact: Harry Roberts (714) 726–3383.

EIS No. 950494, Draft EIS, FHW, UT, US 89 Corridor Transportation Improvements, I–15/Farmington to Harrison Boulevard/South Ogden, Funding, COE Section 404 and NPDES Permits, Davis, Weber, Morgan and Salt Lake Counties, UT, Due: December 19, 1995, Contact: William R. Gedris (801) 963–0183.

EIS No. 950495, Final EIS, AFS, AZ, NM, Southwestern Region Amendment of Forest Plans, Implementation, Standard and Guidelines for Northern Goshawk and

Mexican Spotted Owl, AZ and NM, Due: December 4, 1995, Contact: Arthur S. Briggs (505) 842–3212.

EIS No. 950496, Draft EIS, AFS, ID, Salmon River Corridor, Implementation, Sawtooth National Recreation Area (SNRA), Sawtooth Forest Land and Resource Management Plan (FLRMP), Custer County, ID, Due: December 18, 1995, Contact: Lisa Stoeffer (208) 774–3681.

EIS No. 950497, Final EIS, GSA, OH, Cleveland United States Courthouse, Site Selection, Construction and Operation, Cuyahoga County, OH, Due: December 4, 1995, Contact: Jennifer Enyart (312) 886–5544.

EIS No. 950498, Final EIS, NPS, FL, Timucuan Ecological and Historic Preserve, General Management Plan and Development Concept Plans, Implementation, Fort Caroline National Memorial Area, Duval County, FL, Due: December 4, 1995, Contact: Suzanne Lewis (904) 221–5568.

EIS No. 950499, Draft EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasbility Study, Rehoboth Beach and Dewey Beach Project, Storm Damage Reduction, Sussex County, DE, Due: December 18, 1995, Contact: Steve Allen (215) 656–6555.

EIS No. 950500, Draft EIS, FHW, FL, Miami International Airport (MIA) Landside Terminal Construction, FL–112 on the North, FL–836 on the South; NW 27th Avenue on the East, along FL–836 that extends West to NW 57th Avenue, Dade County, FL, Due: December 18, 1995, Contact: J.R. Skinner (904) 942–9579.

EIS No. 950501, Draft EIS, AFS, AK, Control Lake Timber Sale, Implementation, Prince of Wales Island, Tongass National Forest, AK, Due: December 26, 1995, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 950502, Final EIS, COE, TX, Gulf Intracoastal Waterway (Section 216 Study), Bank Protection and a Spill Containment Feature, Implementation, Aransas National Wildlife Refuge, Galvestion District, Aransas, Calhoun and Refugio Counties, TX, Due: December 04, 1995, Contact: Richard Medina (409) 766–3044.

EIS No. 950503, Draft EIS, DOE, WA, Northwest Regional Power Facility (NRPF), Construction and Operation of a 838 Megawatt (MW) Gas-fired Combustion Turbine Facility, Approval of Permits, Located near the Town of Creston, WA, Due: December 18, 1995, Contact: Nancy Wittpen (503) 230–3297.

EIS No. 950504, Draft EIS, FHW, FL, East-West Multimodal Corridor Transportation Improvements, Begining at the Tamiami Campus of Florida International University (FIU) extending the length of FL 836, Port of Miami, Dade County, FL, Due: December 18, 1995, Contact: J.R. Skinner (904) 681–7223.

EIS No. 950505, Final EIS, FTA, PR, Tren Urbano Transit Project, Improvement, San Juan Metropolitan Area, Funding, NPDES Permit, US Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR, Due: December 06, 1995, Contact: Alex McNeil (404) 347–7875.

Amended Notices

EIS No. 950485, Draft EIS, COE, LA, Programmatic EIS—Marsh Management Project, Hydrologic Manipulation, COE Section 10 and 404 Permit Issuance, Coastal Wetland of Louisiana a part of the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) River Basins, LA, Due: January 02, 1996, Contact: Robert Bonsenberg (504) 862–2522. Published FR 10–27–95—Review period extended.

Dated: October 30, 1995.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–27353 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5325–2]

CSI Auto Manufacturing Sector Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Open Public Advisory Meeting: Common Sense Initiative Council, Auto Manufacturing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council (CSIC) will meet on the date and time described below. All times noted are Central Time. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning the specific meeting, please contact the individuals listed with the Sector Subcommittee announcement below. The Environmental Protection Agency is currently operating under a continuing resolution that expires November 13, 1995. The status of agency funding past this date may affect a change in the meeting schedule. Please contact the Designated Federal Officer listed below for further information after November 13, 1995.

Automobile Manufacturing Sector Subcommittee—November 16, 1995

The Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC-AMS) is convening an open meeting on November 16, 1995. The meeting will begin at approximately 9:30 a.m. EST and run until about 3:30 p.m. The meeting will be held at the Lake Huron Conference Room, 12 floor, 77 West Jackson Boulevard, Ralph Metcalfe Federal Building, Chicago, Illinois.

The following action items will be covered at this meeting.

- The community technical assistance and alternative sector regulatory system groups will present their merged work plan to the Subcommittee.
- Each project team chair will present what deliverables their group can put together for the last meeting before the end of the calendar year.
- The community technical assistance work group should present a summary of the draft data they have collected.

Seating may be limited, therefore, advance registration is recommended. Agendas will be available November 9, 1995. Any person or organization interested in attending the meeting should contact Ms. Carol Kemker, Designated Federal Official, no later than November 13, 1995, at (404) 347–3555 extension 4222. Limited time will be provided for persons wishing to make oral comments at the meeting. In general, each individual or group making any oral presentations will be limited to a total of three minutes. For further meeting information contact Carol Kemker, DFO on (404) 347–3555 extension 4222, or Keith Mason, Alternate DFO, on (202) 260–1360.

Further Information and Inspection of CSIC Documents: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meetings. Thereafter, these documents, together with official minutes for the meetings, will be available for public inspection in Room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, D.C. 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: October 30, 1995.

Keith Mason,

Designated Federal Officer.

[FR Doc. 95–27329 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5324–3]

Vermont: Final Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for the State of Vermont's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The State of Vermont applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA New England reviewed Vermont's MSWLF permit program adequacy application and made a determination that all portions of Vermont's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria. The decision to tenatively approve the State of Vermont's Municipal Solid Waste Landfill Permitting Program was published in the Federal Register on July 26, 1995 for public comment (see 60 FR 38327). There were no comments received within the public comment period; therefore, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the State of Vermont shall be effective on November 3, 1995.

FOR FURTHER INFORMATION CONTACT: EPA New England, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Mr. John F. Hackler, Chief, Solid Waste and Geographic Information Section, mail code HER–CAN 6, telephone (617) 573–9670.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for states or tribes to develop ''adequate'' programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Vermont

On August 23, 1993, EPA New England received Vermont's final MSWLF permit program application for adequacy determination. On July 26, 1995, EPA published in the Federal Register the tentative determination of adequacy for all portions of Vermont's program. Further background on the tentative determination of adequacy appears at 60 *FR* 38327 (July 26, 1995).

Along with the tentative determination, EPA announced the availability of the application for public comment. In addition, a public hearing was tentatively scheduled. However, there were no requests for such and as a result the hearing was not held.

C. Public Comment

EPA received no written comments on the tentative determination of adequacy for Vermont's MSWLF permit program within the public comment period. Minor typographical errors in the Vermont application have been corrected.

D. Decision

After evaluating Vermont's program, EPA New England concludes that the State of Vermont's MSWLF Permitting Program meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of Vermont is granted a determination of adequacy for all portions of its municipal solid waste permit program.

The Vermont MSWLF Permitting Program is technically comparable to, no less stringent than, and equally as effective as the revised Federal Criteria. Vermont will implement its MSWLF permit program through enforceable permit conditions. To ensure compliance with the Federal Criteria, Vermont has revised its current permit requirements through the creation of procedures. These revisions occur in the following areas:

1. The adoption of the following definitions as required by the revised Federal Criteria, 40 CFR 258.2: active life, active portion, composite liner, earthen daily cover, existing MSWLF unit, final cover system for lined landfills, final cover system for unlined landfills, lateral expansion, municipal solid waste landfill unit, new MSWLF unit, 100-year flood, and washout.

2. Compliance with the new location restrictions of 40 CFR 258.10, 258.14, and 258.15, which pertain to airport safety, seismic impact zones, and unstable areas.

3. Compliance with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, and 258.29 which pertain to procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, liquids restrictions, and recordkeeping requirements.

4. Compliance with the design criteria of 40 CFR 258.40.

5. Compliance with the requirements of 40 CFR 258.50, 258.51, 258.53, 258.54, and 258.55 which pertain to ground-water monitoring and the requirements of 40 CFR 258.56, 258.57, and 258.58 which pertain to corrective action.

6. Compliance with the closure and post-closure criteria of 258.60 and 258.61.

7. Compliance with the financial assurance criteria of 40 CFR 258.73, which pertain to financial assurance for corrective action.

The Vermont Department of Environmental Conservation will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR part 258, to assure compliance with current state requirements. The State of Vermont is not asserting jurisdiction over Tribal land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a) provides that citizens may use the citizen suit provisions of section 7002 of RCRA, 42 U.S.C. 6972 to enforce the Federal MSWLF Criteria set forth in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after the publication in the Federal Register. All of the requirements and obligations in the State's program are already in effect as a matter of state law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval 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 notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912, 6945 and 6949a(c-c).

Dated: October 3, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–27289 Filed 11–2–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Injury Prevention and Control Advisory Committee Meeting

The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the American College of Emergency Physicians, American Health Information Management Association, American Hospital Association, Emergency Nurses Association, National Association of EMS Physicians, Society for Academic Emergency Medicine, Agency for Health Care Policy and Research, CDC, Health Resources and Services Administration, and the National Highway Traffic Safety Administration.

Name: National Workshop on Emergency Department Data.

Times and Dates: 3 p.m.–5 p.m., January 22, 1996, Registration; 7:30 a.m.–8:30 a.m., January 23, 1996, Registration; 8:30 a.m.–5:30 p.m., January 23, 1996; 8:30 a.m.–5:30 p.m., January 24, 1996; 8 a.m.–1 p.m., January 25, 1996.

Place: Holiday Inn Conference Center Decatur, 130 Clairmont Road, Decatur, Georgia, telephone 404/371–0204.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 150 people. All interested persons are invited to participate in the workshop.

Purpose: The Workshop will provide a forum to review and refine a uniform Emergency Department (ED) data set that is being drafted by representatives of the organizations and agencies cosponsoring the workshop. The Workshop cosponsors seek to develop a uniform ED data set that will be recommended for routine use in creating a record of each ED patient encounter, meet the essential data needs of multiple ED data users, and be compatible with existing or emerging national standards for health data. Workshop deliberations will focus on ways to improve the draft uniform ED data set. Data elements will be considered in separate, concurrent sessions, each of which will review one of six discrete groups of data elements: Demographic and identifying data, administrative data, illness/injury incident data, ED arrival and initial assessment data, ED procedure and results data, and ED diagnosis and outcome data. Each breakout group will present a summary of its work in a plenary session. The recommendations that emerge from the Workshop and additional recommendations solicited after the meeting will be used by the workshop cosponsors to complete the data set. Further Workshops will be needed to incorporate lessons learned from practical experience, research findings, and other advances in health data systems.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Paul Burlack, Public Health Advisor, Division of Acute Care, Rehabilitation Research, and Disability Prevention, NCIPC, CDC, 4770 Buford Highway NE., M/S F–41, Atlanta, Georgia 30341–3724, telephone 770/488–4031.

Dated: October 27, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27310 Filed 11–2–95; 8:45 am]

BILLING CODE 4163–18–M

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Times and Dates: 1 p.m.–5 p.m., November 20, 1995; 9 a.m.–12 noon, November 21, 1995.

Place: The Washington Court Hotel, Ballroom East, 525 New Jersey Avenue NW., Washington, DC 20001.

Status: Open—1 p.m.–5 p.m., November 20, 1995; Closed—9 a.m.–9:20 a.m., November 21, 1995; Open—9:20 a.m.–12 noon, November 21, 1995.

Purpose: The Board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH, an update on the National Occupational Research Agenda, NIOSH Agriculture Program, a legislative report, a report on workplace violence, a report from the National Foundation for the Centers for Disease Control and Prevention, Inc., an evaluation of the construction program, and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road NE., Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: October 30, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27309 Filed 11–2–95; 8:45 am]

BILLING CODE 4163–19–M

National Institutes of Health

Proposed Data Collection Available for Public Comment

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects. To request more information on the proposed project, call Jeffery P. Struewing, M.D., Senior Research Investigator, at (301) 496–4375.

Comments are invited on: (1) 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. Send comments to Jeffery P. Struewing, M.D. National Cancer Institute, Building EPN, Room 439, 6130 Executive Blvd MSC 7372, Bethesda, MD 20892–7372. Written comments should be received by January 2, 1996.

Proposed Project: Familial Cancer and the BRCA1 gene—NEW—This research study will determine how common a particular alteration in the BRCA1 gene occurs in Jewish individuals, and what the risk of cancer is in individuals who carry this alteration. With the assistance of Jewish community leaders in the Washington, D.C. area, Jewish volunteers will be recruited for the study. In order to determine how representative the volunteers are, a random sample will also be obtained from the Washington area. Jewish individuals and a portion of non-Jewish individuals will be asked to complete the questionnaire. The questionnaire will include a brief personal medical history, and a detailed family history of cancer. Participants will be notified of the overall study results, which may include recommendations about genetic testing and the availability of testing programs.

Number of respondents	Number of responses per individual	Average burden (hours)
7700	1	.33

Philip D. Amoruso,

NCI Executive Officer.

[FR Doc. 95–27173 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Division of Intramural Research; Proposed Data Collection Available for Public Comment and Recommendation

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NIEHS Project Clearance Liaison, at (919) 541–5047.

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 Project: Effects of Chronic Occupational Exposure to Pesticides on Neurological Function in Farm workers—New—A cross-sectional study will be conducted of 147 farmworkers exposed to pesticides and 179 unexposed control subjects with other jobs. Pesticide exposure will be evaluated with a questionnaire that collects information on general work history, work with pesticides, and work practices. Neurological function will be assessed with a neurobehavioral test battery and with quantitative tests of somatosensory function, equilibrium, and tremor. The data collected in this study will elucidate the association between chronic occupational exposure to pesticides and neurological dysfunction. Burden estimates are as follows:

Number of respondents	Number of responses per respondent	Average burden per response (hours)
147 farmworkers	1.92	1.14
179 control subjects	1.92	1.14

Send written comments to Jane Lambert, Project Clearance Liaison, NIEHS, PO Box 12233, A3/05, Research

Triangle Park, NC 27709–12233. Written comments must be received within 60 days of this notice.

Dated: October 25, 1995.

Charles Leasure,

Associate Director for Management, NIEHS.

[FR Doc. 95–27324 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

International Cancer Information Center; Office of the Director; National Cancer Institute; Journal

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Advertisement.

Opportunity for a Cooperative Research and Development Agreement (CRADA) for the development within the private sector of the capability of producing a rapid turn-around multi-disciplinary cancer journal that satisfies the need of the National Cancer Program for the dissemination of high quality peer-reviewed, research that bears on the etiology, biology, detection, prevention, and treatment of cancer. The journal must also provide high quality scientific peer-reviewed articles, reviews, editorials, commentaries and news.

SUMMARY: The International Cancer Information Center of the National Cancer Institute, NIH is seeking a Collaborator with an international reputation in the biomedical research and clinical practice communities, as demonstrated by:

- The quality of its information products, particularly its biomedical journals;
- Its commitment to the advancement of science and medical practice, as evidenced by indicators of a high level of satisfaction by health professionals with products and services, the range of products and services offered, and the impact of its journal(s) as measured by the Institute for Scientific Information (ISI) impact factors.

The Collaborator must be able to collaborate with NCI staff to produce high quality information products. The Collaborator must have a demonstrated record of success in privately producing biomedical and clinical information resources.

The term of the CRADA will be five (5) years.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to William Joseph Cotreau (Tel.# 301–496–0477, FAX# 301–402–2117), Office of Technology Development, National Cancer Institute, Building 31, Room 4A49, NIH, 9000 Rockville Pike, Bethesda, MD 20892.

DATES: Interested parties should notify this office in writing no later than sixty (60) days from the date of this announcement in the Federal Register. Respondents will then be given an additional sixty (60) days for filing a formal proposal.

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987. Under the present proposal, the goal of the CRADA will be the development of the following technology.

A rapid turn around multi disciplinary cancer journal (Journal of the National Cancer Institute—JNCI) that satisfies the need of the National Cancer Program for disseminating:

- High quality scientific peer-reviewed research that bears on the etiology, biology, detection, prevention, and treatment of cancer
- High quality scientific peer-reviewed articles, reviews, editorials and commentaries
- News
- Electronic and new media cancer information sources.

All necessary existing rights and assets currently held by NCI for the production of the JNCI will be licensed as needed to the Collaborator.

The Journal produced under the CRADA will operate in conformance with the Guidelines of the International Committee of Biomedical Journal Editors among other guidelines. These guidelines establish the editorial freedom of the editor-in-chief and maintain the integrity of the Journal. Editorial control and overall intellectual oversight will therefore be the province of the editor-in-chief. The editor-in-chief will be appointed by the NCI and approved by the Collaborator. NCI and Collaborator staff will contribute to achieving the intellectual goals determined by the editor-in-chief. The Collaborator will also contribute the business and marketing expertise and the technical, management, and R&D expertise required for the maintenance and dissemination of a derivative electronic journal or information product.

Party Contributions

The role of the NCI includes the following:

(1) Cooperate with Collaborator to jointly produce the Journal of the National Cancer Institute and related information products;

(2) Provide the Editor-in-Chief for the JNCI and related information products;

(3) Provide all line staff functions for the publication of the JNCI and related information products until the Collaborator is able to provide the same to the satisfaction of the Editor-in-Chief, including assistance with maintainence of the mailing list;

(4) Evaluate the work product of Collaborator to ensure progress toward meeting the CRADA goals;

(5) Provide work space and equipment for production of the JNCI and related information products until the Collaborator is able to provide the same to the satisfaction of the Editor-in-Chief.

The role of the successful Collaborator will include the following:

(1) Transition to independently produce the JNCI and related information products;

(2) Provide funding, as necessary, in support of production and dissemination of information products;

(3) Provide expertise in production and marketing of biomedical information products;

(4) Provide resources to market biomedical information products;

(5) Cooperate with Editor-in-Chief in all aspects of meeting information needs of the National Cancer Program;

(6) Invoice accounts and receive, process, and disburse funds for NCI;

(7) Maintain mailing list electronically in a database of the NCI's choice.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

1. Expertise:

A. Demonstrated expertise in developing and producing high quality biomedical print journals (and spin off print and electronic biomedical information products);

B. Demonstrated expertise in overseeing all aspects of product development;

C. Demonstrated intellectual ability to guide development of product line which addresses the requirements of the National Cancer Program;

D. Demonstrated expertise in conducting rapid peer and editorial review of biomedical information products;

E. Demonstrated expertise in techniques of fast production of publications and information materials;

F. Demonstrated expertise in marketing of biomedical information products;

G. Demonstrated expertise in subscription management, advertising, fulfilment and customer service;

H. Knowledge of basic and clinical research, including but not limited to:

Research in the biology, treatment, detection, and prevention of disease;

I. Experience in publishing biomedical research;

J. Demonstrated proficiency in serving a large membership base.

2. Reputation:

The successful Collaborator must be recognized in the biomedical research and clinical practice communities for:

A. The quality of its information products, particularly its biomedical journals;

B. Its commitment to the advancement of science and medical practice;

C. Indications of high levels of satisfaction by health professionals with the information products and services;

D. The range of products and services;

E. The impact of its journal(s) as measured by the Institute for Scientific Information (ISI).

3. Physical Resources:

A. An established headquarters with offices, space and equipment;

B. Personal access to the organization during business hours;

C. Access to the organization during business hours by telephone, mail, e-mail, the Internet and other evolving technologies;

D. Sufficient financial resources to support, at a minimum, the current activities of the JNCI to meet the needs of the National Cancer Program.

Dated: October 26, 1995.

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 95–27322 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application and/or the issued patent referenced below may be obtained by contacting the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Monoclonal Antibodies for Binding HTLV–III (HIV–1) Proteins, and Cell Lines for Their Production

Sarngadharan, M., Veronese, F., Gallo, R. (NCI)
Serial No. 06/816,573
Patent Issued 27 June 89
U.S. Patent No. 4,843,011
Licensing Contact: Steven Ferguson, 301/496–7735 ext 266

Monoclonal antibodies and hybridoma cell lines for their production are disclosed for three specific proteins that characterize HIV–1, the virus that has been identified with AIDS. This invention relates to all monoclonal antibodies that demonstrate immune reactivity with specific antigens that identify the HIV–1 virus: p41, a transmembrane envelope glycoprotein; p24, a major core protein; and p17. These antibodies provide a means for directly detecting the virus in the sera, blood or blood products of AIDS patients or HIV–1 carriers. Such methods are an important advance over the indirect antibody detection methods presently used. Methods based on antibody detection give false negatives if no antibodies have yet been produced. These antibodies are believed to provide a positive indication of the presence of the virus at any stage of the disease in a patient or in a healthy carrier of virus.

Sterile-Lyophilization Tube

Kidd, G.L. (NEI)
Filed 22 Sep 95
DHHS Reference No.: E–015–95/0
Licensing Contact: David Sadowski, 301/496–7735 ext. 288

Problem Addressed by This Invention: Many compounds, such as drugs, growth factors, etc., must be kept sterile and must be aliquotted for storage. Usually, these aliquots are best stored lyophilized. Yet, researchers have never had a way to keep aliquots sterile through the lyophilization process. Consequently, each aliquot has had to be filter-sterilized when reconstituted for use. This process has the disadvantages of consuming excessive filters, syringes, sterile, receptacles, and time and results in serious loss of precious sample due to absorption by the filters (especially with small aliquots less than 1 ml). Alternatively, researchers have had to forego lyophilization and store their solutions in the less-stable frozen form.

Solution Offered by This Invention: Sterile-lyophilization tubes having a 0.22 micron filter built into the cap. This unique feature allows a sterile solution to remain sterile throughout lyophilization, even after the vacuum is released and air reenters the tube. Thus, a starting solution is simply filter-sterilized while in a relatively large volume, using a single filter and therefore suffering minimal loss and consuming little time. It is then aliquotted into sterile-lyophilization tubes and lyophilized. The tubes can then be transferred directly to the freezer, if desired. The compound is reconstituted when needed, and may then be used immediately without further filtration.

Potential Applications of This Invention: All researchers worldwide who utilize sterile, labile compounds will have an interest in this product, including governmental, university, institutional, and drug company laboratories. Most notably in need are investigators involved in drug-testing, which is normally done either in cell cultures, laboratory animals, or humans, and which requires sterility of many aliquots of many drugs. Additionally, this product will have a large market relating to basic research utilizing microbial, plant, or animal cell or organ cultures, to which sterile compounds such as growth factors are commonly added. Research in drugs, growth factors, etc., is expanding ever more rapidly, and generally requires a cell culture system in which to study such compounds. Most of these compounds are quite expensive. Loss of potency during storage and loss of material during filtration are widespread problems which may be overcome with this invention. Therefore, there exists a tremendous need, and immense market for, this sterile-lyophilization vessel.

Stage of Development: Development is complete and invention has been successfully tested. Prototypes are available.

Dated: October 26, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–27321 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

Notice of the Meeting of the National Eye Institute Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), December 4 and 5, 1995 in the NEI Conference Room, Building

31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 4 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, NEI, on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 4 from approximately 4 p.m. until recess and on December 5 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases and the Laboratory of Ocular Therapeutics. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Marie Watkins, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Watkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27250 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: AIDS-Related Training Grants, Conference Grants, Clinical Investigator and Independent Scientist Applications.

Date: November 13, 1995.

Time: 8 a.m.

Place: NIH, Natcher Bldg. 45, Conference Room A, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Dr. Peter Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892–7610, (301) 496–8426.

Purpose/Agenda: To review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27251 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: November 20, 1995, November 21, 1995.

Time: 6:30 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Contact Person: Theresa Lo, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Room 5AS–25U, Bethesda, Maryland 20892–6500, (301) 594–4952.

Purpose/Agenda: To review and evaluate research grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, project grants in arthritis, musculoskeletal and skin diseases research], National Institutes of Health, HHS)

Date: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

FR Doc. 95–27253 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 1, 1995, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on December 1 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, Area Code 301, 496–2133, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27317 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of a Meeting of the Ad Hoc Clearinghouse Subcommittee of the National Deafness and Other Communication Disorders (NDCD) Advisory Council

Notice is hereby given of the meeting of the Ad Hoc Clearinghouse Subcommittee of the NDCD Advisory Council on November 16, 1995. The meeting will take place from 1 to 3 p.m. and will be conducted as a telephone conference call originating in Room 3C05, Building 31, 9000 Rockville Pike, Bethesda, Maryland.

The meeting, which is open to the public, will be held to discuss the operations of the NIDCD Clearinghouse. Attendance by the public is limited to space available.

Summaries of the meeting and a roster of members may be obtained from Dr. Earleen Elkins, Acting Director, Division of Extramural Activities, NIDCD, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, Maryland 20892, 301–496–8693, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Elkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27252 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Request for Comments on the Draft Report on Validation and Regulatory Acceptance of Toxicological Test Methods; Announcement of the National Toxicology Program (NTP) Workshop on Validation and Regulatory Acceptance of Alternative Toxicological Test Methods

The draft report on Validation and Regulatory Acceptance of Toxicological Test Methods is available and public review and comment are encouraged. Registration is open for an NTP Workshop scheduled for December 11–12, 1995, that will provide the opportunity to participate in the review of this Report and to comment on the recommendations generated at the Workshop.

Background on the Report

One of the over-arching goals of the NTP is developing and validating improved alternative toxicological test methods. Consistent with the goal, the NIH Revitalization Act of 1993 (P.L. 103–43, sec. 1301) stated that the National Institute of Environmental Health Sciences (NIEHS), the primary component of the NTP, would: (a) Establish criteria for the validation and regulatory acceptance of alternative testing methods; and (b) recommend a process through which scientifically validated alternative methods can be accepted for regulatory use.

An *ad hoc* Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) was established by NIEHS to develop a report recommending criteria and processes for validation and regulatory acceptance of toxicological testing methods. Fifteen Federal regulatory and research agencies have participated in this effort, including:

- Agency for Toxic Substances and Disease Registry (ATSDR).
- Consumer Product Safety Commission (CPSC).
- Department of Agriculture (USDA).
- Department of Defense (DOD).
- Department of Energy (DOE).
- Department of the Interior (DOI).
- Department of Transportation (DOT).
- Environmental Protection Agency (EPA).
- Food and Drug Administration (FDA).
- National Institute for Occupational Safety and Health (NIOSH).
- National Institutes of Health (NIH).
- National Cancer Institute (NCI).
- National Institute of Environmental Health Sciences (NIEHS).
- National Library of Medicine (NLM).
- Occupational Safety and Health Administration (OSHA).

The draft Report is applicable to all proposed toxicological testing methods for health and ecological endpoints, including those termed ''alternatives.'' Alternative test methods are those that incorporate some aspect of reduction, refinement, and replacement of animal use. Such methods: result in the reduction of the total number of animals required; incorporate refinements of procedures to lessen or eliminate pain or distress to animals and enhance animal well-being; or provide for the partial or total replacement of animals with non-animal systems, or the replacement of an animal species with a phylogenetically lower species (e.g., a mammalian species replaced by an invertebrate species).

The ICCVAM determined that the goals of the Report are to:

- Communicate the criteria and processes that Federal agencies should employ in considering new and revised test methods;
- Encourage the development of new methods and improvement of existing test methods;
- Provide more effective guidance for scientists for the validation and evaluation of new and revised test methods;
- Contribute to the increased likelihood of regulatory acceptance of scientifically valid new and revised test methods;
- Encourage, when scientifically feasible, the reduction and refinement of animal use in testing, and the replacement of animals with non-animal methods and phylogenetically lower species;
- Encourage the use of validated and accepted new and revised test methods.

Comments on the Report

Public review of the draft Report is critical to its completion and is encouraged. To receive a copy of the Report, please contact the NTP Liaison Office at NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709, or by FAX to: (919) 541–0295. Written comments received by November 20, 1995, will be distributed for consideration during the workshop. Written comments submitted after November 20 but before January 2, 1996, will be considered by the Committee in preparing a final Report. Submit comments to Dr. William Stokes, NIEHS, P.O. Box 12233, MD B2–04, Research Triangle Park, NC 27709, or by FAX to (919) 541–0719. For further information about the Report, please contact one of the ICCVAM co-chairs—Dr. William Stokes, NIEHS, or Dr. Richard Hill, EPA, Mail Code 7101, 401 M Street, S.W., Washington, DC 20460, or FAX (202) 260–1847.

Background on the Workshop

A workshop on Validation and Regulatory Acceptance of Alternative Toxicological Test Methods will be held on December 11–12, 1995, in Arlington, Virginia, to receive comments from the public and invited review panels on the draft Report. The Workshop meeting structure will include opening and closing Plenary Sessions and three Breakout Groups that will address: (1) Validation Criteria; (2) Regulatory Acceptance Criteria and Processes; and (3) Proposals for Future Directions.

Specific goals of the Workshop:

- To obtain comments and recommendations and strengthen the usefulness of the Report for the scientific community.
- To discuss comments received in response to this notice and other announcements.
- To obtain comments and recommendations relevant to the effective implementation of the processes described in the Report.

Comments and recommendations from the Workshop will be considered by the ICCVAM in preparing a final Report.

Registration for the Workshop

Registration materials for the workshop can be obtained by contacting the NTP Liaison Office at NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709, or by FAX to: (919) 541–0295. Please indicate on the registration form if you wish to speak. Oral presentations from participants requesting time during the closing plenary session will be limited to five minutes in length to allow for a maximum number of presentations. Written comments accompanying the oral statements are encouraged and should be received by close of business on November 20, 1995, to ensure consideration by the workshop breakout groups.

Dated: October 26, 1995.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 95–27323 Filed 11–2–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–61]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice/ Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnson at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 205405; (202) 501–2059; (This is not a toll-free nubmer).

Dated: October 27, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/03/95

Unsuitable Properties

Buildings (by State)

California

Cape Mendocino Lighthouse
Capetown Co: Humboldt CA
Landholding Agency: GSA
Proeprty Number: 549540004
Status: Excess
Reason: Other, Secured Area
Comment: Structural; deficiencies GSA Number: 9–U–CA–622–B

[FR Doc. 95–27172 Filed 11–2–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1310–00 1A]

Green River Basin Advisory Committee; Notice of Intent to Establish and Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Establish Green River Basin Advisory Committee and Call for Nominations.

SUMMARY: This notice is published to announce the Secretary of the Interior's intention to establish the Green River Basin Advisory Committee (Committee) in accordance with the provisions of the Federal Advisory Committee Act of 1972 (Public Law 92–463). The public is also being requested to submit nominations for membership on the Committee and to identify additional issues that could be addressed by the Committee.

DATES: Nominations and recommendations should be submitted to either address listed below no later than December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Bennett, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone number (307) 775–6148; or Frank Salwerowicz, Bureau of Land Management, 2850 Youngfield Str., Lakewood, CO 80215, telephone number (303) 239- 3745.

SUPPLEMENTARY INFORMATION: The purpose of the Committee will be to advise the Secretary of the Interior and the Bureau of Land Management (BLM) Director on matters pertinent to the BLM's Oil and Gas Program responsibilities and activities in the greater Green River Basin, principally in regard to the management of the natural resources, both surface and subsurface, and other resources as defined in the Federal Land Policy and Management Act. The Committee will provide advice on issues derived from the discussion of data compiled in Phase I of the Southwest Wyoming Resource Evaluation Project and options/recommendations or agency implementation that would ensure continued reasonable development of the oil and gas resources underlying Federal public lands while protecting environmental values.

Committee members will be appointed by the Secretary of the Interior. Membership will be composed of individuals who have expertise, through education or practical experience, in oil and gas activities, natural resources management/conservation, or similar disciplines. The BLM is seeking nominations from all sources for membership in the Committee. The BLM is also soliciting recommendations for additional issues that could be addressed by the Committee. It is anticipated that the Committee will convene its initial meeting in Rock Springs, Wyoming, in January 1996, and complete its activities over the next 12 months.

Date Signed: October 31, 1995.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 95–27441 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–81–P

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: December 6–7, 1995, at 8 a.m.

ADDRESSES: First floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The agenda will include a review of current and planned restoration activities and recommendations for the fiscal year 1996 restoration work plan.

Dated October 30, 1995.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 95–27330 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

[MT–910–1820–00]

Resource Advisory Council Meetings, Montana Councils and Dakotas Council; Montana, North Dakota and South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Department of the Interior, Bureau of Land Management (BLM), has established four Resource Advisory Councils for the States of Montana, North Dakota and South Dakota.

The Montana Councils are: Butte Resource Advisory Council, Lewistown Resource Advisory Council and Miles City Resource Advisory Council; North Dakota and South Dakota: Dakotas Resource Advisory Council.

These Councils provide representative counsel and advice to the BLM on the planning and management of the public lands. Members of these Councils were appointed by the Secretary of the Interior.

The Montana and Dakotas Councils will convene jointly at 8 a.m. December 11, 1995, for required rangeland ecosystem management instruction. December 12, the Councils will reconvene separately. The four Councils will meet at the Holiday Inn Billings Plaza Hotel and Trade Center, 5500 Midland Road, Billings, Montana. The agendas for the Council meetings are as follows:

Butte Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12, for a full day and again at 8 a.m. Wednesday, December 13, for as much of the day as needed. Agenda items include the Beaverhead County cooperative weed program; a discussion of potential effects of rangeland standards and guidelines on the ranching industry and public land resources; development of a process to identify standards and guidelines for rangeland resources in the Butte District; the present condition of riparian resources on public land in the Butte District; further work on developing a consensus process for decision making; and normal housekeeping items and any other new business the Council wishes to review.

Public comment period will begin at 4 p.m. December 12.

Lewistown Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12. Agenda items include a review of the Council charter; election of Council officers; updates on Lonesome Lake, Sweetgrass Hills and mining at Zortman; review of questions and answers from the September 21, 1995, RAC teleconference; discussion of the Mixed Grass Prairie and Little Rocky Mountain ACEC nominations; a meeting evaluation; and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 11:15 a.m. December 12.

Miles City Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8 a.m. The Council will reconvene at 8 a.m. Tuesday, December 12, for a full day and again at 8 a.m. Wednesday, December 13, for as much of the day as needed. Agenda items include a field trip to Pompeys Pillar and possibly other sites in the Billings Resource Area (weather permitting); prioritizing issues; discussion and decision on the need for subgroups; a decision on the need for formal officers (with an election possible); and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 8 a.m. December 13.

Dakotas Resource Advisory Council

December 11, 1995, rangeland ecosystem management instruction beginning at 8:00 a.m. The Council will reconvene at 8:30 a.m., Tuesday, December 12, and, if needed to conclude its business, again at 8:30 a.m. on Wednesday, December 13. Agenda items include Council orientation; election of Council officers and decisions on other Council operational issues; prioritization of new business for consideration; discussion of new business including standards and guidelines, land exchanges, and subgroups; a meeting evaluation; and normal housekeeping items and any other new business the Council wishes to review. Public comment period will begin at 11 a.m., December 12.

All meetings are open to the public. The public may present written comments to any Council. Each Council meeting will also have time allocated for hearing public comments. The public comment period for each meeting is listed above. Depending on the number of persons wishing to comment and the time available, the time for individual comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Montana State Office, External Affairs, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800, telephone 406–255–2913. Seating at the meetings will be on a first-come basis.

FOR FURTHER INFORMATION CONTACT: Greg Albright, Public Affairs Specialist, Office of External Affairs, Montana State Office, Bureau of Land Management, 222 N. 32nd Street, P.O. Box 36800, Billings, MT 59107, telephone (406) 255–2913.

SUPPLEMENTARY INFORMATION: The purpose of the Councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Councils' responsibilities include providing advice to BLM regarding the preparation, amendment and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members represent various industries and interests concerned with the management, protection and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Dated: October 30, 1995.

Larry E. Hamilton,

State Director.

[FR Doc. 95–27308 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–DN–P

[WY–920–41–5700; WYW121117]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 20, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW121117 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW121117 effective August 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 95–27336 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–22–M

Fish and Wildlife Service

Notice of Availability of Final Environmental Impact Statement on the Establishment of the Silvio O. Conte National Fish and Wildlife Refuge Within the Four-State Connecticut River Watershed of New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on establishing the Silvio O. Conte National Fish and Wildlife Refuge (refuge) in the Connecticut River watershed of Connecticut, Massachusetts, Vermont and New Hampshire is available. The U.S. Fish and Wildlife Service (Service) proposes to work with private landowners, state or local agencies and private organizations through the existing Partners for Wildlife and Challenge Cost Share Programs. The Service's major thrust through the year 2010 would focus on the use of

voluntary efforts, developing partnerships, providing technical assistance, and administering a cost-sharing grants program to help other conservation interests carry out their land protection programs. The Service would also initiate its own land protection program—using a combination of easements, cooperative management agreement and fee title acquisition—with emphasis on endangered, threatened, rare and uncommon species and communities. Educational efforts would be carried out in cooperation with the watershed's many environmental education providers. This proposal would result in the establishment of a special watershed-wide cooperative management and education program. This notice is being furnished pursuant to the National Environmental Policy Act (NEPA) regulations (40 CFR parts 1500–1508).

DATES: A Record of Decision can be approved after December 4, 1995.

ADDRESSES: A limited number of copies of either the complete FEIS, or a summary of the FEIS, are available upon request from Larry Bandolin, Project Leader, U.S. Fish and Wildlife Service, 38 Avenue A, Turners Falls, Massachusetts 01376.

FOR FURTHER INFORMATION CONTACT: Larry Bandolin, Project Leader, Telephone (413) 863–0209 or Fax (413) 863–3070.

SUPPLEMENTARY INFORMATION: The FEIS was prepared to fulfill the requirements of the Silvio O. Conte National Fish and Wildlife Refuge Act of 1991 (Act), Section 105. The Act's long-term purposes for establishing a new refuge in the Connecticut River watershed are to: (1) Conserve, protect, and enhance the Connecticut River watershed populations of Atlantic salmon, American shad, river herring, shortnose sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife; (2) conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge; (3) protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended; (4) restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge; (5) fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and (6) provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section. The FEIS describes five alternative ways to fulfill these purposes. It also discusses the process used to develop them and the environmental consequences of implementing each one. The first alternative (No Action) would involve no new conservation efforts in the watershed on the part of the Service. A second alternative (Private Lands Work and Education) relies on the voluntary restoration and enhancement of private lands through the Service's Partners for Wildlife Program. A third alternative (Private Lands Work, Education and Partnerships) relies on the voluntary restoration and enhancement of private lands, developing partnerships, providing technical assistance and establishing a cost-sharing grants program—through the Service's Challenge Cost Share Program—to help other conservation interests carry out their land protection programs. A fourth alternative (Private Lands Work, Education, Partnerships and Land Protection—The Service's Revised Proposed Action) is similar to the third alternative, except that the Service would also acquire lands to protect threatened or endangered, rare and uncommon species and communities. Under the fifth alternative (Private Lands Work, Education and Land Protection) the Service would establish a more traditional national fish and wildlife refuge. All issues an concerns identified by the public during scoping were considered and the most significant analyzed in detail. The potential effects of each alternative on agriculture and forestry, biological resources, local economies, environmental education, public use and access, and water use and quality are also described.

During the public review and comment period on the Draft Environmental Impact Statement (DEIS), a series of afternoon walk-in informational sessions and evening public meetings and hearings were held in 16 different locations throughout the four-state Connecticut River watershed. Meetings were held in four locations in Massachusetts; four in Connecticut; four in Vermont; and four in New Hampshire in June, 1995. During the public review and comment period the Service received 348 written comments and seven petitions containing 897 signatures. Over 290 people attended the afternoon walk-in sessions and over 700 attended the evening public meetings and hearings, including 94 who testified. All comments received, both written and verbal, were taken into consideration during the preparation of the FEIS—to make corrections or revisions—and have become part of the official record for the project. The FEIS contains the Service's responses to comments made by 150 federal or state agencies, private organizations and individuals. Copies of the FEIS have been sent to all agencies and individuals who commented on the DEIS and to all others who have already requested copies, as well as all libraries within the watershed. A summary of the FEIS has been sent to all other organizations and individuals on the project mailing list.

Cathleen I. Short,

Acting Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 95–27195 Filed 11–2–95; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32683]

Canadian Pacific Limited and CP Containers (Canada) Inc.—Control Exemption—Cast North America (Trucking) Limited and Cast Transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the acquisition of control by Canadian Pacific Limited (CPL) and CP Containers (Canada) Inc. of two Commission-regulated motor carriers: Cast North America (Trucking) Limited and Cast Transport, Inc. CPL presently controls two rail carriers: Soo Line Railroad Company and the Delaware and Hudson Railway Company, Inc. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on December 3, 1995. Petitions to stay must be filed by November 13, 1995 and petitions to reopen must be filed November 24, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32683 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioners' representative: Terence M. Hynes, Sidley & Austin, 1722 Eye 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: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Ave., NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27301 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32767]

Westmoreland County Industrial Development Corporation—Acquisition Exemption—Southwest Pennsylvania Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Westmoreland County Industrial Development Corporation of 28.35 miles of interconnected rail lines of the Southwest Pennsylvania Railway Company known as the Greensburg Cluster, subject to the labor protective conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). The Cluster consists of (a) The Greensburg Industrial Track between mileposts 0.05± and 2.50±, (b) the Southwest Secondary Track between mileposts 2.50± and 17.54±, together with segments of the Sewickley and Tarr Branches, (c) the Southwest Branch/Southwest Secondary Track between mileposts 17.54± and 23.80±, (d) the Long Siding between mileposts 0.1± and 1.04±, (e) the Southwest (Radebaugh) Secondary Track and the Long Siding between mileposts 1.04± and 2.50±, and (f) the Yukon Industrial Track between mileposts 0.00± and 3.00± in Westmoreland and Fayette Counties, PA.

DATES: This exemption will be effective on November 13, 1995, unless stayed. Petitions for stay and petitions to reopen must be filed by November 8, 1995.

ADDRESSES: An original and 10 copies of any comments, referring to Finance Docket No. 32767, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, one copy must be served on Keith G. O'Brien, REA, CROSS & AUCHINCLOSS, Suite 420, 1920 N St., NW., Washington, DC 20036.

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: DC News & Data, Inc., Room 2229, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 26, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27303 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 157X)]

Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Imperial County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the discontinuance of service by Southern Pacific Transportation Company over a 9.38-mile segment of rail line known as the Sandia Branch, which consists of 8.64 track-miles between milepost 711.90 near El Centro, CA, and the end of the track at milepost 703.26, in Holtville, CA, and a .74-mile line segment from milepost 703.46 to milepost 702.72, in Holtville, Imperial County, CA, subject to environmental and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 4, 1995. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by November 13, 1995. Petitions to stay must be filed by November 20, 1995. Petitions for reopening must be filed by November 28, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 157X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioner's representatives: John MacDonald Smith and Gary A. Laakso, Southern Pacific Transportation Company, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [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: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: October 25, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27302 Filed 11–2–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission Open and Closed Meeting

Summary: Pursuant to section 10(a) of FACA, this is to announce that the teleconference meeting of the Glass Ceiling Commission which was to have taken place on October 25th and November 1, 1995 have been rescheduled to Thursday, November 9, 1995.

The Commission will meet in closed session in order to discuss commercial

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

characteristics of applicants for the Frances Perkins-Elizabeth Hanford Dole National Award For Diversity and Excellence in American Executive Management. The closing of this meeting is authorized by section 10(d) of the Federal Advisory Committee Act and Section (c)(4) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(4)). This closing allows the Commission to discuss matters which if disclosed in an open meeting would reveal information that would not customarily be released to the public by the applicants.

The Open portion of the teleconference meeting will follow immediately after the closed portion.

The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

The purpose of this open meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

Time and Place: The Closed portion of the teleconference meeting will be held on Thursday, November 9, 1995 from 2 p.m. to 2:30 p.m. (EST). The Open teleconference meeting will be held from 2:35–3:35 p.m. (EST) in room C2313 at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

For further Information Contact: Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 31st day of October, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–27341 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–23–M

Bureau of Labor Statistics

Proposal to Revise Method for Estimation of Monthly Labor Force Statistics for Certain Subnational Areas

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed action.

SUMMARY: The Department of Labor, through the Bureau of Labor Statistics, is responsible for the development and publication of local area labor force statistics. This program includes the issuance of monthly estimates of the labor force, employment, unemployment, and the unemployment rate for each State and labor market area in the nation. For 11 large States (California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas) and two large areas (New York City, and the Los Angeles Metropolitan Area), the Current Population Survey (CPS) sample is sufficiently large to meet the BLS standard for direct use and the monthly estimates are taken directly from the survey. Historically, concern has been expressed over the volatility of monthly CPS estimates in these large States and areas.

Under anticipated lower funding levels, BLS plans to reduce the number of households in the CPS. One result will be that the 11 large States and two large areas no longer will be estimated directly from the monthly household survey. The BLS proposes to continue publishing monthly estimates for these subnational areas based on the time series modeling approach currently used in the other 39 States and the District of Columbia beginning in January 1996.

DATES: Comments are due by December 1, 1995.

ADDRESSES: Send comments to Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, Suite 4675, 2 Massachusetts Ave., NE., Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, telephone 202–606–6390.

SUPPLEMENTARY INFORMATION: The Bureau of Labor Statistics (BLS) has been responsible for the Local Area Unemployment Statistics (LAUS) program since 1972. In 1978, the BLS broadened the use of data from the Current Population Survey (CPS) in the LAUS program by extending the annual reliability criterion to monthly data. This action was within the context of a budget proposal to expand the CPS to yield monthly employment and unemployment data for all States by June 1981. Under the expanded criterion, monthly CPS levels were used directly for the 10 largest States, two sub-State areas, and the respective balance-of-State areas. The use of annual average CPS data continued for the other 40 States and the District of Columbia. Ultimately, the budget proposal which initiated the direct use of monthly State CPS data was rejected as too costly. Based on population ranking, the State of North Carolina joined the group of direct-use States in 1985, bringing that group to its current total size of 11 States. Also in 1985, sample redesign and other efficiencies improved the reliability of CPS data at the State level, resulting in the current criterion on monthly and annual average data of an 8 percent coefficient of variation on the level of unemployment when the unemployment rate is 6 percent.

Especially in regard to the monthly direct use of State CPS data, concern has been expressed as to the volatility of the statistics. In the typical direct-use State, a month-to-month change in the unemployment rate must exceed 0.7 percentage point to be considered statistically significant. Often, States experience consecutive, offsetting large movements in the unemployment rate.

For the other 39 States and the District of Columbia, after extensive research and simulation, variable coefficient time series models for monthly estimation of State employment and unemployment were introduced in 1989. Further improvement was effected with the implementation of signal-plus-noise models in 1994. These models rely heavily on monthly CPS data, as well as current wage and salary employment and unemployment insurance statistics. At the end of each year, the monthly model estimates are rebenchmarked so that the annual averages for each State match the annual averages derived directly from the CPS.

Because of the budget reductions that the Bureau anticipates, the CPS sample may not be of sufficient size to provide monthly data directly for the 11 large States, New York City, and the Los Angeles Metropolitan Area. Monthly estimates will continue to be produced, based on the time series modeling method currently used for the other States and the District of Columbia. Data for the current direct-use States and

areas would no longer be released by the BLS at the same time as the monthly national labor force statistics, but would be published about four weeks later in the State and Metropolitan Area Employment and Unemployment news release. States that are able to do so will have the option of releasing these data earlier, perhaps even simultaneously with the release of national data. Monthly data for these States also will become subject to end-of-year benchmarking.

The impact of the CPS sample cut on the national statistics would be to increase the variability of most national estimates by about 5 percent. For example, under the reduced sample, a month-to-month change of 0.19 percentage points in the national unemployment rate would represent a statistically significant change at the 90-percent confidence level; the corresponding change under the current design is 0.18 percent.

Detailed descriptions of the estimating methods are available at the above address.

Signed at Washington, DC, this 30th day of October, 1995.

Thomas J. Plewes,

Associate Commissioner for Employment and Unemployment Statistics, Bureau of Labor Statistics.

[FR Doc. 95–27285 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–24–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

Volume IV:

Michigan
MI950030 (Nov. 3, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Connecticut
CT950001 (Feb. 10, 1995)
CT950003 (Feb. 10, 1995)
CT950004 (Feb. 10, 1995)
CT950008 (Feb. 10, 1995)
Massachusetts
MA950007 (Feb. 10, 1995)
MA950021 (Feb. 10, 1995)

Volume II:

Pennsylvania
PA950042 (Feb. 10, 1995)

Volume III:

None

Volume IV:

Michigan
MI950001 (Feb. 10, 1995)
Minnesota
MN950007 (Feb. 10, 1995)
MN950017 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950059 (Feb. 10, 1995)

Volume V:

Nebraska
NE950001 (Feb. 10, 1995)
NE950003 (Feb. 10, 1995)
NE950010 (Feb. 10, 1995)
NE950011 (Feb. 10, 1995)
NE950059 (Feb. 10, 1995)
Texas
TX950002 (Feb. 10, 1995)
TX950014 (Feb. 10, 1995)
TX950051 (Feb. 10, 1995)

Volume VI:

Utah
UT950024 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage

Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Region Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 27th day of October 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–27121 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–10027, et al.]

Proposed Exemptions; Concord Hospital Capital Region

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of Concord Hospital Capital Region Healthcare Corp. (the Plan) Located in Concord, New Hampshire

[Application No. D–10027]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the July 7, July 13, July 18, August 19, and August 22, 1994, transfers (the Transfers) to the Plan of $7,376,039 of publicly-traded securities from non-ERISA accounts (the Accounts) of Concord Hospital, Inc. (the Employer) and its parent corporation, Capital Region Health Care Corporation (Capital; collectively, the Applicant); (2) the transfer of $3,761,319 of publicly-traded securities from the Plan to the Accounts in August of 1994 (the August, 1994 Distributions); and (3) the proposed transfer of approximately $3.6 million from the Plan to the Accounts (the Proposed Corrective Distribution), provided the following conditions are satisfied: (a) the decision for the Plan to enter the subject transactions was made at the recommendation of the Plan's independent investment advisor; (b) the Plan has not paid and will not pay commissions or other fees in connection with the subject transactions; (c) the transactions involve publicly-traded securities, the fair market values of which were based upon published prices on established markets; and (d) the Plan's independent fiduciary has reviewed the transactions and has determined that the transactions were in the best interest of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 7, 1994.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which has approximately

1,400 participants and beneficiaries and assets with an approximate fair market value of $20 million. The Applicant is a community-service hospital which is exempt from federal income tax under section 501(c)(3) of the Code. The Accounts from which the Transfers were made are commingled accounts consisting of assets belonging to the Employer and Capital. The Accounts of Capital are endowment accounts, and the Accounts of the Employer are funded depreciation reserves and operating reserves.

2. Effective June 1, 1993, the Applicant hired an investment consulting firm, Prime Buchholz & Associates, Inc. (PB) to provide advice concerning the investment of the assets of the Plan and of the Accounts. The equity categories that were reviewed included large capitalization U.S. equities, medium capitalization U.S. equities, small capitalization U.S. equities, international equities, and fixed-income U.S. and international securities.

3. After a year of study, PB recommended that the Plan investments be diversified from the then principally large capitalization U.S. equities and intermediate term U.S. fixed- income securities to a broader spectrum of investments in large, medium and small capitalization U.S. equities, international equities and intermediate term U.S. fixed-income and global fixed-income securities. A corresponding decision was made to diversify the investments of the Accounts from principally medium capitalization U.S. equities and intermediate fixed-income securities to include holdings in large, medium and small capitalization U.S. equities and international equities, and intermediate term U.S. fixed-income and global fixed-income securities.

4. In order to eliminate significant transaction costs which would arise from sales of existing securities and the purchase of other securities for the Plan, the decision was made, at PB's recommendation, to enter into an equivalent like-kind exchange of assets between the Plan and the Accounts. The intent of PB and of the Applicant was to produce this exchange at an exactly equivalent value, determined by third party valuation sources. The practical impact was a substantial cost saving to the Plan in sales brokerage commissions, as well as the purchase of certain medium capitalization and small capitalization U.S. equities recommended for the Plan's portfolio.

5. The first set of transactions consisted of the Transfers, an in-kind transfer of $7,376,039 of publicly-traded securities from the Accounts into the Plan, completed on July 7, July 13, July 18, August 19, and August 22, 1994. The second set of transactions was to be a reciprocal in-kind transfer of $7,376,039 of Plan assets into the Accounts, scheduled for completion in early August, 1994. A portion ($3,761,319) of this second transaction was completed on August 18–19, and August 29–31, 1994 prior to the realization by the Applicant that a prohibited transaction may have taken place.[1] The Applicant immediately suspended further transfers between the Plan and the Accounts, and commenced discussions with PB and its counsel as to whether a prohibited transaction may have occurred and whether any corrective action could be taken. The Applicant then engaged outside counsel to review the situation, to make recommendations concerning corrective action and, subsequently, to request a prohibited transaction exemption from the Department.

6. The Plan's independent asset managers, Keystone Institutional Company, Inc. (Keystone) and Boston represent that they were fiduciaries to the Plan at the time of the subject transactions, and that they were responsible for the selection of the securities.[2] Boston represents that because the transfer value was slightly more than one-half of the value of the account it managed for the Plan, it first selected for transfer one-half of the shares of each equity security held by the account. Then, Boston identified certain securities in the account which had been classified as near-term sell candidates through the firm's investment research process. Boston selected the balance of the securities to be transferred from those designated near-term sell candidates. With regard to its security selection for assets to be transferred to the Plan, Keystone represents that it agreed to transfer securities where possible to fund the pension accounts while avoiding unnecessary transaction costs. Keystone also represents that it undertook all security transfers to have the Plan's portfolio be in line with other similar portfolios that it managed.

7. With respect to the Transfers and the August, 1994 Distributions, the Plan's independent custodian, U.S. Trust Company (UST) represents that all the securities transferred were publicly-traded securities. Each security was valued as of the date of its Transfer to or Distribution from the Plan. UST represents that it relied on Interactive Data Corporation and Merrill Lynch Securities to provide independent valuations of the investment assets transferred. The values of the common stocks were established by Interactive Data Corporation, based upon closing prices, if available. If they were not available, then the bid quotation was used. The values of the bonds were established by Merrill Lynch, a market maker, based on closing prices. The money market assets were valued at the $1.00 per share stated value.

8. Keystone and Boston represent that the transactions were not all accomplished on the same date for several reasons. First, the instructions from PB were sent to the two asset managers in two separate fax transmissions, separated by approximately a month. In addition, Boston states that the distributions out of the Plan were delayed because there were multiple accounts, there were questions about the mechanics of the transactions, and because UST had recently become the custodian of the Plan's accounts and it was necessary that UST's records be reconciled.

9. The Applicant has retained an independent investment management firm, R.M. Davis & Company (Davis) of Portland, Maine, as an independent fiduciary to evaluate the initial transactions and to recommend the procedure to be followed in making the Proposed Corrective Distribution from the Plan to protect the interests of the Plan and of its participants and beneficiaries. The Applicant instructed Davis that the Proposed Corrective Distribution must be accomplished in such a manner that the Plan will not suffer any loss due to the transaction, and that an appropriate dollar amount will be retained by the Plan to reflect interest, dividends and capital appreciation, if necessary, to put the Plan in at least as good a position as it would have been in had none of the transfers taken place. In this regard, it should be noted that the Plan held assets with a value of approximately $7,361,664 for slightly less than one month (between the Transfers made in July, 1994 and the August, 1994 Distributions), and that it will also have held $3,614,720 in assets from August 22, 1994 until the completion of the Proposed Corrective Distribution.[3]

[1] The Applicant represents that The Boston Company (Boston), one of the independent investment money managers hired to manage the assets of the Plan, had an internal transaction review process which identified the subject transactions as being prohibited transactions under the Act.

[2] Keystone represents that none of the assets that were transferred from the Plan to the Accounts were subject to its management.

[3] Boston represents that the Plan has earned $314,736.50 in interest on this money as of August 31, 1995.

Keystone represents that the assets transferred into the Plan have appreciated in value to $10,997,547 as of September 13, 1995, an increase of $2,942,305 from August 22, 1994. That appreciation, plus any interest and dividends, will be retained by the Plan so that the maximum Proposed Corrective Distribution will be no greater than $3,614,720, which was the difference in value between the assets transferred into the Plan in July and August, 1994, and distributed out of the Plan in August, 1994. It is intended that the Proposed Corrective Distribution will consist of short-term fixed income securities managed by Boston. The Applicant represents that Boston will select the securities to be transferred out of the Plan, and these securities will be valued by UST as of the date of transfer, with the values being verified by Davis.

10. Davis has reviewed the past and proposed transactions and has determined that PB's general recommendation was prudently arrived at and was in accordance with a policy of diversifying Plan assets. PB's specific recommendation to adjust portfolio balances through a direct exchange between the Plan and the Accounts was also prudently arrived at and was consistent with the best interest of Plan participants and beneficiaries. The methods employed for determining fair market values of the securities were consistent with industry practices, and the transactions have been carried out in a manner protective of the participants and beneficiaries of the Plan.

11. In summary, the Applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The decision to enter into the transactions was made at the recommendation of PB, the Plan's independent investment advisor; (b) the Plan paid no commissions or other fees in connection with the transactions; (c) the transactions, which have all involved publicly-traded securities, have been at fair market value as evidenced by published quotations; (d) Boston and Keystone, independent asset managers of the Plan, selected the securities that were involved in the transactions; (e) the Applicant, upon discovery of the prohibited nature of the transactions, suspended the transactions and promptly applied for an exemption; and (f) Davis, the Plan's independent fiduciary, has reviewed all aspects of the transactions and determined that they were in the best interest of the Plan and of its participants and beneficiaries, and protective of their rights.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Industrial Bank of Japan, Limited, New York Branch (IBJ) Located in New York, New York

[Application Nos. D–10065 and D–10066]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) The proposed granting to IBJ, as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in the Tiger Real Estate Fund, L.P. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

Summary of Facts and Representations

1. The Partnership is a Delaware limited partnership which is organized under an agreement (the Agreement) dated January 31, 1995 for a term expiring on February 1, 2005. The general partner of the Partnership is Tiger Real Estate Partners Management, L.L.C., (the General Partner), a Delaware limited liability company, the managing member of which is Tiger Real Estate Partners, L.L.C., also a Delaware limited liability company. The Partnership has been organized to make investments in a broad range of real estate related assets, portfolios, and companies. Proceeds from the sale or refinancing of properties generally will not be reinvested, but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

2. After execution of the Agreement, the General Partner sought capital commitments through private placement and has obtained, as a result, irrevocable, unconditional capital commitments of at least $500,000,000 from 48 purchasers of limited partnership units (the Limited Partners). The Agreement requires Limited Partners to make capital contributions upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make a call for cash contributions, also known as a ''drawdown,'' up to the total amount of the Limited Partner's capital commitment upon 15 days' notice, subject to certain limitations. The Partners' capital commitments are structured as irrevocable, unconditional, and binding commitments to contribute equity when capital calls are made by the General Partner. The obligation of each Limited Partner to contribute the full amount of its capital commitment is secured by a grant to the Partnership of a security interest in the Limited Partner's partnership interest.

3. In the ordinary course of its business operations, it is contemplated that the Partnership will incur indebtedness in connection with many of its investments. This on-going need for credit is to be provided by the Facility, a 45-month arrangement for $200 million in revolving credit. The Facility will enable the Partnership to consummate investments quickly without the delay of having to finalize the debt/equity structure for an investment or of having to arrange for interim or permanent financing prior to making an investment. IBJ is the administrative agent for a group of Lenders funding the Facility, as well as a participating Lender. The Facility is, for the Partnership, a non-recourse obligation which matures December 30, 1998. The repayment of this obligation is secured by the Partnership's assignment to the Facility of a security interest in each Limited Partner's partnership interest, capital commitment, and the General Partner's right to make drawdowns. As additional security, the Facility will require each Limited Partner to execute a separate agreement (the Security Agreement) granting to IBJ, for the benefit of the Lenders, a security interest and lien in the Limited Partner's partnership interest, and covenanting with IBJ for the benefit of the Lenders, that such Limited Partner will unconditionally honor any drawdown made by IBJ in lieu of the General Partner in accordance with the Agreement to the

full extent of the Limited Partner's unfunded capital commitment.

4. The trusts which hold assets of the Plans (the Trusts) are Limited Partners in the Partnership and therefore own limited partnership interests. Some of the Lenders are parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' (or their affiliates') provision of fiduciary services to such Plans. These fiduciary services are provided with respect to Trust assets other than the Partnership interests.

IBJ is requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Trusts with the largest interests in the Partnership and the extent of their respective capital commitments to the Partnership are described as follows:

(a) *The AT&T Master Pension Trust (the AT&T Trust), Located in New York, New York; State Street Bank and Trust Company, Trustee.* This Trust holds the assets of two defined benefit pension plans sponsored by AT&T—the AT&T Pension Plan and the AT&T Management Pension Plan. The AT&T Trust also holds the assets of some smaller plans sponsored by AT&T affiliates. As of December 31, 1995, the AT&T Trust had a total of 442,240 participants and aggregate assets of $38.25 billion. The AT&T Trust has undertaken a total capital commitment of $100,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the AT&T Trust is David Feldman, Corporate Vice President, of AT&T's Investment Management Organization.

(b) *The Honeywell Master Pension Trust (the Honeywell Trust), Located in Medford, Massachusetts; Boston Safe Deposit and Trust Company, Trustee.* This Trust holds the assets of four defined benefit pension plans. These Plans are the Durham Pension Plan, the Honeywell Retirement Benefit Plan, the Honeywell Protection Services Pension Plan, and the Honeywell Pension Plan for Certain Hourly Employees. As of February 28, 1995, the Honeywell Trust had a total of 82,850 participants and aggregate assets of $2.33 billion. The Honeywell Trust has undertaken a total capital commitment of $20,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the Honeywell Trust is the Honeywell Pension and Retirement Committee.

(c) *The BP America Inc. Retirement Trust (the BP Trust), Located in Cleveland, Ohio; Bankers Trust Company, Trustee.* This Trust holds the assets of two defined benefit pension plans sponsored by BP. These Plans are the BP America Master Hourly Plan for Represented Employees and the BP America Retirement Accumulation Plan. As of December 31, 1993, these Plans had a total of 39,619 participants. The BP Trust also holds the assets of some smaller plans sponsored by BP affiliates. As of December 31, 1993, the BP Trust had aggregate assets of $1.4 billion. The BP Trust has undertaken a total capital commitment of $10,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the BP Trust is Howard H. Harpster, Director, of Pension Investments.

(d) *The IBM Retirement Plan (the IBM Plan), Located in New York, New York.* This Plan is a defined benefit pension plan having 285,951 participants and total assets of $26.7 billion as of February 28, 1995. Assets of the IBM Plan are held in the IBM Retirement Plan Trust (the IBM Trust), of which the Chase Manhattan Bank is the directed trustee. The IBM Trust has undertaken a total capital commitment of $50,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the IBM Trust is the IBM Investment Committee.

(e) *The United States Steel Corporation Plan for Employee Pension Benefits (the USS Plan), Located in New York, New York.* This Plan is a defined benefit pension plan having 148,985 participants and total assets of $8.3 billion as of December 31, 1993. Assets of the USS Plan are held in the USS Special Investments Group Trust (the USS Trust), of which the United States Steel and Carnegie Pension Fund is trustee. The USS Trust has undertaken a total capital commitment of $20,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the USS Trust is the United States Steel and Carnegie Pension Fund.

(f) *The Retirement Plan of Marathon Oil Company (the Marathon Plan), Located in New York.* This is a defined benefit pension plan having 11,969 participants and total assets of $863,677,625 as of December 31, 1993. Assets of the Marathon Plan are held in the MRO USS Special Investments Group Trust (the MRO Trust), of which the United States Steel and Carnegie Pension Fund is trustee. The MRO Trust has undertaken a total capital commitment of $5,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the MRO Trust is the United States Steel and Carnegie Pension Fund.

(g) *The Walt Disney Company Retirement Plan Master Trust (the Disney Trust), Located in Burbank, California; Bankers Trust Company, Trustee.* This trust holds the assets of five defined benefit pension plans. These Plans are the Walt Disney Productions and Associated Companies' Retirement Plan, the Disneyland and Associated Companies' Retirement Plan, the Disney Associated Companies' Retirement Plan, the Walt Disney World Co. and Associated Companies' Retirement Plan, and the Disney Salaried Retirement Plan. As of February 28, 1995, the Disney Trust had a total of 40,000 participants and aggregate assets of $637,000,000. The Disney Trust has undertaken a total capital commitment of $10,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the Disney Trust is the Investment and Administrative Committee of the Walt Disney Company Sponsored Qualified Benefit Plans and Key Employees Deferred Compensation and Retirement Plan.

(h) *The General Mills, Inc. Master Trust (the General Mills Trust), Located in Minneapolis, Minnesota; State Street Bank and Trust Company, Trustee.* This Trust holds assets of eleven defined benefit and deferred compensation pension plans. The Plans in the General Mills Trust are the Retirement Income Plan, the Grain Millers Plan, the Multiple Group Plan, The Restaurant Hourly Plan, the Restaurant Salaried Plan, the Vroman's Bargaining Plan, the Yoplait Hourly Plan, the Yoplait #386 Plan, the Voluntary Investment Plan, the Profit Sharing and Savings Plan, and the Retirement Savings Plan. As of December 31, 1994, the General Mills Trust had a total of 130,000 participants and aggregate assets of $1.42 billion. The General Mills Trust has undertaken a total capital commitment of $5,000,000 to the Partnership. The fiduciary responsible for reviewing and authorizing the investment in the Partnership by the General Mills Trust is the Benefit Finance Committee of General Mills, Inc.

(i) *The Central States, Southeast and Southwest Areas Pension Fund (the Fund), Located in Rosemont, Illinois.* This Plan is a defined benefit plan having 483,794 participants and total assets of $12.16 billion as of December 31, 1994. The Fund has undertaken a total capital commitment of $75,000,000. The fiduciary responsible for reviewing and authorizing the

investment in the Partnership by the Fund is LaSalle Advisors.

(j) In addition, it is possible that one or more other Plans may become Limited Partners at some future time. Therefore, this proposed exemption is intended to cover any such Plan so long as the Plan meets the terms and conditions described herein.

(k) Limited Partners which are not Plans include:

(1) Allstate Insurance Company, which has undertaken a total capital commitment of $25,000,000.

(2) Allstate Life Insurance Company, which has undertaken a total capital commitment of $10,000,000.

(3) Columbia University, which has undertaken a total capital commitment of $10,000,000.

(4) Cornell University, which has undertaken a total capital commitment of $10,000,000.

(5) The Ministers and Missionaries Benefit Board of the American Baptist Churches, which has undertaken a total capital commitment of $20,000,000.

(6) The New York State Common Retirement Fund, which has undertaken a total capital commitment of $75,000,000.

(7) The Commonwealth of Pennsylvania Public School Employes' Retirement System, which has undertaken a total capital commitment of $50,000,000.

(8) Puma, which has undertaken a total capital commitment of $13,500,000.

(9) NC/TREIT, which has undertaken a total capital commitment of $20,000,000.

(10) Endowment Realty Investors II, Inc., which has undertaken a total capital commitment of $25,000,000.

(11) The Oregon Public Employees' Retirement Fund, which has undertaken a total capital commitment of $75,000,000.

(12) Tiger, which has undertaken a total capital commitment of $38,250,000.

5. IBJ represents that the Partnership has obtained an opinion of counsel that the Partnership will constitute an ''operating company'' under the Department's plan asset regulations [29 CFR 2510.3–101(c)] if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[4]

6. IBJ represents that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. IBJ also represents that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. IBJ represents that the only direct relationship between any of the Limited Partners and any of the Lenders will be in the execution of the Security Agreements. All other aspects of the transaction, including the negotiation of all terms of the Facility, are exclusively between the Lenders and the Partnership. IBJ represents that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as Limited Partners to respond to drawdowns up to the total amount of each Plan's capital commitment to the Partnership.

7. IBJ represents that neither it nor any Lender will act in any fiduciary capacity with respect to any Trust's investment in the Partnership and that IBJ is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by the Lenders. The Trust Fiduciaries represent that the Trust's investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor drawdowns made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to IBJ and the Lenders and that the investment by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (b) none of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (c) the Trust Fiduciaries invested in the Partnership on behalf of the Plans with the knowledge that the Security Agreements are required of all Limited Partners investing in the Partnership.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Larson Distributing Co. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Application No. D–10083]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit to the Plan (the Loan) by Larson Distributing Co., Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's investments in annuity accounts maintained with USG Annuity and Life Co. and All American Life Insurance Company (the Annuities), and (2) the Plan's potential repayment of the Loan (the Repayments); provided the following conditions are satisfied:

(A) The Plan does not pay any interest or incur any expenses with respect to the Loan;

(B) The Repayments are restricted solely to the amounts recovered by the Employer on behalf of the Plan (the Recovery Amounts) in litigation concerning the Annuities; and

(C) To the extent the Loan exceeds the total Recovery Amounts, the Repayments shall be waived.

[4] The Department expresses no opinion herein as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3–101.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 47 participants and total assets of $446,784 as of October 31, 1994. The Employer is a Colorado closely-held corporation engaged in the wholesale distribution of floor coverings and building materials, with its principal place of business in Denver, Colorado. The trustees of the Plan are John L. Larson, Sr. and Allen W. Kliewer (the Trustees), each of whom is an officer and director of the Employer.

2. The Plan provides for individual participant accounts and participant-directed investment of the accounts among investment options (the Funds) selected by the Trustees. Commencing October 1987, the Trustees engaged the services of Moore Resources Group, Inc. (MRGI) as a third party administrator of the Plan. MRGI's duties included responsibility for receiving all Plan contributions for distribution and deposit among the Funds in accordance with participant directions. Among the Funds under MRGI's responsibility was the Money Market Annuity Fund, the assets of which included annuity accounts with USG Annuity and Life Co. (USG) and All American Life Insurance Company (All American; together, the Insurers).

3. The Employer represents that from October 1991 through December 1993, MRGI fraudulently deposited into its own account at Norwest Bank in Denver, Colorado, a total of $150,595.24 generated by forging checks and fraudulently surrendering annuities with respect to the Plan's accounts with the Insurers. The Employer details the allegations of fraud and forgery as follows: Twenty one checks, totalling $78,472.71, in Plan contributions payable to USG were deposited into MRGI's account at Norwest Bank and were never paid to USG. Nineteen checks totalling $51,203.52 issued by USG as surrendered annuities, pursuant to forged surrender applications submitted by MRGI, were endorsed by forgery and deposited by MRGI into its account at Norwest Bank. Twelve checks totalling $20,919.01 issued by All American as surrendered annuities, pursuant to forged surrender applications submitted by MRGI, were endorsed by forgery and deposited by MRGI into its account at Norwest Bank. Previously, on May 14, 1991, according to the Employer, MRGI's chief executive officer had forged the signature of one of the Trustees on a letter to USG requesting that all correspondence regarding the Plan be forwarded to MRGI. Furthermore, the Employer states that the Form 5500's for the Plan which were prepared by MRGI and sent to the Employer for review and signature contained false entries with respect to the amount of contributions to the Insurers and the balances of the participant accounts invested with the Insurers. In addition, the Employer represents that the year-end statements sent to Plan participants by MRGI reflected not the actual balances of the individual accounts but an approximation of the amounts which would have been in the participant accounts without the forgeries.

4. The Employer is initiating litigation on behalf of the Plan against MRGI, USG, All American, and Norwest Bank to recover the amounts fraudulently diverted from the Plan as described above (the Litigation). The Employer is paying all court costs and attorneys fees in initiating and pursuing the Litigation. Meanwhile, the Employer wishes to restore to the Plan the amounts of the forged checks and fraudulently surrendered annuities, plus interest, in the form of a loan to the Plan (the Loan). The Employer represents that by making a special contribution to the Plan in the form of the Loan the Plan will be able to recover immediately the amounts sought in the Litigation, and to prevent further lost earnings on the amounts which have been diverted by MRGI. Accordingly, the Employer is requesting an exemption for the Loan, including its potential repayment by the Plan (the Repayments), as described herein.

5. The Employer proposes to execute a written agreement (the Agreement) under which the Employer undertakes the obligation to make a special cash contribution to the Plan (the Special Contribution), which will constitute the Loan principal. The Agreement provides that the Special Contribution is to be made to the Plan only after the grant of the exemption proposed herein, if granted. The amount of the Special Contribution is defined in the Agreement as the amount of the forged checks for contributions and fraudulently surrendered annuity contracts plus an amount to reflect earnings that would have accumulated under the contracts with the Insurers absent the fraud, as determined on the basis of rate information provided by the Insurers. The Agreement requires that the Special Contribution be allocated to the Plan participants in the proportion that their accounts were affected by the fraud and forgery.

With respect to repayment of the Loan (the Repayment), the Agreement provides that the Special Contribution is to be repaid to the Employer only if the Litigation is successful in recovering monetary amounts on behalf of the Plan either through a final judgment or settlement of the Litigation. If the Litigation does not result in any monetary recovery, the Plan shall not reimburse the Employer for any of the Special Contribution. Upon the entry of a final judgment or upon settlement of the Litigation, the Plan shall repay the Special Contribution to the Company in the amount of the lesser of (a) the amount of the Special Contribution plus Litigation costs and attorneys' fees, or (b) the amount actually recovered in the Litigation. If the amount of such recovery is greater than the amount of the Special Contribution plus costs of the Litigation and attorneys fees, the excess recovery shall enure to the benefit of the Plan. If the amount of such recovery is less than the amount of the Special Contribution plus costs of the Litigation and attorneys fees, repayment of the difference will be waived and the Employer will have no further right of reimbursement with respect to the Special Contribution.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Loan will enable the Plan to recover immediately the amounts allegedly diverted, including interest on such amounts as determined by the Insurers, and to prevent further loss of earnings on such amounts; (b) The Plan will not pay any interest or incur any expenses with respect to the Loan; (c) Repayment of the Loan will be restricted to the proceeds, if any, recovered in the Litigation; and (d) To the extent the Loan exceeds the amount recovered in the Litigation, the Repayments will be waived.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Retirement Savings Plan and Trust for Employees of the J.H. Heafner Company, Inc. (the Plan), Located in Lincolnton, North Carolina

[Application No. D–10125]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,

shall not apply to the proposed sale by to the Plan of certain limited partnership units (the Units) in two limited partnerships to the J.H. Heafner Company, Inc. (Heafner), provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) the Plan pays no commissions or other expenses in connection with the transaction; and c) the Plan receives no less than the greater of: (1) its cost for the Units; or (2) the fair market value of the Units on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan established by Heafner under the provisions of section 401(k) of the Code. The Plan currently has 392 participants, and had assets of $5,728,370 as of June 30, 1995. Heafner is a North Carolina corporation which has 30 distribution centers throughout the Southeast involved in the wholesale distribution of tires and automotive equipment and wheels.

2. Among the assets in the Plan are the Units, which are interests in two limited partnerships, which are unrelated to Heafner. Heafner has no interests in either of the partnerships. One partnership is Realty Parking Properties L.P. (RPP), and the second is Atlantic Income Properties (Atlantic). The Plan purchased 1,600 Units in RPP on June 2, 1989 for a purchase price of $40,000. The Plan purchased 5,000 Units in Atlantic on April 5, 1989 for a purchase price of $100,000. The Plan's investment broker, Interstate Johnson Lane, purchased the Units in both partnerships on behalf of the Plan on the open market. There are a total of 1,909,087 units of RPP as of June 30, 1995, so the Plan's Units represent approximately .08% of the total units. There are a total of 508,844 units of Atlantic outstanding, so the Plan's Units represent approximately .98% of the total units. The applicant represents that the Units are non-liquid in nature with no ready market for their sale.

3. The Plan now proposes to sell the Units to Heafner. The applicant represents that the Units are the only non-liquid assets contained in the Plan, except for those invested in the NCNB Real Estate Fund, which the North Carolina National Bank is moving to liquidate itself. Currently, the Plan's trustees have frozen these fixed asset accounts to preserve the principal base for all participants who have money invested in these assets. Due to the non-liquid nature of the assets, there are no allowable distributions currently until the liquidity improves. The applicant represents that the presence of these assets has made Plan administration difficult and that the current freeze is unfair to participants. The applicant represents that before considering a sale to Heafner, the Plan's trustees investigated the possibility of selling the Units on the open market and found that there was no market.

4. The sale price will be the higher of the Plan's cost for the Units or their fair market value as of the date of the sale. Any costs that will be incurred in the proposed transaction will be borne by Heafner. Ms. Denise Liekfet of RPP has represented that as of December 31, 1994, the Units of RPP had an appraised fair market value of $22.50 per Unit, or a total value of $36,000. Since the Plan's cost for these Units was $40,000, Heafner proposes to pay $40,000 to the Plan. Ms. Tammy L. Stempler of ISC Realty Corporation, General Partner of Atlantic has represented that as of March 30, 1995 the Units in Atlantic had an appraised fair market value of $13 per Unit, or a total value of $65,000. Since the Plan's cost for these units was $100,000, Heafner proposes to pay $100,000 to the Plan.[5]

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: a) the sale is a one-time transaction for cash; b) the Plan will pay no commissions or other expenses in connection with the transaction; and c) the sale price will be the higher of the Plan's cost of the Units or the current fair market value of the Units as determined by independent appraisal.

Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 31st day of October, 1995.

U.S. Department of Labor.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration.

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[5] Heafner represents that should the Plan receive greater than the fair market value of the Units, the excess, if treated as a contribution to the Plan, would not cause the Plan to violate sections 401(a)(4), 404 or 415 of the Code.

[Prohibited Transaction Exemption 95–100; Exemption Application No. D–9500 , et al.]

Grant of Individual Exemptions; Fidelity Management Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Fidelity Management Trust Company (FMTC) and its Affiliates (collectively, Fidelity) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–100; Application No. D–9500]

Section I—Exemption for Payment of Certain Fees to Fidelity

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain performance fees (the Performance Fee) to Fidelity by employee benefit plans for which Fidelity provides investment management or discretionary trustee services (the Client Plans) pursuant to an investment management or trust agreement (the Agreement) entered into between Fidelity and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Section III are satisfied. (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts.)

Section II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by Fidelity, provided that the conditions set forth below in Section III are satisfied.

Section III—General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Performance Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of Fidelity (the Independent Fiduciary). Notwithstanding the foregoing, Fidelity may authorize the transfer of cash from a Single Client Account to a Multiple Client Account provided that: (1) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes Fidelity to invest in a Multiple Client Account; (3) Fidelity receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account; (4) a binding commitment to make the transfer to the Multiple Client Account occurs within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event Fidelity's binding commitment to make the transfer occurs more than six months after such fiduciary's decision, Fidelity obtains an additional authorization from the Independent Fiduciary; and (5) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty (60) days of the actual transfer of such assets to the Single Client Account.

(b) The terms of any investment in an Account and of any Performance Fee shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million or, alternatively, be represented by an Independent Fiduciary that is responsible for the investment of at least $50 million in ''plan assets'' subject to the provisions of the Act; and

(2) No Client Plan shall invest, in the aggregate, more than five percent (5%) of its total assets in any Account or more than ten percent (10%) of its assets in all Accounts established by Fidelity.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from Fidelity which disclose all material facts concerning the purpose, structure, and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, the Independent Fiduciary of each Client Plan shall receive the following written information from Fidelity:

(1) Audited financial statements of the Account prepared by independent public accountants selected by Fidelity no later than ninety (90) days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by Fidelity relating to the overall financial position of the Account and, in the case of a Multiple Client Account, the value of such Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to Fidelity during the period covered by such report;

(3) Annual reports indicating the fair market value of the Account's assets

determined using market sources and valuation methodologies acceptable to the Independent Fiduciary of the Client Plan for a Single Client Account or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Section IV(c) below), or if market sources are not available, values determined by a qualified appraiser independent of Fidelity which has been approved by the Independent Fiduciary or Responsible Independent Fiduciaries. However, no independent appraisals shall be required unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to Fidelity shall constitute no more than reasonable compensation.

(g) The Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of Fidelity's removal or resignation, Fidelity shall be entitled to receive a Performance Fee payable either at the time of removal, or in the event of Fidelity's resignation, on the scheduled termination date of the Account, subject to the requirements of paragraph (j) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with market sources or independent appraisals as described in paragraph (k) below), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of Fidelity's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(h) The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Section IV(d). The Independent Fiduciary acting for a Client Plan shall specifically agree in writing with Fidelity, prior to any investment in the Account, that it would be appropriate for the minimum rate of return applicable to the Account to be based upon the rate of change in the consumer price index (CPI) during the period specified in the Agreement, as described in Section IV(d).

(i) For any sale of an asset in an Account which shall give rise to the payment of a Performance Fee to Fidelity prior to the termination of the Account, the sale price of the asset shall be at least equal to a target amount (the Target Amount), as defined in Section IV(e), in order for Fidelity to sell the asset and receive its Performance Fee without further approvals. If the proposed sale price of the asset is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, in which event Fidelity will be entitled to sell the asset and receive its Performance Fee. If the proposed sale price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, Fidelity shall still have the authority to sell the asset, if the Agreement provides Fidelity with complete investment discretion for the Account, provided that the Performance Fee that would have been payable to Fidelity by reason of the sale of the asset is paid only at the termination of the Account.

(j) In the event Fidelity resigns as investment manager or trustee of an Account, the Performance Fee shall be calculated at the time of resignation based upon a deemed distribution of the assets of the Account at their fair market value (determined using market sources or independent appraisals as described in paragraph (k) below). The amount arrived at by this calculation shall be multiplied by a fraction, the numerator of which shall be the sum of the disposition proceeds of all assets in the Account received prior to the termination date plus the fair market value of the assets remaining in the Account on the termination date and the denominator of which shall be the aggregate value of the assets in the Account used in determining the amount of the Performance Fee as of the date of resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to Fidelity on the scheduled termination date of the Account.

(k) With respect to the valuation of the assets in an Account for purposes of determining any Performance Fee based on a deemed distribution of such assets, Fidelity shall establish the fair market value for the assets using market sources and valuation methodologies disclosed to, and approved in writing by, the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account. In the event market sources are not available for the valuation of assets in the Account, the fair market value of such assets shall be determined by an independent qualified appraiser approved by either the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account prior to any valuation of the assets. If a new appraiser for an asset is chosen by Fidelity, the appraiser shall be approved by such Fiduciaries prior to any valuation of the asset. In any event, the fair market value of all assets involved in any deemed distribution shall be based on the current market value of such assets as of the date of the transactions giving rise to the payment of the Performance Fee.

(l) Fidelity shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) of this Section III shall be unconditionally available at their customary location for examination during normal business by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to any Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of any Client Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1) (ii)–(iv) shall be authorized to examine the trade secrets of Fidelity or any commercial or financial information which is privileged or confidential.

Section IV—Definitions

(a) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''Responsible Independent Fiduciaries'' means with respect to a Multiple Client Account the Independent Fiduciary of Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of Fidelity and that collectively hold at least 50% of the interests in the Account.

(d) The term ''Threshold Amount'' means with respect to any Performance Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the CPI during the period from the deposit of the Client Plan's assets in the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the average annual rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(e) The term ''Target Amount'' means a value assigned to each asset in the Account established by Fidelity either (1) at the time the asset is acquired, by mutual agreement between Fidelity and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the asset.

(f) The term ''Account'' means any Single Client Account or Multiple Client Account established with Fidelity, under a written investment management or trust agreement, that is invested primarily (i.e. more than 50%) in securities or other assets which are not publicly-traded equity securities or publicly-traded, investment grade debt securities, pursuant to written instructions and guidelines established and approved by an Independent Fiduciary for the Client Plan prior to any investment by the Client Plan in the Account. For purposes of an ''Account'' meeting the 50% test for assets which are not ''publicly-traded equity securities'' or ''publicly-traded, investment grade debt securities'', any private market securities held by the Account that become publicly-traded securities shall not be considered as such for a period of thirty (30) months following the date such securities become publicly-traded so as to allow Fidelity sufficient time to dispose of such securities in order for the Account to remain primarily invested in assets which are not publicly-traded securities, including for such purposes any publicly-traded debt securities which are not investment grade.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on June 15, 1995, at 60 FR 31501.

Written Comments and Modifications

The Department received one comment letter from interested persons regarding the Proposal. The comment letter was from Russell L. Olson, Director, Pension Investment, Worldwide, Eastman Kodak Company in Rochester, New York (the Commenter).

The Commenter made two recommendations regarding the conditions contained in the Proposal.

First, the Commenter notes that Section III(c)(1) of the Proposal requires that each Client Plan must have total net assets with a value in excess of $50 million. The Commenter states that the Proposal's language would foreclose the use of such a Fidelity performance-fee based Account to a small pension fund whose named fiduciary is the same as that which is named fiduciary of a multi-billion dollar pension fund, but with which the smaller pension fund is not commingled. The Commenter believes that such an Account may be equally as appropriate for the small pension fund as for the large, provided that the smaller pension fund is represented by a sophisticated fiduciary. Thus, the Commenter recommends that Section III(c)(1) be revised to require only that each Client Plan be represented by an Independent Fiduciary that is responsible for the investment of more than $50 million of ''plan assets'' subject to the provisions of the Act.[1]

Second, the Commenter notes that Section III(i) of the Proposal requires, in pertinent part, that

> ''* * * If the proposed sale price of an asset is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary * * * or [if the] Independent Fiduciary's * * * approval is not obtained, Fidelity shall still have the authority to sell the asset, if the Agreement provides Fidelity with complete investment discretion for the Account, provided that the Performance Fee that would have been payable to Fidelity by reason of the sale of the asset is paid only at the termination of the Account.''

The Commenter recommends that this provision be eliminated. In this regard, the Commenter states that this condition would make it more cumbersome for Fidelity to sell a less successful investment. The Commenter represents that, as an investor, it would view any such impediment as counter to the best interest of plan participants.

By letter dated August 16, 1995, Fidelity responded to the comments made by the Commenter. Fidelity expressed support for the Commenter's suggested revisions to the Proposal to the extent the Department would be willing to adopt such changes. However, Fidelity noted that it would also be willing to accept an exemption as proposed on these issues to avoid any material delay in the processing of a final exemption.

With respect to the first recommendation made by the Commenter, and Fidelity's response thereto, the Department believes that a Client Plan's interests in connection with the proposed payment of Performance Fees to Fidelity should be represented by an Independent Fiduciary which has sufficient knowledge, experience and expertise to enable such fiduciary to adequately protect the interests of the Client Plan.[2]

[1] See 29 CFR 2510.3–101 for the Department's regulations defining ''plan assets'' that are subject to Title I of the Act.

[2] As noted in Footnote 3 of Paragraph 3 in the Summary of Facts and Representations in the Proposal, the Department expects a plan fiduciary, prior to entering into any performance-based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with the compensation formula

Thus, the Department believes that the Commenter's recommendations have merit as long as the Client Plan's interests are protected by a sophisticated fiduciary that is thoroughly familiar with the Performance Fee arrangement and monitors such arrangement for the Client Plan. In this regard, the Department expects that a particular sophisticated fiduciary which initially acts for a Client Plan as an Independent Fiduciary for the Plan's approval of a Performance Fee for Fidelity should continue to serve in that role throughout the duration of such Plan's participation in the Account.

Therefore, the Department has determined to modify the language of Section III(c)(1) as follows:

''* * * Each Client Plan shall have total net assets with a value in excess of $50 million or, alternatively, be represented by an Independent Fiduciary that is responsible for the investment of at least $50 million in ''plan assets'' subject to the provisions of the Act. [emphasis added]

With respect to the second recommendation made by the Commenter, and Fidelity's response thereto, the Department does not believe that elimination of requirements in Section III(i) of the Proposal is warranted. In general, the Department views the payment of a Performance Fee as a reward for superior investment performance for assets acquired by an Account. The ''Target Amount'' concept (as defined in Section IV(e) of the Proposal) ensures that Fidelity will only receive a Performance Fee if each particular asset has at least reached its intended or ''targeted'' value at the time of sale. Thus, the Department believes that after the Threshold Amount (as defined in Section IV(d) of the Proposal) has been reached, the sale of any asset by an Account at a price which is less than the Target Amount established for such asset should not entitle Fidelity to the receipt of a Performance Fee at the time of sale unless an Independent Fiduciary is made aware of, and specifically approves, the sale at that time. Accordingly, the Department has determined not to adopt the Commenter's recommendations with respect to the provisions of Section III(i) of the Proposal.

In addition to the issues raised by the Commenter, the applicant (i.e. Fidelity) submitted the following comments and/or requests for modifications regarding the Proposal.

First, Fidelity states that Section III(e)(3) of the Proposal requires, in pertinent part, that no independent appraisals will be required for assets acquired for an Account within the twelve (12) months preceding the end of the period covered by the report, unless such appraisals are necessary for purposes of determining any compensation due to Fidelity based on the value of the assets in the Account for that period. Fidelity notes that this condition seems to suggest that independent appraisals will be required for assets after the twelve (12) month period mentioned therein, even where Fidelity's fees are not based on the value of the assets in the Account. In this regard, Fidelity states that in certain instances it's Base Fee for an Account may be based on the amount of capital invested in the Account, rather than on the value of the assets in the Account [see Footnote 7 in Paragraph 5 of the Summary of Facts and Representations (the Summary) in the Proposal]. Thus, Fidelity requests that the words ''* * * for assets acquired for the Account within the twelve (12) months preceding the end of the period covered by the report * * *'' in Section III(e)(3) of the Proposal be deleted in order to clarify that no appraisals will be required for assets held in an Account *at any time* unless compensation payable to Fidelity is based on the ''value'' of the assets in the Account.

The Department concurs with Fidelity's requested clarification and has so modified the language of the Proposal.

Second, with respect to the condition set forth in Section III(j) dealing with the calculation and payment of any Performance Fee in the event Fidelity resigns as investment manager or trustee of an Account, Fidelity states that there is a fraction which is used to reduce the amount of the Performance Fee calculated at the time of resignation to reflect the ultimate value realized by the Account for the assets held in the Account at the time of resignation. The numerator of this fraction equals the sum of the disposition proceeds of all assets in the Account received prior to the termination date of the Account plus the fair market value of the assets remaining in the Account on the termination date. In this regard, Fidelity wishes to clarify for the record that the disposition proceeds which would be included in the numerator of this fraction are disposition proceeds which are received on and after the date of resignation and which arise from the disposition of assets which were included in the Account on the resignation date. However, Fidelity does not believe that any change is required to the language of Section III(j) of the Proposal.

The Department notes the applicant's clarification.

Third, Fidelity states that the first sentence in Footnote 6 in Paragraph 4 of the Summary requires a minor clarification. Footnote 6 states that an Account will not invest in or use any swap transactions (including caps, floors, collars, or options relating thereto), forward contracts, exchanged-traded futures transactions, or options (other than covered call options). Fidelity's comment letter reaffirms its previous representation regarding the exclusion of swap transactions, forward contracts, and exchanged-traded futures transactions. However, Fidelity states that the exclusion with respect to the use of all ''options'' (which do not relate to swap transactions), as stated in Footnote 6, is too broad. In this regard, Fidelity represents that an Account may need to either: (i) Purchase an option to permit the Account to acquire an asset from, or sell an asset to, a third party at a later date, or (ii) sell an option which permits a third party to acquire an asset owned by the Account at a later date (i.e. so-called ''covered'' call options). In addition, Fidelity represents that an Account may need to enter into certain contracts which require the Account to acquire or sell, and a third party to sell or acquire, an asset owned or to be acquired by the Account at a later date. Specifically, Fidelity states that an Account may use such options, or enter into such contracts, to acquire or sell the following: (i) Real estate; (ii) mortgages; (iii) interests in real estate; (iv) partnership interests; (v) joint venture interests; (vi) securities which are not publicly-traded at the time of purchase; or (vii) loans or other debt instruments (whether or not considered ''securities'') which are not rated as investment grade. Fidelity states further that an Account will not use any ''exchange-traded'' options or options which relate to either publicly-traded equity securities or publicly-traded investment grade debt securities. Finally, Fidelity states that in no event will an Account engage in the sale of any ''naked'' options.

The Department notes the applicant's clarification.

No other comments on the Proposal, and no requests for a hearing, were received by the Department during the comment period.

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following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties and must consider, prior to entering into the arrangement, whether such plan fiduciary is able to provide oversight of the investment manager during the course of the arrangement.

Accordingly, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Michael Elkin Individual Retirement Account (the IRA) Located in New York, New York

[Prohibited Transaction Exemption 95–101; Application No. D–10022]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase for cash of a certain limited partnership interest in the Medallion Fund (the Interest) by the IRA from Michael Elkin, a disqualified person with respect to the IRA,[3] provided the following conditions are met:

(a) The purchase is a one-time transaction for cash;

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA pays no more than the fair market value of the Interest, as established by an independent qualified appraiser at the time of the transaction;

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the transaction; and

(e) The fair market value of the Interest is based on an independent valuation of the total net asset value of the Fund and does not represent more than 25% of the total assets of the IRA at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption Notice published on September 21, 1995, 60 FR 49022.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

The Age-Based Profit Sharing Plan and Trust of Carolina OB–GYN Care, P.A. (the Plan) Located in Spartanburg, South Carolina

[Prohibited Transaction Exemption 95–102; [Application No. D–10061]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the individual account (the Account) in the Plan of James C. Montgomery, M.D., of a parcel of real property (the Property) to Dr. Montgomery, a party in interest with respect to the Plan, and the assumption by Dr. Montgomery of the Account's current indebtedness with respect to the Property, provided that the following conditions are satisfied: (a) The purchase price is the greater of $120,000 or the fair market value of the Property as of the date of the sale; (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale; and (c) the Account pays no commissions or other expenses relating to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 1995 at 60 FR 49425.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 31st day of October, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–27296 Filed 11–2–95; 8:45 am]

BILLING CODE 4510–29–P

[3] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–096]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Subcommittee on Propulsion Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

DATES: November 30, 1995, 8:30 a.m. to 5 p.m.; and December 1, 1995, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. James Afarin, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–6753.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview
—NASA Aeropropulsion Program Overview and Status

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: October 30, 1995.

Phillip I. Chait,

GAO/OIG Audit Team Leader, Management Controls Office.

[FR Doc. 95–27312 Filed 11–2–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–097]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: December 5, 1995, 8:30 a.m. to 4:30 p.m.; December 6, 1995, 8:30 a.m. to 4:30 p.m.; and December 7, 1995, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—NASA Actions on Committee's Previous Recommendations
—NASA Aeronautics Program Overview
—NASA Human Factors Overview
—Updates on Ames Research Center and Langley Research Center Programs

- Human Factors R&T Base
- Human Factors of Focused Programs

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 31, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–27313 Filed 11–2–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (''PRMPA'', 44 U.S.C. 2111 note) and section 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning December 19, 1995. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal or constitutional right or privilege which would prevent or limit access to these materials should notify the Archivist of the United States in writing of the claimed right or privilege before December 11, 1995.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 8601 Adelphi Road, College Park, Maryland.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Supervisory Archivist, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 28 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the twelfth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; May 17, 1993; July 15, 1993; and January 12, 1995.

Some of the materials designated for opening on December 19, 1995, are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumeric file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files that will be made available to the public on December 19, 1995.

Subject category	Volume (cubic feet)
Federal Government (FG)	23.4
FG 76 Appalachian Regional Commission	
FG 77 Atlantic—Pacific Interoceanic Canal Study Commission	
FG 78 Atomic Energy Commission	
FG 80 Board of Actuaries	
FG 81 Board of Examiners for the Foreign Service	
FG 82 Board of Foreign Scholarships	
FG 83 Board of Foreign Service	
FG 84 Board of Geographic Names	
FG 85 Business Council	
FG 86 Cabinet Committee on Balance of Payment (Also known as: Balance of Payment Advisory Committee)	
FG 87 Canal Zone Government	
FG 89 Coastal Plains Regional Commission	
FG 100 Committee for the Preservation of the White House	
FG 101 Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped	
FG 102 Communication Satellite Corporation	
FG 103 Corporation for Public Broadcasting	
FG 104 Delaware River Basin Commission	
FG 105 Distinguished Civilian Service Awards Board	
FG 115 Federal Advisory Council on Regional Economic Development	
FG 116 Federal Coal Mine Safety Board of Review	
FG 117 Federal Committee on Pest Control	
FG 120 Federal Deposit Insurance Corporation	

Subject category	Volume (cubic feet)
FG 121 Federal Election Campaign Fund Advisory Board	
FG 122 Federal Executive Boards	
FG 123 Federal Fire Council	
FG 124 Federal Home Loan Bank Board	
FG 125 Federal Interagency Committee on Education (FICE)	
FG 126 Federal Maritime Commission	
FG 127 Federal Mediation and Conciliation Service	
FG 128 Federal Mortgage Association	
FG 129 Federal Power Commission	
FG 130 Federal Radiation Council	
FG 132 Federal Safety Council	
FG 133 Federal Trade Commission	
FG 148 Interdepartmental Highway Safety Board	
FG 149 Interdepartmental Committee for Voluntary Payroll Savings Plan for the Purchase of United States Savings Bonds	

Nine files designated for opening on December 19, 1995, are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files are usually filed by subject in the Subject Files. Name Files relating to nine individuals will be opened on December 19, 1995:

	Volume (cubic feet)
White House Central Files:	
Alpha Name Files	2.7
Lamar Alexander	
Patrick J. Buchanan	
Robert J. Dole	
John Kasich	
Frank W. Lecjaks	
Richard G. Lugar	
H. Ross Perot	
Colin L. Powell	
Laurance S. Rockefeller	

A number of documents which were previously withheld from public access have been re-reviewed for release and/or declassified under the Mandatory Review provisions of Executive Order 12356 and will be made available to the public on December 19, 1995.

	Volume (cubic feet)
Previously restricted materials.	1.5

Public access to some of the items in the file segments will be restricted in accordance with 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: October 25, 1995.

John W. Carlin,

Archivist of the United States.

[FR Doc. 95–26996 Filed 11–2–95; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL EDUCATION GOALS PANEL

National Education Goals Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATES: November 9, 1995 from 9:30 a.m.–11 a.m.

ADDRESSES: Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, N.W., Washington, D.C. 20001. All entrances to the hotel are accessible for persons with disabilities.

FOR FURTHER INFORMATION CONTACT: William C. Noxon, Public Information Officer, 1255—22nd Street, N.W., Suite 502, Washington, DC 20037, Telephone: (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes: a discussion of the impact of the National Education Goals on American education; a review of the 1995 Goals Panel Report to the nation; the creation of a resource group for benchmarking academic standards; a strategic plan for data collection; a legislative update; and, the announcement of the 1995–96 initiatives of the incoming Chair. The new Chair for 1995–96 will be announce.

Records are kept of all proceedings and are available for inspection at the Goals Panel office, 1255—22nd Street, N.W., Suite 502, Washington, D.C. 20037.

Dated: October 27, 1995.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 95–27286 Filed 11–2–95; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary) Publishing: Assistance to Literary Magazines Section) to the National Council on the Arts will be held on November 29–30, 1995. The panel will meet from 9 a.m. to 6:30 p.m. on November 29 and from 9 a.m. to 5 p.m. on November 30. This meeting will be held in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on November 30, for a policy discussion and guidelines review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on November 29 and from 9 a.m. to 3:30 p.m. on November 30 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yuonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5433.

Dated: October 30, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–27331 Filed 11–2–95; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on November 13–14, 1995, from 9 a.m. to 5 p.m. This meeting will be held in Room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility National Endowment for the Arts, 1100 Pennsylvania NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: October 30, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–27332 Filed 11–2–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Correction To Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Consideration

On October 25, 1995, the Federal Register published the BiWeekly Notice of Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations. On page 54718, Column 1, Duke Power Company, McGuire Nuclear Station, under *Description of amendment request,* midway thru the first paragraph, the line ''* * * into section 6.9.2 of the Oconee TS.'' should read ''* * * into Section 6.9.1.9 of the McGuire TS.''

Dated at Rockville, Maryland, this 27th day of October 1995.

For The Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27292 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

National Institutes of Health; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated October 10, 1995, Dr. Maryann Wenli Ma and Dr. Bill Wenling Zheng (Petitioners) have requested that the NRC take immediate action with regard to the National Institutes of Health (NIH). The Petitioners request that materials license No. 19–00296–10 held by NIH be suspended or revoked pending resolution of the issues raised in the Petition, and that other appropriate enforcement action be taken against NIH.

As a basis for their request, the Petitioners assert that NIH has willfully, recklessly, or deliberately committed numerous violations of 10 CFR Part 20. Broadly stated, the Petitioners assert that, as a result of NIH's failure to control and secure radioactive materials, maintain an effective bioassay program and otherwise adhere to the requirements of 10 CFR Part 20, Dr. Ma was contaminated with phosphorous-32 (P–32) resulting in both her and her unborn fetus receiving intakes of radioactive material significantly in excess of regulatory limits; that additional NIH employees also were internally contaminated with P–32; and that NIH failed to take proper actions to assess accurately the level of Dr. Ma's internal contamination or provide appropriate medical care and follow-up treatment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. By letter dated October 30, 1995, the Petitioners' request that license No. 19–00296–10 held by NIH be suspended or revoked pending resolution of the issues discussed in the Petition was denied. Action will be taken on the remaining aspects of the petition, pursuant to Section 2.206, within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555.

Dated at Rockville, Maryland this 30th day of October 1995.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27293 Filed 11–2–95; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

COMMENTS ARE INVITED ON: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

TITLE AND PURPOSE OF INFORMATION COLLECTION: Railroad Separation Allowance or Severance Pay Report. Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward

retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. In order to provide these payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 on a quarterly basis, to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. All reports contain a one-line entry for each such payment or adjustment. Minor editorial changes are being proposed to Form BA–9.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual re-sponses	Time (min)	Burden (hrs)
BA–9	7,500	75	9,375

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Office at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–27281 Filed 11–2–95; 8:45 am]

BILLING CODE 7905–01–M

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

Name of participating agencies: Office of Personnel Management and Railroad Retirement Board.

Purpose of the match: The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Presently the RRB relies on the affected annuitant to report adjustments in the amounts of such public pension benefits.

Authority for conducting the match: Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

Categories of records and individuals covered: The records to be used in the match and the roles of the matching participants are described as follows: OPM will provide RRB twice a year with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.3 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Master Benefit Files. The Privacy Act System of Records designations for these files are: RRB–25, ''Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act,'' and RRB–26, ''Research Master Record for Retired Railroad Employees and Their Dependents.'' For records that are matched, the RRB will extract the civil service payment information.

Inclusive dates of the matching program: The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the Federal Register, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: October 27, 1995.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–27282 Filed 11–2–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36432; File No. SR–CHX–95–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Agency Crosses Between the Disseminated Exchange Market

October 27, 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 October 11, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' 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 17, 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 proposes to amend interpretation and policy .01 to Rule 23 of Article XX of the Exchange's Rules relating to agency crosses between the disseminated Exchange market. The text of the proposed rule change is as follows [deleted text is bracketed]:

Article XX, Rule 23

Rule 23. No Change.

* * * Interpretations and Polices

.01 A specialist must refrain from interfering at the cross price with an agency cross [of 10,000 shares or greater] which is to be effected at a price between the disseminated Exchange market in existence at the time the broker arrives at the post; provided, the broker has not previously solicited the specialist's assistance in consummating any part of the trade. However, the specialist may participate if he or she is willing to better one side of the cross.

A specialist who has a disseminated bid or offer at the cross price shall be allowed to participate at the cross price in a size greater then specialist is disseminating.

In no event shall an agency order in the book, having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

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

1. Purpose

On March 3, 1994, the Commission approved a proposed rule change submitted by the Exchange relating to the execution of agency cross transactions at a price between the disseminated Exchange market.[2] Specifically, that rule required a CHX specialist to refrain from interfering with a floor-brokered agency cross of 10,000 shares or more at a cross price *between* the disseminated Exchange market.

The purpose of this proposed rule change is to require a CHX specialist to refrain from interfering with all floor-brokered agency crosses *regardless of size,* at a cross price between the disseminated Exchange market. As before, the specialist is obligated to satisfy all orders on the book with priority at the cross price. In addition, as before the specialist can participate if he or she has a *disseminated* bid or offer *at* the cross price, regardless of the size of the quote, and a specialist can participate if he or she is willing to provide one side of the cross with a better price.

The proposed rule change will increase the possibility of immediate execution for agency crosses on the Exchange. This, in turn, will improve the Exchange's ability to compete for order flow and will enhance the depth and liquidity of the Exchange market.

In terms of auction market principles, the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the Exchange and the proprietary trading operations of Exchange members and member organizations, including specialists.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so funding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 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

[1] *See* letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Team Leader, SEC, dated October 13, 1995. Amendment No. 1 corrects the text of Exhibit A to the filing, which sets forth the text of the proposed rule change, by adding a sentence that had been inadvertently omitted from Exhibit A as initially filed.

[2] *See* Securities Exchange Act Release No. 33708 (Mar. 3, 1994), 59 FR 11339 (File No. SR–MSE–93–05).

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 NW., Washington, D.C. 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–CHX–95–24 and should be submitted by November 24, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27275 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36429; File No. SR–PHLX–95–35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Routing and Delivery of Broker-Dealer Orders in USTOP 100 Index Options Through the Automated Options Market System

October 27, 1995.

On May 22, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 proposal to amend its rules to allow the orders of PHLX member and non-member broker-dealers in USTOP 100 Index (''TPX'') options to be routed and delivered through the Exchange's Automated Options Market (''AUTOM'') system and executed manually. The broker-dealer TPX option orders will not be eligible for AUTO–X, the automatic execution feature of AUTOM.

Notice of the proposal appeared in the Federal Register on July 11, 1995.[3] No comments were received on the proposed rule change.[4]

Currently, only public customer orders for up to 500 options contracts are eligible for AUTOM[5] and public customer orders for up to 25 contracts, in general, are eligible for AUTO–X,[6] the automatic execution feature of AUTOM.[7] AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,[8] is an on-line system that allows electronic Delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor. AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO–X are handled manually by the specialist.

The purpose of the proposal is to permit TPX orders for the accounts of broker-dealers to be delivered through AUTOM. Although broker-dealer TPX option orders will be delivered through AUTOM, they will not be eligible for AUTO–X.

The PHLX believes that extending AUTOM to broker-dealer TPX option orders will allow additional orders to benefit from AUTOM's prompt and efficient electronic order delivery and reporting. This, in turn, should add liquidity to the PHLX's marketplace for TPX options buy encouraging broker-dealer orders who seek such automated order routing treatment. As noted above, AUTO–X will not be available for broker-dealer TPX Orders; all such broker-dealer TPX orders will be handled manually by the specialist.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[9] Specifically, the Commission believes that allowing broker-dealers to use AUTOM for TPX options orders will facilitate the efficient handling and reporting of broker-dealer orders in TPX options, thereby improving TPX order processing and turnaround time. In addition, by providing increased order routing efficiencies for broker-dealer TPX orders, the proposal may help to attract broker-dealer TPX orders, and thus help to improve the depth and liquidity of the market for TPX options.

Under the proposal, broker-dealer TPX orders will not be eligible for AUTO–X; thus, only public customer orders will continue to receive the benefits of AUTO–X, including immediate executions at the displayed market quote and nearly instantaneous confirmations. The Commission notes that limiting AUTO–X to public customer orders is consistent with the Exchange's current practice.

In addition, based upon representations by the PHLX, the Commission believes that the AUTOM system has sufficient capacity to handle broker-dealer TPX orders and, therefore, that the proposal will not expose the PHLX's options markets to the risk of failure or operational break-down.[10]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35925 (June 30, 1995), 60 FR 35771.

[4] On September 26, 1995, the PHLX represented that the Exchange's AUTOM system has sufficient capacity to accommodate the additional message traffic that will result from routing broker-dealer TPX orders through AUTOM. *See* Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Office of Market Supervision, Commission, dated September 26, 1995 (''September 26 Letter'').

[5] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (File No. SR–PHLX–95–30).

[6] Recently, the Commission approved a proposal increasing the maximum number of public customer orders in USTOP 100 Index options that are eligible for AUTO–X from 25 to 50 contracts. *See* Securities Exchange Act Release No. 35781 (May 30, 1995) (order approving File No. SR–PHLX–95–29).

[7] The Commission has approved a PHLX proposal to codify the use of AUTOM and AUTO–X for index options. *See* Securities Exchange Act Release No. 34920 (October 31, 1994), 59 FR 5510 (November 7, 1994) (order approving File No. SR–PHLX–94–40). In addition, the Commission has approved a PHLX proposal to codify the Exchange's practice of accepting certain orders for AUTOM and AUTO–X. *See* Securities Exchange Act Release No. 35601 (April 13, 1995), 60 FR 19616 (April 19, 1995) (order approving File No. SR–PHLX–95–18).

See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR–PHLX–94–41). *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR–PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR–PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR–PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR–PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR–PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR–PHLX–90–34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR–PHLX–91–31, permitting AUTO–X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR–PHLX–91–33, permitting AUTO–X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR–PHLX–90–03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR–PHLX–92–38, permitting AUTO–X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR–PHLX–93–57, extending pilot through December 31, 1994).

[9] 15 U.S.C. 78f and 78k–1 (1988).

[10] *See* September 26 Letter, *supra* note 4.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,.[11] that the proposed rule change (SR–PHLX–95–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27277 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26401; 70–8411]

Allegheny Power System, Inc., Supplemental Order Authorizing Acquisition of Nonutility Subsidiaries; Issuance of Securities; and Provision of Services to Associates

October 27, 1995.

Allegheny Power System, Inc. (''APS''), a registered holding company, AYP Capital, Inc. (''AYP''), a nonutility subsidiary company of APS, and Allegheny Power Service Corporation (''APSC''), all of New York, New York, have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 45, 53, 87, 90 and 91 thereunder. The Commission issued a notice of the filing of the post-effective amendment on July 7, 1995 (HCAR No. 26327).

By order dated July 14, 1994 (HCAR No. 26085), APS was authorized to organize and finance AYP to invest in: (i) Companies engaged in new technologies related to the core utility business of APS and (ii) companies for the acquisition and ownership of exempt wholesale generators (''EWGs'').

By order dated February 3, 1995 (HCAR No. 26229), AYP was authorized to engage in the development, acquisition, construction, ownership and operation of EWGs and in development activities with respect to: (i) Qualifying cogeneration facilities and small power production facilities (''SPPs''); (ii) nonqualifying cogeneration facilities, nonqualifying SPPs and independent power production facilities (''IPPs'') located within the service territories of APS public utility subsidiary companies; (iii) EWGs; (iv) companies involved in new technologies related to the core business of APS; and (v) foreign utility companies (''FUCOs''). AYP was also authorized to consult for nonaffiliate companies. APS was authorized to increase its investment in AYP from $500,000 to $3 million.

The post-effective amendment, as amended, seeks Commission authorization to allow APS and AYP to engage in several activities. A total of $300 million in financing also is sought.

First, the post-effective amendment seeks Commission authorization to allow AYP or a special-purpose subsidiary (''NEWCO'') to provide energy management services (''EMS'') and demand side management (''DSM'') services to nonassociates at market prices and to associate companies at cost. The amended application states that the EMS would include: (i) Identification of energy cost reduction and efficiency opportunities; (ii) design of facility and process modifications to realize such efficiencies; (iii) management of or the direct construction or installation of energy conservation equipment; (iv) training of client personnel in operation of equipment; (v) maintenance of energy systems; (vi) design, management, construction and installation of energy management systems and structures; (vii) performance contracts; (viii) identifying energy conservation or efficiency programs; (ix) system commissioning; (x) reporting system results; and (xi) other similar or related energy management activities.

The DSM services would include: (i) Design of energy conservation programs; (ii) implementation of energy conservation programs; (iii) performance contracts for DSM work; (iv) monitoring and evaluating DSM programs; and (v) other similar or related DSM activities.

With respect to EMS and DSM services, AYP and the NEWCO would finance, either through direct loans or leases of EMS and DSM facilities and equipment purchased by AYP and the NEWCO, EMS and DSM equipment provided to EMS and DSM customers. AYP and the NEWCO might retain title to the EMS and DSM facilities and equipment. Loans would enable customers to purchase goods and services from third parties on their own terms and conditions. Loans would be evidenced by promissory notes.

The Commission previously has authorized registered holding companies to form and finance special-purpose subsidiaries to engage in EMS and DSM services.[1] For example, the Commission authorized in December 1992 the formation by Entergy Corporation of a non-utility subsidiary to acquire an interest in Systems and Service International, Inc. for $6.4 million and to engage in DSM in Arkansas, Louisiana, and Mississippi.[2] The Commission also previously has authorized such subsidiaries to engage in construction activities relative to EMS and DSM services.[3] Finally, it previously has authorized loans from special-purpose subsidiaries to EMS and DSM customers for EMS and DSM services.[4] Specifically, it has authorized Southern Development and Investment Group, Inc. (''Development'') to invest up to ''$40 million to finance the costs of equipment or provide customer financing of equipment in connection with energy management and efficiency services provided by Development.''[5]

Although the Commission previously has imposed limitations on EMS and DSM services offered by special-purpose subsidiaries, it has recently departed from this practice in appropriate cases.[6]

Second, the post-effective amendment seeks Commission authorization to allow AYP to engage in activities related to the development, acquisition, ownership, construction and operation of FUCOs and to invest in FUCOs through various types of investment vehicles, including limited partnerships or other types of funds, the sole objective of which is to make investments in one or more FUCOs.

The Commission previously has authorized investments in FUCOs through various types of investment vehicles. For example, the Commission has authorized TriStar Ventures Corporation (''TriStar''), a nonutility subsidiary company of Columbia Gas System, to form, acquire, finance and own securities or interests in FUCOs directly or indirectly through special-purpose domestic corporations, foreign corporations, partnerships, limited liability companies, and joint ventures.[7]

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[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1994).

[1] EUA Cogenex Corp., Holding Co. Act Release No. 25697 (Dec. 9, 1992) (acquisition of New England Sun Control, Inc.); Northeast Utilities, Holding Co. Act Release No. 25114–A (July 27, 1990) (acquisition of HEC Energy Corp.); Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (acquisition of Citizens Heat and Power Corp.); Central and South West Corp., Holding Co. Act Release No. 23818 (Sept. 4, 1985) (joint venture with Time Energy Management System Southwest, Inc.).

[2] Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

[3] HEC, Inc., Holding Co. Act Release No. 26108 (Aug. 19, 1994).

[4] Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995).

[5] *See also* Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

[6] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); Central and South West Corp., Holding Co. Act Release No. 26367 (Sept. 1, 1995).

[7] Columbia Gas System, Holding Co. Act Release No. 26209 (Dec. 29, 1994). *See also* Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994)

Continued

Third, the post-effective amendment seeks Commission authorization to allow APS and AYP to acquire the securities of NEWCOs that own FUCOs or EWGs (''Project NEWCOs''). Project NEWCOs might be organized to facilitate bids or proposals to acquire interests in FUCOs and EWGs, after awards of bid proposals to facilitate closing on the purchases, or subsequent to acquisitions of interests to effect adjustments in the ownership interests of unaffiliated co-investors, to facilitate partial sales of interests, to comply with applicable laws of foreign jurisdictions, or to limit exposure to U.S. and foreign taxes as part of tax planning.[8]

Fourth, the post-effective amendment seeks Commission authorization to factor the accounts receivable of associate companies and of nonassociate companies whose primary revenues are derived from the sale of electric power.

AYP (or one NEWCO engaged in this activity) will limit the acquisition of receivables from nonassociate companies so that the trailing twelve-month average amount of nonassociate company receivables held as of the end of any calendar month will be less than the trailing twelve-month average amount of receivables acquired from APS associate companies and held as of the end of such calendar month.

AYP or the NEWCO will purchase accounts receivable from associate or nonassociate companies on the day that such accounts receivable become due and payable. Purchases from utility subsidiary companies of APS will be made at discounts which are competitive to those of other entities providing comparable factoring services. Accounts receivable will be assigned to AYP or the NEWCO on a nonrecourse basis, except to the extent that such receivable is invalid, in which instances AYP or the NEWCO will bear the risk of the uncollectability of the account. Each company from which accounts receivable are purchased is expected to be appointed to act as collection agent in respect of such account receivables.

The Commission previously has authorized the factoring of accounts receivable of both associate and nonassociate companies.[9] The Commission, in July 1986, authorized CSW Credit, a special-purpose subsidiary of a registered holding company, to process the accounts receivable of nonassociate companies. As in this application, fifty percent of the accounts receivable processed by CSW Credit were required to be from associate companies. In March 1994, the Commission affirmed the ''fifty-percent'' limitation in a denial of an application for approval to exceed the standard.[10]

Fifth, and finally, the post-effective amendment seeks Commission authorization to allow AYP or a NEWCO, as agent for APS system companies, to manage the real estate portfolio of APS and its associate companies, to market excess or unwanted real estate, and to facilitate the exploitation of resources contained on or in real estate. No real estate will be purchased by AYP in connection with these activities. In addition, the net proceeds realized from any sale of real estate or from the exploitation of resources thereon, which resources include timber, oil, gas, and coal, will be credited to the company that owns the subject asset.

The Commission previously has authorized excess or unwanted real estate to be leased.[11] The Commission also has authorized holding companies to form and finance special-purpose subsidiaries to act as agent for associate public utilities for purposes of, for example, fuel procurement. For example, in 1978, the Commission authorized the formulation of Central and South West Fuels, Inc. to engage in fuel exploration and development ''as agent for'' four electric public utilities in the Central and south West system.[12]

APS proposes to invest in AYP and AYP proposes to invest in NEWCOs and in Project NEWCOs up to an aggregate of $100 million through December 31, 1999 through loans to finance the activities relative to EMS and DSM services, accounts receivable, real estate, FUCOs and EWGs. In addition, AYP, the NEWCOs, and the Project NEWCOs propose to obtain loans from banks or issue other recourse obligations which could be guaranteed by APS or AYP. Such third-party borrowings by AYP, the NEWCOs, and the Project NEWCOs that are guaranteed by APS or AYP would be subject to the $100 million investment authority. APS and AYP, through December 31, 1999, would guarantee or act as surety on bonds, indebtedness and performance and other obligations issued or undertaken by AYP, the NEWCOs, or the Project NEWCOs subject to the $100 million investment authority.

Loans from APS would mature by December 31, 2004 and would bear a fixed interest rate equal to a rate not above the prime rate in effect on the date of the loan at a bank designated by APS. Loans from third parties would mature by December 31, 2004 and would bear a fixed interest rate not above 3% over the prime rate at a U.S. money center bank to be designated by APS. Notes sold to such parties could be guaranteed by APS.

In addition to the $100 million in financing requested, APS and AYP Commission authorization for Project NEWCOs to issue partnership interests or trust certificates through December 31, 1999 to third parties to finance EWGs and FUCOs. Such equity interests will not exceed $200 million.[13]

AYP anticipates that NEWCOs and Project NEWCOs might not have paid employees, in which case personnel employed by APSC, a wholly owned subsidiary of APS, would provide a wide range of services to such NEWCOs and Project NEWCOs pursuant to a service agreement. Under these service agreements, NEWCOs and Project NEWCOs would reimburse APSC for the cost of services provided.

All services rendered by AYP, NEWCOs, or Project NEWCOs to nonaffiliates will be based upon the fair market value thereof. AYP, NEWCOs, and Project NEWCOs also propose to provide such services and sell goods at fair market prices to any associate EWG, FUCO or qualifying facility,[14] and to NEWCOs which are any of the foregoing, and request an exemption pursuant to Section 13(b) from the requirements of Rules 90 and 91, as applicable to such transactions, if: (i) such associate entity is a FUCO, or is an EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; (ii) such associate entity is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC'') or the appropriate state public utility commission, provided that the purchaser of such electricity is not an associate company of AYP within the

(authorization for acquisition of capital shares, partnership interests, or trust certificates in NEWCOs that own FUCOs or EWGs).

[8] The Commission previously has authorized the formation of NEWCOs for these purposes. Southern Co., Holding Co. Act Release No. 26069 (Aug. 3, 1994).

[9] Central and South West Corp., Holding Co. Act Release No. 23767 (July 19, 1985) (associate companies); CSW Credit, Inc., Holding Co. Act Release No. 24157 (July 31, 1986) (nonassociate companies).

[10] CSW Credit, Inc., Holding Co. Act Release No. 25995 (March 2, 1994).

[11] *See, e.g.,* Pennsylvania Electric Co., Holding Co. Act Release No. 24716 (Sept. 15, 1988).

[12] Central and South West Corp., Holding Co. Act Release No. 20658 (Aug. 2, 1978).

[13] APS and AYP also intend to issue capital stock and nonrecourse debt securities to finance FUCOs and EWGs. Such financing is exempt pursuant to rule 52(b).

[14] Neither APS nor AYP will acquire any interest in any qualifying facility without further specific Commission authorization.

APS System; (iii) such associate entity is a qualifying facility that sells electricity exclusively at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale or to an electric utility company, other than any associate company of AYP within the APS System, at ''avoided cost'' as determined in accordance with FERC regulations; or (iv) such associate entity is an EWG or qualifying facility that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate company of AYP within the APS System.

Fees and expenses in the estimated amount of $75,000 are anticipated in connection with the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the post-effective amendment has been given in the manner prescribed in Rule 23 promulgated under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied, and that no adverse findings are necessary.

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is granted and permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act, except that:

AYP shall provide, not later than 60 days following the end of each calendar quarter and 120 days after the end of each calendar year, a certificate of notification pursuant to Rule 24 that includes: (i) An unaudited balance sheet and income statement for AYP and one for each NEWCO, when established;

(ii) a narrative description of activities during the quarter just ended and a total of expenses organized by segment and, within each segment, a narrative description of services rendered by project, and new developments and updates by project type;

(iii) amounts and forms of guarantees of, and similar provisions and arrangements concerning, performance and undertaking of other obligations by AYP, or any subsidiary of AYP, which APS has granted and are currently effective, as well as indemnifications of and with respect to persons acting as sureties on bonds or other obligations on behalf of AYP, or any subsidiary of AYP, which APS has granted and are currently effective;

(iv) a description of services provided to associate companies which identifies the recipient company, the service, the charge to the associate and, with respect to FUCOs and EWGs, whether the charge was computed at cost, market or pursuant to another method, which method shall be specified; and

(v) in connection with its factoring activities, a balance sheet as of the end of the year, statement of income for the twelve months then ended and notes to the financial statements, a listing of principal amount of borrowings of AYP and each NEWCO outstanding at the end of each year, which will contain the terms of each obligation, name of lending institution and effective cost of borrowing, outstanding accounts receivable as of the end of each month, separated by associate and nonassociate companies with each nonassociate company listed separately, a detailed calculation of the annual discount for associate companies and the methodology used to arrive at that calculation, and a calculation by month of consolidated earnings coverage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27315 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21458; 812–8868]

ESC Strategic Funds, Inc. and Equitable Securities Corporation; Notice of Application

October 27, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the Act).

APPLICANTS: ESC Strategic Funds, Inc. (the ''Company'') and Equitable Securities Corporation (the ''Adviser'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f–2; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07.2(a), (b), and (c) of Regulations S–X.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting sub-advisers (the ''Managers'') approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval of the agreements with the Managers, and permitting the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports.

FILING DATES: The application was filed on March 3, 1994, and amended on August 3, 1995, and October 26, 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 November 21, 1995, and should be accompanied by proof of service on the 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 Fifth Street, NW., Washington, DC 20549. Applicants, 800 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219–1743 (Attention: W. Howard Cammack, Jr.).

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942–0579, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end management investment company incorporated under Maryland law. The Company offers five separate investment portfolios (each a ''Fund,'' and together, the ''Funds''), each with distinct investment objectives, policies, and restrictions. These Funds are: ESC Strategic Appreciation Fund, ESC Strategic Global Equity Fund, ESC Strategic Small Cap Fund, ESC Strategic Income Fund, and ESC Strategic Asset

Preservation Fund.[1] Shares of the Funds are offered to individuals, institutions, corporations, and fiduciaries.

2. The Adviser is a registered investment adviser and broker-dealer that provides overall investment management for the Funds pursuant to an investment advisory agreement (''Investment Advisory Agreement'').

3. The specific investment decisions for each Fund are made by one or more Managers, each of whom has discretionary authority to invest all or a portion of the assets of a particular Fund, subject to general supervision by the Adviser and the board of directors of the Company. Each Manager has been recommended by the Adviser, and selected and approved by the board of directors of the Company, including a majority of the Company's directors who are not interested persons of the Company, the Adviser, or the Manager, as well as by the initial sole shareholder of each Fund. Each Manager performs services pursuant to a written portfolio management agreement (''Portfolio Management Agreement''). Applicants currently do not anticipate that the number of Managers for any Fund will be reduced. The number of Managers may be increased, however, if the Company or one or more Funds experience a significant increase in total assets over time.

4. One of the Managers, Equitable Asset Management (''EAM''), is an affiliated person (as defined in section 2(a)(3) of the Act) of the Adviser. EAM is one of three Managers of ESC Strategic Appreciation Fund, and is the sole Manager of ESC Strategic Small Cap Fund and ESC Strategic Asset Preservation Fund.

5. The Adviser is responsible for recommending to the Company's board of directors the retention of one or more Managers for each Fund, for allocating and reallocating assets among Managers of Funds with multiple Managers, and for recommending the termination of a Manager when deemed advisable. The Adviser selects Managers based on the continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Adviser monitors continually the performance of Managers as well as management firm staffs and organizations to assess overall competence. For the advisory services the Adviser provides the Funds, each Fund pays an investment advisory fee to the Adviser. The Adviser, out of these fees, pays the Managers' fees at no additional cost to the Funds.

6. For three of the Funds, the Adviser seeks to enhance performance and reduce market risk by allocating a Fund's assets among multiple ''specialist'' Managers (the ''Multiple Manager Strategy''). Under this strategy, the Adviser allocates portions of a Fund's assets among multiple Managers with dissimilar investment styles and security selection disciplines. The Adviser monitors the performance of both the total Fund portfolio and of each Manager. The Adviser, to the extent it deems appropriate to achieve the overall objectives of the particular Fund, will reallocate Fund assets among individual Managers or recommend to the Company's board of directors that it employ or terminate particular Managers. As a result of this strategy, the Adviser believes the Funds with multiple Managers may achieve a better rate of return with lower volatility than typically would be expected of any one management style.

7. Applicants request an order permitting the Company to enter into new or materially amended Portfolio Management Agreements with the Managers without obtaining shareholder approval. Without the requested relief, the Company would be prohibited from entering promptly into a new Portfolio Management Agreement or amending materially an existing Portfolio Management Agreement, and would be prohibited from continuing relations with an existing Manager whose contract has been assigned as a result of a change of control, unless the particular Fund involved were to incur the expense of convening a special shareholder meeting. Although shareholders will not vote on a new Manager or a materially amended Portfolio Management Agreement, applicants will furnish shareholders an information statement within sixty days that includes all the information that would have been provided in a proxy statement. Moreover, applicants will not enter into a Portfolio Management Agreement with any Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Company or the Adviser other than by reason of serving as a Manager to one or more of the Funds (an ''Affiliated Manager'') without such agreements being approved by the shareholders of the applicable Fund. The Investment Advisory Agreement between the Adviser and the Fund would in all cases continue to be subject to the shareholder voting requirements of the Act.

8. Applicants request an exemption from the various disclosure provisions that may require applicants or others to disclose the fees paid by the Adviser to individual Managers. Applicants propose to disclose (both as a dollar amount and as a percentage of a Fund's net assets) in the Funds' registration statements and other public documents only the aggregate amount of fees paid by the Adviser to the Managers of each Fund (''Limited Fee Disclosure''). Limited Fee Disclosure means: (a) Fees paid to the Adviser by each Fund, in dollar amount and as a percentage of each Fund's assets; (b) aggregate fees paid by the Adviser to Managers of each Fund; (c) net advisory fees retained by the Adviser with respect to each Fund after payment of Managers' fees; and (d) fees paid by a Fund to any Affiliated Manager.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which precisely describes all compensation to be paid thereunder and which has been approved by a majority of the investment company's outstanding securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants state that the Company's structure is different from that of traditional investment companies. In addition to its Adviser/Manager structure for all Funds, the Company offers the Multiple Manager strategy of portfolio management to investors with certain investment objectives. Applicants state that shareholders receive the benefit of the Adviser's constant supervision of these Managers, so that the proportion of their assets subject to particular Manager styles can be reallocated (or new Managers introduced) in response to changing market conditions or Manager performance, in an attempt to improve the Fund's overall performance.

3. Applicants assert that, by investing in a Fund, investors are effectively electing to have the Adviser select one or more Managers best suited to achieve that Fund's investment objectives. Applicants argue that, because the Managers are concerned only with selection of portfolio investments in accordance with a Fund's investment objectives and policies, the role of the Managers is comparable to that of individual portfolio managers employed

[1] Applicants also request relief with respect to any additional Fund organized in the future and for any open-end, management investment company advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser, in the future, provided that such investment company operates in substantially the same manner as the Funds and complies with the conditions to the requested order (''Future Company'').

by other investment firms. Applicants contend, therefore, that it is the Adviser, not the Managers, on whom the Company's investors rely for investment management services.

4. Applicants state that the Company's prospectuses and statements of additional information have continuously disclosed that applicants were seeking exemptive relief from the requirement for shareholders to approve the retention of new Managers. Applicants assert that, without exemptive relief, the Company would be required to call a shareholders meeting whenever it decides to employ new or additional Managers, or to approve a new Portfolio Management Agreement after an assignment or due to a material change in terms. Applicants argue that, given the nature of the Company's operations and investors' reasons for investing in the Funds, requiring shareholder approval of the Portfolio Management Agreements would merely increase the Funds' expenses and delay the prompt implementation of actions deemed advisable by the Adviser and the Company's board of directors.

5. Form N–1A is the registration statement used by open-end management investment companies to register under the Act and register their securities under the Securities Act of 1933 (the ''Securities Act''). Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require the Company to disclose in its prospectus the investment adviser's compensation and the method of computing the advisory fee.

6. Item 3 of Form N–14, the registration form for business combinations involving mutual funds, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' in item 2 of Form N–1A.

7. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N–1A. Items 22(c)(1)(ii), 22(c)(1)(ii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' the ''terms of the contract to be acted upon,'' and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers, including the Managers.

8. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR provides that the Funds must disclose the rate schedule for fees paid to their investment advisers, including the Managers.

9. Regulation S–X sets forth the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and under the Securities Act. Items 6–07(2) (a), (b), and (c) of Regulation S–X require that the Funds' financial statements contain information concerning fees paid to the Managers by the Adviser.

10. Applicants state that all shareholders of the Funds will be fully advised of the fees charged by the Adviser for its investment advisory services because these fees will be disclosed in the Company's prospectuses and statements of additional information. Thus, each investor will know in advance the rate of investment advisory fees that each Fund will bear. Applicants argue that each investor, therefore, will be able to determine whether its cost for investment advisory services, including the selection and supervision of Managers and the reallocation of assets among multiple Managers from time to time, is competitive with the services and costs that the investor could obtain elsewhere. Under these circumstances, applicants assert that the particular fees of the Managers are not relevant to the investor.

11. Applicants believe that it is desirable for the Adviser to have maximum flexibility in negotiating fees with Managers. Applicants argue that some organizations will be unwilling to serve as Managers at any fee rate other than their ''posted'' fee rates unless the rates negotiated for the Funds are not publicly disclosed. Therefore, to force disclosure of a Manager's fees would tend to deprive the Adviser of its bargaining power while producing no benefit to shareholders. Applicants assert that the Adviser's ability to secure the services of Managers for the Funds at rates lower than their posted rates benefits both the Funds and their shareholders. If the Adviser were to lose negotiating flexibility through forced disclosure of a Manager's fees, applicants state that the Adviser might be forced to seek an increase in its own fees or to back off from its expense cap commitment. Further, they argue that opportunities for future reductions as Fund assets increase might be diminished. Thus, applicants believe that forced disclosure of Managers' fees could have negative repercussions for the Funds' shareholders.

12. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that their request satisfies these standards.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The Company will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser will not enter into a Portfolio Management Agreement with any Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

3. At all times, a majority of the Company's directors will be persons each of whom is not an ''interested person'' of the Company as defined in section 2(a)(19) of the Act (''Independent Directors''), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

4. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Company. The selection of such counsel will be placed within the discretion of the then existing Independent Directors.

5. The Adviser will provide the board of directors of the Company, no less frequently than quarterly, information about the Adviser's profitability on a per-Fund basis. Such information will reflect the impact on profitability of the hiring or termination of any Managers during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser will provide the board of directors of the Company information showing the expected impact on the Adviser's profitability.

7. When a Manager change is proposed for a fund with a Affiliated Manager, the Company's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Company's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Manager derives an inappropriate advantage.

8. The Adviser will provide general management services to the Company and the Funds and, subject to review and approval by the Company's board of directors will: (a) set the Funds' overall investment strategies; (b) select Managers; (c) allocate and, when appropriate, reallocate a Fund's assets among Managers; (d) monitor and evaluate the performance of Managers; and (e) ensure that the Managers comply with the Funds; investment objectives, policies, and restrictions.

9. Within 60 days of the hiring of any new Manager or the implementation of any proposed material change in a Portfolio Management Agreement, shareholders will be furnished all information about a new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager or any proposed material change in a Portfolio Management Agreement. The Adviser will meet this condition by providing shareholders, within 60 days of the hiring of a Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement will also meet the requirements of Schedule 14A, except as modified by the order to permit Limited Fee Disclosure.

10. The Company will disclosure in its prospectuses the existence, substance, and effect of any other granted pursuant to the application.

11. Before a Future Company that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the Adviser/Manager structure before such Future Company offers its shares to the public.

12. No director or officer of the Company or the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Manager except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt to a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27316 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26402]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

October 27, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–6971)

New England Energy Incorporated (''NEEI''), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 6(a), 7, 9(a) and 10 of the Act.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts (''Swap Agreement(s)'') with one or more parties, on or before December 31, 1985, covering a total principal amount of up to $150 million of its outstanding debt (''Covered Amounts''). The Swap Agreements could have a term or terms ranging between three and seven years. The Covered Amounts represent borrowings last authorized for NEEI under a credit agreement (''Credit Agreement'') with certain banks in total amounts outstanding at any one time of up $400 million, through December 31, 1998 (HCAR No. 24847, March 29, 1989) (''Borrowings''). The Borrowings may be made at NEEI's option under any one of four interest rates.

By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the Covered Amounts could be increased up to $200 million. Subsequently, by order dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements and other types of interest rate protection mechanisms, up to the same principal amount, on or before December 31, 1989. Finally, by orders dated December 29, 1989, September 19, 1991 and December 1, 1993 (HCAR Nos. 25015, 25378 and 25935, respectively), all such authority was extended through December 31, 1995, under all of the same terms and conditions.

Subsequently, by order dated April 7, 1995 (HCAR No. 26268), NEEI was authorized to enter into a new credit agreement (''New Credit Agreement'') with a group of banks headed by Credit Suisse to replace the Credit Agreement. The New Credit Agreement initially provides for borrowings in outstanding amounts of up to $225 million. Available amounts under the credit facility reduce incrementally according to a schedule through April 7, 2002. Total borrowings by NEEI at September 30, 1995 were $180 million.

Currently, NEEI is a party to two Swap Agreements with a combined notional amount of $75 million. On October 21, 1993, NEEI entered into a three year Swap Agreement with Merrill Lynch Capital Services, Inc. for a notional amount of $50 million. On June 7, 1995, NEEI entered into a three year Swap Agreement with Citibank, N.A. for a notional amount of $25 million.

NEEI now seeks to extend, through December 31, 1998, its authority to enter into Swap Agreements and other types of interest rate protection mechanisms, as approved by the prior orders, except that Covered Amounts will be the lesser of $175 million or the amount available under the New Credit Agreement.

PSI Energy, Inc. (70–8727)

PSI Energy, Inc. (''PSI Energy''), 1000 East Main Street, Plainfield, Indiana 46168, an electric utility subsidiary of Cinergy Corp. (''Cinergy''), a registered holding company, has filed an application under sections 9(a) and 10 and rule 54 thereunder.

PSI Energy seeks authorization, through December 31, 1996, to enter into a business venture with H. H. Gregg (''Gregg''), a retail vendor of household electronic appliances and related consumer goods, involving an appliance sales program. PSI Energy believes that the venture with Gregg will facilitate the eventual marketing to customers of other energy-related and demand side management products, more fully utilize existing employees and offices to hold down costs, and strengthen ties to customers.

Under the proposed program, PSI Energy would market Gregg's electronic goods and appliances at retail, on a best efforts, consignment basis to PSI Energy's customers at a limited number of its local offices. When sales are made, Gregg would deliver the product to the customer and bill PSI Energy the wholesale price paid by Gregg for the product. In connection with the program, PSI Energy will also sell extended service warranties covering any items purchased. PSI Energy would either purchase such warranties from Gregg at a wholesale price and resell them to customers, or sell its own warranty and contract with Gregg to provide any of the related warranty work. PSI Energy also intends to arrange for customer financing through a bank or other financial institution, for which PSI Energy would receive a fee of up to 2% of the purchase price financed.

The current proposal involves a pilot program extending from November 24, 1995 through December 31, 1996. PSI Energy estimates that the pilot program will result in total sales revenues of approximately $2.6 million (of which approximately $2.3 million would accrue to Gregg), will utilize the full-time employee equivalent of three or four employees, and will involve approximately $320,000 of expenditures (consisting primarily of advertising and sales expenses, expenses associated with the use of local offices and related facilities, and expenses associated with employees' time). PSI Energy (or another Cinergy system company) may seek to extend this authorization, depending on the success of the pilot program.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27276 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. John T. Spotila, General Counsel
2. Martin Teckler, Deputy General Counsel
3. Antonella Pianalto, Associate Deputy Administrator for Management and Administration
4. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs
5. William F. Combs, Associate Administrator for Communications and Public Liaison
6. Carolyn J. Smith, Assistant Administrator for Human Resources
7. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance
8. Francisco A. Marrero, District Director, Newark
9. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance
10. John R. Cox, Associate Administrator for Financial Assistance
11. Jeanne Sclater, Acting Deputy to the Associate Deputy Administrator for Economic Development
12. Wilfredo Gonzalez, District Director, Washington
13. Calvin Jenkins, Associate Administrator for Minority Small Business and Capital Ownership Development
14. Aubrey Rogers, District Director, New York

Dated: October 30, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–27356 Filed 11–2–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2275]

United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T), Study Group D; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Sector (ITAC–T), Study Group D will meet on Monday, January 8, 1996, Room 1205, at 9 a.m. at the Department of State, 2201 C Street NW, Washington, DC 20520.

The agenda for Study Group D will include consideration of contributions for upcoming meetings of Study Groups 8 and 14, and the April '96 meeting of Study Group 7 and a review of the October meeting of Study Group 14 Working Parties. Any other matters within the competence of Study Group D may be raised at this meeting.

Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting.

Please Note: Persons intending to attend the January 8, 1996 U.S. Study Group D meeting must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: October 23, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunications Standardization Sector.

[FR Doc. 95–27279 Filed 11–2–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Criteria and Application Process for the Secretarial Award for Excellence in Transportation Technology Research and Development

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of request for nominations.

SUMMARY: The Department of Transportation (DOT) announces procedures for nominating individuals and organizations for the Secretarial Award for Excellence in Transportation Technology Research and Development. Awards are made annually by the Secretary of Transportation to recognize research and development contributions advancing the performance of U.S. transportation systems and the ability of U.S. transportation industries to create domestic jobs and compete in the global marketplace.

DATES: Nominations must be postmarked no later than November 30, 1995.

ADDRESSES: An original and three copies of the nomination should be sent to: Noah Rifkin, Director of Technology Deployment, Office of the Secretary, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, room 10200. One additional copy should be sent to the contact listed below.

FOR FURTHER INFORMATION CONTACT: Keving Green, Volpe National Transportation Systems Center, Kendall Square, DTS–24, Cambridge, MA 02142. Telephone: (617)–494–2106. Internet: green@volpel.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

This notice solicits nominations for the Secretarial Award for Excellence in Transportation Technology Research and Development and provides relevant information on the nomination and selection process. The award is an honorary recognition by the Secretary of Transportation. Last year, one award was made, and it was granted to QUALCOMM Incorporated of San Diego, in recognition of its OmniTRACS mobile communications and vehicle tracking system.

Purpose

DOT is committed to promoting a safe and efficient transportation system that enhances the U.S. economy and contributes to a secure and healthy environment. In fulfilling this mission, the Department intends to accelerate the development and application of advanced transportation technologies. The Secretary of Transportation has therefore established the Secretarial Award for Excellence in Transportation Technology Research and Development to recognize significant achievement that expand the transportation technology knowledge base, that promote timely deployment of those transportation technologies which will best meet the nation's needs, and that enhance the ability of the U.S. transportation industries to compete internationally.

Evaluation Criteria

Nominations will be evaluated based on the following criteria:

- Quality and innovative nature of the technology developed and/or deployed;
- How the technology improves the safety, efficiency, and/or environmental performance of transportation systems;
- How the technology has enhanced industry competitiveness, both domestically and internationally;
- Significance of individual or organization nominated to the success of the development and/or deployment effort;
- Entrepreneurial nature of research effort (nature of collaboration);
- Potential for positive economic benefits to the U.S. or specific region; and
- Applicability to more than one mode of transportation.

The qualifying work may be a singular accomplishment or a series of accomplishments that have had a substantial effect over time. However, significant weight will be given to achievements developed or demonstrated within the past twelve months.

Examples of achievements that may be recognized include, but are not limited to:

- Safety Improvements—Technology that reduces the likelihood of transportation-related accidents or the likelihood of serious injury when such accidents do occur or otherwise improves the chances of post-accident survival/recovery of accident victims. This could include research and development of instrumentation equipment, human factors, or biomechanics.
- Energy Savings—Technology that reduces the energy intensity of transportation systems through research in materials, alternative fuels, engine and propulsion modifications, aerodynamic modeling and drag reduction, combustion research, and transportation system modeling and design.
- Environmental Quality—Technology that reduces the impact of transportation on air quality, water quality, solid waste volume and toxicity, noise, the global climate, and biological diversity. This could include research and development of products, processes, models, systems, or measurement instrumentation.
- International Industrial Competitiveness—Technology that helps U.S. transportation industries to create jobs for U.S. citizens and to compete in the global marketplace for transportation vehicles and equipment and for freight and passenger transportation services.
- Economic Performance—Transportation technology that improves the economic efficiency of domestic and international freight and passenger transportation systems. Such improvements could result from, for example: reduced travel time, reduced life-cycle costs of vehicles and infrastructure, and more cost-efficient design and utilization of transportation systems.

Evaluation Process

The DOT Research and Technology Coordinating Council, chaired by the Director of Technology Deployment will appoint an Evaluation Committee to evaluate nominations under the prescribed criteria and to recommend recipients.

Recommendations of the Evaluation Committee will be reviewed by a Selection Committee made up of members of the Research and Technology Steering Committee. Final selections will be made by the Secretary of Transportation.

Nominating Procedures

Nominees can be individuals or organizations. For purposes of this award, organizations include but are not limited to: domestic corporations, including nonprofit corporations; partnerships; professional associations; institutions of higher education; Federal, State, or local government; and professional teams assembled for the specific projects. Nominations should be in the form of a letter and must demonstrate how the nominee meets the evaluation criteria. Nominations, which must be signed and should be no more than 10 pages in length, must include the following:

- Name and address of the individual or organization being nominated;
- Name, address, and telephone number of the point of contact at the nominating organization;
- A description of the accomplishments focusing on the evaluation criteria identified above;
- Recognition of accomplishments by peers, as indicated by awards, patents, etc.; and
- If the nominee is an organization, documentation that the nominee is a domestic concern (i.e., as the term

''domestic'' is defined in 26 U.S.C. 7701(a)(4)).

Nominations must be postmarked by November 30, 1995, and should be sent to: Noah Rifkin, Director of Technology Deployment, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 10200.

Issued this 24th day of October 1995, in Washington, DC.

Noah Rifkin,

Director of Technology Deployment.

[FR Doc. 95–27351 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–95–40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), the notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 24, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 30, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28358
Petitioner: Mr. Frank S. Mills
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Mills to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Dispositons of Petitions

Docket No.: 25345
Petitioner: National Business Aircraft Association, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5127, as amended, which permits National Business Aircraft Association, Inc., members to operate in certain specified areas of the Western Atlantic, the Caribbean, and the Gulf of Mexico with a single long-range navigation device. *GRANT, October 13, 1995, Exemption No. 5127C.*

Docket No.: 26006
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 47.69(b)
Descripton of Relief Sought/Disposition: To extend Exemption No. 5125, as amended, which allows Beech Aircraft Corporation to conduct flights outside the United States. *GRANT, October 18, 1995, Exemption No. 5125C.*

Docket No.: 27690
Petitioner: Atlas Air, Inc.
Sections of the FAR Affected: 14 CFR appendix H, part 121
Descriptionof Relief Sought/Disposition: To amend Exemption No. 5888, as amended, which permits Atlas Air, Inc., (AAI) to provide initial or upgrade training and checking in a Phase II (Level C) simulator and allows certain experienced pilots and flight engineers who have received training in a Phase II (Level C) simulator to be Boeing 747 (B–747) seconds-in-command (SIC) in accordance with the training and checking provisions permitted under Phase III (Level D) of appendix H, part 121. The amendment permits initial training in a Phase II (Level C) simulator of AAI pilots-in-command (PIC) approved by the Principal Operations Inspector (POI). *GRANT, September 20, 1995, Exemption No. 5888B.*

Docket No.: 28309
Petitioner: Eastern Air Transport, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Eastern Air Transport, Inc., to operate without a TSO–C112 (Mode S) transponder installed on its Cessna C–337 aircraft (Registration No. N24135, Serial No. 337–0713) operating under the provisions of part 135 for a period of 1 year. *GRANT, October 11, 1995, Exemption No. 6187.*

[FR Doc. 95–27350 Filed 11–2–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Advisory Committee to the National Center for State, Local, and International Law Enforcement Training; Meeting

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes the introduction of new special quests; remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; and reports on the International Law Enforcement Academy, Critical Incident Response Group, Leadership Model, Community Policing, International Training, and STAR series.

DATES: October 31, 1995.

ADDRESSES: FBI Training Academy, Quantico, Virginia 22135.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, National Center for State, Local, and International Training Federal Law Enforcement Training Center, Glynco, Georgia 31524.

Dated: October 20, 1995.

Hobart M. Henson,

Director, National Center for State, Local, and International Training.

[FR Doc. 95–27337 Filed 11–2–95; 8:45 am]

BILLING CODE 4810–32–M

Office of Thrift Supervision

[AC–53; OTS No. 7934]

Amsterdam Savings Bank, FSB, Amsterdam, New York; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Amsterdam Savings Bank, FSB, Amsterdam, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: October 30, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27265 Filed 11–2–95; 8:45 am]

BILLING CODE 6720–01–M

[AC–52; OTS No. 6759]

Joachim Federal Savings and Loan Association, De Soto, Missouri; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Joachim Federal Savings and Loan Association, De Soto, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: October 30, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27264 Filed 11–2–95; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 213
Friday, November 3, 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).

BROADCASTING BOARD OF GOVERNORS

DATE AND TIME: November 8, 1995; 9:00 a.m.

PLACE: Cohen Building, 330 Independence Avenue, SW., Room 3317, Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural issues, as well as sensitive foreign policy and personnel issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel rules and practices, and personnel, of the BBG, the International Broadcasting Bureau, and USIA. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: November 1, 1995.

David W. Burke,

Chairman.

[FR Doc. 95–27440 Filed 11–1–95; 2:17 pm]

BILLING CODE 6155–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATES: 10 a.m. Wednesday, November 8, 1995.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Technical Amendments to the Community Support Regulation.
- Request for Federal Housing Finance Board Approval of Statewide Homeownership Set-Aside Program.
- Financing Corporation 1995 Budget Amendment.
- 1996 Strategic Plan for Examinations of the FHLBanks.
- Final Rule to Amend Section 943.6 to Eliminate Finance Board Approval of Prices for Item Processing and Other Services.

MATTER TO BE CONSIDERED DURING PORTIONS CLOSED TO THE PUBLIC:

- FHLBank of San Francisco Affordable Housing Subsidies on Guaranteed Rate Advances.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 95–27405 Filed 11–1–95; 10:48 am]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 8, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Eligibility criteria for selection of Federal Reserve Bank directors. (This item was originally announced for a closed meeting on October 18, 1995.)
2. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on November 6, 1995.)
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27410 Filed 11–1–95; 10:49 am]

BILLING CODE 6210–01–P

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: November 15, 1995, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portion specified as closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED: .

1. Approval of the Minutes of the July 25, 1995, Board Meeting.
2. President's Report.
3. Board Audit Committee Report.
4. Discussion on Future of the Foundation.
5. Executive Session on Personnel Implications in Fiscal Year 1996 (closed session).

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: November 1, 1995.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 95–27450 Filed 11–1–95; 8:45 am]

BILLING CODE 7025–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 54408, October 23, 1995].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 23, 1995.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Wednesday, October 25, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: October 31, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–27423 Filed 11–1–95; 2:16 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 213
Friday, November 3, 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 AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

Correction

In notice document 95–26532 appearing on page 54839 in the issue of Thursday, October 26, 1995, make the following corrections:

1. In the first column, under **SUMMARY**, in the third line, ''Science'' should read ''Service''.

2. In the same column, under **DATES**, ''November 27, 1995'' should read ''December 25, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-1430-01; NMNM 94904]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

Correction

In notice document 95–26443 appearing on page 54704 in the issue of Wednesday, October 25, 1995, make the following correction:

Under the heading **DATES**, ''January 23, 1995'' should read ''January 23, 1996''.

BILLING CODE 1505–01–D

federal register

Friday
November 3, 1995

Part II

Department of Transportation

Coast Guard

33 CFR Part 164

Navigation Safety Equipment for Towing Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 94–020]

RIN 2115–AE91

Navigation Safety Equipment for Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that towing vessels carry and properly use equipment such as radars, compasses, marine charts or maps, and publications and that they choose, inspect, and maintain towlines. This rule is necessary as part of a comprehensive initiative to improve navigational safety for towing vessels. If it becomes final, it will help prevent another catastrophic train-wreck such as that of the Sunset Limited in Alabama during September, 1993, and another spill such as that off Puerto Rico during January, 1994.

DATES: Comments must be received on or before February 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) (CGD 94–020), 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. 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.

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.

A copy of the material listed in Incorporation by Reference of this preamble is available for inspection at room B–726, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LaRue, Vessel Traffic Services Division (G–NVT), Office of Navigation Safety and Waterway Services, (202) 267–0416, or LCDR Suzanne Englebert, Project Development Branch (G–MES–2), Office of Marine Safety, Security and Environmental Protection, (202) 267–6490.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 94–020] and the specific section of this proposed 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 proposed rule in view of the comments.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to the Marine Safety Council at the first address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later document in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Edward LaRue, Project Manager, Vessel Traffic Services Division (G–NVT), LCDR Suzanne Englebert, Project Manager, Project Development Branch (G–MES–2), Office of Marine Safety, Security and Environmental Protection, and Pat Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

This proposed rule, if it becomes final, will constitute part of a comprehensive initiative by the Coast Guard to improve navigational safety for towing vessels. While other regulatory efforts are concentrating on reporting of casualties, on licensing, and on training on radar, this rule would help ensure that the mariner piloting a towing vessel has adequate equipment to safely navigate the waters being transited. It would impose the following: (1) Requirements for carriage of radars, searchlights, radios, compasses, swing-meters, echo depth-sounding devices, electronic position-fixing devices, marine charts or maps, and publications; (2) requirements for proper use of this navigational equipment; (3) requirements for maintenance, inspection, and serviceability of towlines, towing gear, and terminal gear; and (4) general requirements for navigational safety.

Review of Marine-Safety Issues Related to Uninspected Towing Vessels

Soon after the fatal accident on September 22, 1993, near Mobile, Alabama, in which a barge collided with a railroad bridge and caused the Sunset Limited to plunge into a bayou, the Secretary of Transportation directed that the Coast Guard and the Federal Railroad Administration review the circumstances of the accident and undertake initiatives to minimize the risk of any similar tragedy in the future. Later, on March 2, 1994, the Coast Guard published (59 FR 10031) a notice of meeting and availability of study that announced both the availability of a study prepared by the Coast Guard, ''Review of Marine Safety Issues Related to Uninspected Towing Vessels,'' and a meeting to review the study and to seek public comment on the recommendations made in the study.

The study examined marine-casualty statistics over a 12-year period (1980–1991). The Coast Guard made 19 recommendations: on the reporting of marine casualties and hazardous conditions; on bridge-fendering systems and navigational lighting; on the adequacy of the Aids to Navigation System for marking the approaches to bridges over navigable waterways; on the training and licensing of operators of uninspected towing vessels (OUTVs); and on—the subject of this proposed rule—the adequacy of navigational equipment for uninspected towing vessels (UTVs).

The public meeting announced [59 FR 10031] on March 2, 1994, was held on May 4, 1994, to discuss regulatory initiatives of the Coast Guard stemming from the derailment of the Sunset Limited. This meeting was well attended by the public, representing a wide range of towing and other interests. Right afterward, the Towing Safety Advisory Committee (TSAC) formed a working group of towing experts from the industry (TSAC working group) to help the Coast Guard formulate standards. A meeting of the TSAC working group was announced (59 FR 13353) on March 21, 1994, and held on April 5, 1994; and the group made recommendations to the full TSAC at its public meeting on May 6, 1994.

In the notice of March 2, 1994, the Coast Guard had specifically sought comments on a proposal to require radar and marine charts or maps and publications aboard towing vessels and—the subject of a separate rulemaking—to require that the operator of the radar system be a qualified radar observer. The Coast Guard received a total of 23 comments in response to the notice. A summary of them appears in the following section, Discussion of Proposed Rules.

During the public meeting, the Coast Guard also recognized the significant impact of improper towlines and related towing gear on navigational safety. The need to regulate these lines and gear, within any comprehensive navigational-safety proposal, had been made manifest by the tragic spill along the coast of Puerto Rico near San Juan, in January 1994. The T/B MORRIS J. BERMAN lost about 750,000 gallons of #6 fuel oil when the towing vessel's towline parted and the vessel was unable to recover the barge before it went aground. Groundings, delays of shipping, collisions, and allisions with bridges are all by-products of the improper use of towing gear. Ensuring that the towing vessel has sufficient navigational equipment to fix its position will make little sense unless the vessel is made fast to its tow.

Discussion of Proposed Rules

1. Scope of application and exemptions. This proposed rule would apply to all towing vessels 8 meters (26.25 feet) or more in length operating in the navigable waters of the United States, except for certain yard craft used in restricted service and for assistance towing vessels.

The applicability of these requirements was discussed at length in both the public meeting and the meeting of the TSAC working group, which recommended that towing vessels less than 8 meters (26.25 feet) in length not pushing barges, and towing vessels under 15 meters (around 50 feet) used only for towing disabled vessels, be exempt from these requirements. One attendee at the public meeting questioned whether these requirements would unduly burden small towing vessels primarily engaged in rescuing recreational boats. Several attendees urged the exemption of yard craft or fleeting boats operating only within a limited geographic area from these requirements. Others pointed out, however, that, on the lower Mississippi, fleeting boats are generally equipped with radar, to operate in restricted visibility and monitor their fleets for break-away barges.

The Coast Guard has proposed a general criterion of 8 meters (26.25 feet) in length because this excludes most of the small craft that neither tow barges nor operate offshore in heavy weather. Also, this length is consistent with the rules of the Vessel Bridge-to-Bridge Radiotelephone Act (codified as 33 U.S.C., Chapter 24) and with the Vessel Traffic Service regulations.

Proposed § 164.01(b)(1) would exempt most yard and fleeting craft from the requirements in proposed § 164.72. It would exempt those yard and fleeting craft used solely for making up or breaking up tows or other work in and around piers or fleeting areas. While the navigational equipment in the latter section may be valuable for many yard craft, it may not be for others. To prevent abuse of this provision, this rule would give wide discretion to Captains of the Port (COTPs) to determine whether particular vessels should be exempt and to allow sufficient time for those that should not to be brought into compliance. There may be areas where fleeting boats routinely cross busy navigable channels or operate in crowded harbors. In such areas, this exemption would be inappropriate. Owners, operators, or masters of vessels could ask COTPs to declare in advance whether certain vessels are exempt.

Further, proposed § 164.01(b)(2) would exempt towing vessels engaged solely in rescue and assistance from the requirements in proposed § 164.72. An entire industry catering to the towing of disabled recreational boaters has developed in recent years. These rescue-and-assistance towing vessels are usually small and are generally recognized by their local Coast Guard search-and-rescue stations as alternative-assistance vessels. The mariners operating these vessels also satisfy licensing requirements more stringent than their counterparts aboard typical small vessels. Because of their limited operating nature, § 164.01(b)(2) proposes an exemption from § 164.72; however, if any of them also engages in salvage work or commercial towing of barges, vessels, or objects not in distress, many of the proposed requirements would be appropriate. An exemption from the proposed requirements of § 164.72 should be based on the entire scope of work an owner, master, or operator of a vessel declares. With the help of TSAC, the Coast Guard is developing criteria to assess whether a size or type of commercial towing operation should also be exempt from the requirements in § 164.72. The Coast Guard solicits comments on this matter.

2. Definitions. Based on the recommendations of TSAC on current operating practices within the towing industry, this proposed rule would divide areas of operation into rivers, Western rivers, U.S. navigable waters other than rivers and Western rivers, and waters seaward of U.S. navigable waters or, for vessels operating on the Great Lakes, waters over three nautical miles from shore. The definitions proposed in § 164.70 distinguish the areas of operation and are consistent with the International Regulations for Preventing Collisions at Sea, 1972 (codified as 33 U.S.C., Chapter 30); the Inland Navigational Rules Act of 1980 (codified as 33 U.S.C., Chapter 34); and 33 CFR part 2.

3a. Radar. A marine radar is an essential piece of navigational-safety equipment. Radar not only provides a means of detecting and avoiding other vessels at great distances and in restricted visibility, but allows the operator or master of the vessel to navigate safely on constricted waters in reduced visibility. During the public meeting and in meetings with the TSAC working group, members of the industry strongly endorsed a requirement for radar on board towing vessels and indicated that most towing vessels already, voluntarily, carry radar.

The Coast Guard considered specifications for radar equipment for navigational safety and, after considerable deliberation and consultation with industry, would require in § 164.72(a)(1) a radar meeting minimum marine specifications. Basic features necessary for safe navigation by radar come with almost every modern radar set: bearing-lines, ship's-heading marker, range rings, variable range-scales, and variable pulse-width. Other features, which are desirable, come only with higher-quality commercial radars: higher power, which permits detection at longer range and better detection of small targets at closer range; interference rejection, which prevents interference from other radars operating on similar frequencies; and track histories, which allow display of relative motion of other vessels. Into § 164.03(b) performance standards for marine radar, developed by the Radio Technical Commission for Maritime Services (RTCM), would be incorporated by reference. This approach would ensure the installation of an appropriate radar for the marine environment, yet would allow for the rapid changes in electronic technology and the inability of any regulatory regime to keep up with them. Furthermore, because this rule would apply broadly, while covered vessels differ widely, requiring features instead of standards might make equipping

smaller vessels with radar impracticable and cost-prohibitive.

The Coast Guard recognizes that owners or operators of vessels would need to assess their radar needs and local radar availability. Therefore, the Coast Guard is proposing in § 164.72(a)(1) that the radar requirement become effective 1 year after the effective date of the final rule. It is imperative that radars be of marine quality and meet minimum standards; therefore, instead of giving an indefinite grandfather clause to those vessels with existing radars of unknown quality, the Coast Guard has proposed in § 164.72(a)(1)(iv) a longer phase-in period for vessels with existing radars that do not meet performance standards of RTCM for marine radar.

3b. Public comments on radar. The Coast Guard received 11 comments on the recommendation by the study that towing vessels of 8 meters (26.25 feet) or more in length carry radar. Of these, 5 generally supported the recommendation. Of these, one urged that the requirements regard size, service, trade, and location of vessels. Another urged that they regard at least size and operating-area. A third suggested rulemaking under the Ports and Waterways Safety Act (33 U.S.C. 1221, *et seq.*), which would require UTVs to carry surface-navigation radar. A fourth supported upgrading the radar already aboard towing vessels. A fifth, while generally supporting the use of radar aboard those vessels, argued that this use should not be mandatory and that, if it became so, the rule should consider both spatial limits and operational needs. Again, the approach of this proposed rule is to avoid features and to favor standards, which address these matters.

Of the other six comments, one urged the Coast Guard to require that all towing vessels, not just those of 8 meters (26.25 feet) or more in length, carry radar. Contrary to this, another comment urged the Coast Guard not to require that all such vessels of 8 meters (26.25 feet) or more in length carry radar and that lower tonnage or horsepower or smaller tows should relieve such vessels of the burden. A third urged the Coast Guard to require that every towing vessel carry two surface-navigation radars. A fourth urged the Coast Guard to require that every such vessel carry two commercial radars of which at least one must be working. A fifth urged the Coast Guard to address not the carriage of radar at large but the use of it in certain areas.

The Coast Guard has determined that 8 meters (26.25 feet) is an appropriate minimal length. It also considered towing vessels' operating areas by exempting fleeting tugs, by requiring minimal performance standards for vessels operating within three nautical miles of shore, and by ensuring that radar of vessels on voyages offshore meet higher performance standards for the more severe weather and sea conditions. The performance standards of the RTCM for marine radar already take account of vessel sizes and routes of vessels by addressing capability of radar units, yet they do not dictate sizes of radar screens and scanners for vessels operating within three nautical miles of shore. The Coast Guard also recognizes the advantages of redundancy and of some preference to have both ''S'' band and ''X'' band radar capability. Two radars are not proposed in § 164.72(a)(1), because this rulemaking seeks only to require minimal requirements; it does not preclude installing added equipment if owners, operators, or masters of vessels determine that it is needed, and it assumes that, once a radar is installed, it operates correctly.

The sixth comment asked whether an inoperable radar would constitute a ''hazardous condition'' as defined by 33 CFR 160.203. This proposed rule would allow for continued operation of the towing vessel with an inoperable radar, though it would also call in § 164.82 for the reporting of inoperable navigational equipment.

4. Searchlight. The Coast Guard is proposing in § 164.72(a)(2) that towing vessels be equipped with searchlights. A properly operating searchlight is an essential tool for the towing vessel. It is useful not only in navigating within restricted waterways but also in checking conditions of tows and warning other vessels of the presence of towlines. The TSAC working group specifically recommended that every towing vessel carry a commercial searchlight that could be directed by the vessel's operator or master. For a small vessel with an open steering station, a hand-held spotlight would suffice. For a typical towing vessel navigating with a one-person watch—in which the sole qualified operator or master acts as lookout, helmsman, and navigator—the controls of the searchlight must be accessible from the main steering station. For a large vessel, remote controls may be necessary. The Coast Guard has found that searchlights with remote control are common in the towing industry and are available at relatively low cost.

A searchlight is not a navigation light, for which uniform specifications are essential. The Coast Guard proposes in § 164.72(a)(2) to ensure that the searchlight is an adequate tool. (The Coast Guard suggests, though it does not require, that the searchlight be housed in a weatherproof fitting, be designed for marine use, project a focused beam, and provide a minimum of 200,000 candle-power.)

5. VHF–FM Radio. VHF–FM radios are required by the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201–1208), the Communications Act of 1934 as amended (47 U.S.C. 151 *et seq.*), and the Agreement Between the United States of America and Canada for the Promotion of Safety on the Great Lakes by Means of Radio, 1973. Section 164.72(a)(3) reiterates these requirements.

The Coast Guard may require within this section a source of power to the radio in an emergency. This second source would ensure that at least one installed radiotelephone could function if the vessel lost power. The Coast Guard is soliciting comments on whether to require that the VHF–FM radio on a towing vessel have an emergency or back-up source of power.

6. Compass. The compass is a piece of navigational equipment essential in many places. This proposed rule would require in § 164.72(a)(4) an illuminated magnetic compass aboard every towing vessel, except one operating solely on rivers and Western rivers as defined by this rule.

To navigate safely, a vessel operating in open waters must know its heading. A compass provides this—through dead reckoning (in restricted visibility or out of sight of landmarks); through fixes (in good visibility or within sight of landmarks); through checks on the effects of current or wind on course made good; and through indications of rate of turn for a tow.

The TSAC working group recommended a marine compass that should (1) operate satisfactorily and remain usable under the operational and environmental conditions likely to be experienced; (2) have a compass card that is readable both during the day and at night; (3) be installed on, or as close as possible to, the vessel's centerline; (4) be installed so that, from its position, the view is as nearly uninterrupted as possible for the taking of bearings; (5) be clearly readable by the helmsman at the main steering station; (6) be installed as far as possible from any magnetic material; (7) have the compass card suspended in gimbals so that it cannot be dislodged and remains readable in any sea or weather; and (8) not be a fluxgate compass unless it can operate reliably on steel-hulled tugs without constant adjustment, particularly when the tugs are picking up and dropping off

different configurations of steel-barge tows. The Coast Guard recognizes the recommendations of the TSAC working group as fitting guidelines for the magnetic compass. It does not propose the use of a fluxgate magnetic compass in § 164.72(a)(4), because of the reliance of this type of compass on external power.

The Coast Guard also considered and rejected an absolute requirement that every towing vessel carry a magnetic compass. It decided to provide towing vessels operating solely on rivers with a swing-meter exemption from this requirement, for the following reasons: (1) On rivers traffic essentially flows up or down the rivers. (2) On rivers masters or other operators are continually changing course so as to account for currents, eddies, and bends, without reference to magnetic headings. (3) While most nautical charts or maps display a compass rose, most river maps display just a ''north marker.'' And (4), although a magnetic compass would furnish some information on the swing of a vessel, a purpose-built swing-meter furnishes more.

7. Swing-Meter. During both the public meeting and the meeting of the TSAC working group, the Coast Guard heard repeated testimony that on winding rivers a magnetic compass was less useful than a swing-meter (rate-of-turn indicator). The TSAC working group ultimately advised against a requirement of swing-meters, but even it acknowledged that they are often of immense value to vessels pushing barges ahead on rivers and inland waters.

To accommodate areas where a swing-meter may be of more navigational use than a magnetic compass, § 164.72(a)(4)(i) would allow a towing vessel to have either a swing-meter or a magnetic compass if operating solely on rivers and Western rivers. It would not allow this for every towing vessel operating within these waters. A vessel that also operates in or crosses large port areas where its heading is needed to navigate and where charts or maps are available with compass roses should carry a magnetic compass. The COTP can clarify in advance whether a specific towing vessel may substitute a swing-meter for a magnetic compass.

8. Echo depth-sounding device (depth-sounder). Proposed § 164.72(a)(5) would require a depth-sounder aboard every towing vessel on any waters except rivers and Western rivers. The Coast Guard considers a depth-sounder a valuable navigational tool on any waters, including rivers. It can not only provide immediate information on depth but also assist in fixing position.

On rivers where depth fluctuates with the gauge, a depth-sounder furnishes useful information for the return trip and, when the mariner annotates a chart or map as he or she goes, lets him or her correlate gauges with depths. Nevertheless, on rivers the actual use—as distinct from the abstract utility—of a depth-sounder can prove problematic. A portable depth-sounder may make more sense aboard a lead barge than an installed one makes aboard a towing vessel itself; yet aboard a lead barge a depth-sounder runs the greatest risk of damage from ice or flotsam. Therefore, on rivers, both whether and where to deploy a depth-sounder would remain within the discretion of the owner, operator, or master of the towing vessel.

Proposed § 164.72(a)(5) would exempt a towing vessel operating solely on rivers and Western rivers from the requirement for a depth-sounder. This exemption is not meant to include every towing vessel operating within these waters. A vessel that also operates in or crosses large port areas where water depth helps to fix the vessel's position should carry a depth-sounder. The COTP can clarify in advance whether a specific towing vessel must carry a depth-sounder.

The Coast Guard recognizes that owners or operators of vessels would need to research depth-sounders' availability. Installation is also generally completed during a vessel's drydock period. Therefore, proposed § 164.72(a)(5) would require the depth-sounder 5 years after the effective date of the final rule.

9. Electronic position-fixing device. This proposed rule would require in § 164.72(a)(6) an electronic position-fixing device aboard each towing vessel operating seaward of the navigable waters of the U.S. or over three nautical miles from shore on the Great Lakes. Such devices—usually, receivers for either LORAN–C or a Global-Positioning System (GPS)—have become essential pieces of navigational equipment aboard vessels operating out of sight of land. Most if not all offshore towing vessels already, voluntarily, carry these devices. The TSAC working group recommended carriage of these devices. The cost of receivers from LORAN–C and GPS continues to decline; reliability continues to improve.

The Coast Guard considered requiring the carriage of electronic position-fixing devices by all towing vessels, but decided against it. First, fixes stated in latitude and longitude on inland waterways are now of little use to the mariner, because few charts and maps of rivers give latitude and longitude. Second, although Electronic Chart Display and Information System (ECDIS) may someday display real-time fixes on charts or maps generated electronically, requiring ECDIS would be premature until standards for the devices are adopted by the International Maritime Organization (IMO) and the devices are shown to be accurate and reliable. (Because differential GPS, or dGPS, already affords great accuracy and reliability, the Coast Guard recommends that anyone in the market for a new device consider a receiver that either picks up a dGPS signal by itself or works with a differential receiver.)

10a. Charts or maps and publications. Charts or maps. Proposed § 164.72(b)(1) would require that every towing vessel carry charts or their equivalent for the areas it transits. The TSAC working group, as well as individual participants in the public meeting, thought carriage of such charts or maps a sound idea.

The Coast Guard recognizes that, on many of the Western rivers and other inland waters, the National Ocean Service does not provide charts or maps. There, the rule specifically allows the use of maps from the Army Corps of Engineer or other river authority. One chart or map would suffice on towing vessels transiting rivers where only one is available.

The charts or maps would have to employ a suitable scale and contain suitable detail for safe navigation. (1) General charts or maps, scaled from 1:600,000 down to 1:150,000, would be suitable only for plotting a course well offshore; they contain too little detail for a towing vessel approaching shore. (2) Coastal charts or maps, scaled from 1:150,000 down to 1:50,000, are suitable for navigating inside offshore reefs and shoals, entering bays and harbors of appreciable size, and plying certain inland waterways. (3) Harbor charts or maps, scaled from 1:50,000 down, furnish details of harbors, anchorages, and small waterways. (4) Small-craft charts or maps furnish details of particular use to smaller craft; they are usually produced in strip format, which makes them useful on inland waterways.

This proposed rule would also require the chart or map to be ''currently corrected'' or be the ''current edition.'' These terms refer both to the edition of the chart or map and to corrections to it. Coast Guard Navigation and Vessel Inspection Circular (NVIC) No. 7–86 entitled ''Information on the Adequacy and Currency of Nautical Charts'' addresses in detail the need for current nautical charts or maps on ships, and much of its commentary applies to towing vessels as well. Specifically, a

new edition of a chart or map often shows data such as new survey information, new structures, or a change in the chart's or map's datum that would not appear in a Notice to Mariners. Therefore, even a corrected chart or map, if superseded, may pose a risk to mariners. The Coast Guard recognizes that current editions of charts or maps are not always reasonably available. Where they are not, the Coast Guard would allow the use of a currently corrected edition.

Members of the public questioned the need for the most current editions of charts or maps on rivers, noting that owners, operators, or masters of towing vessels often extensively annotate their charts or maps with information on shoaling, currents, and so forth. While this annotation enhances the usefulness of superseded charts or maps, most charts or maps published by the National Ocean Service are updated when the number of corrections reach a predetermined threshold. River maps published by the Army Corps of Engineers are updated every few years. The Coast Guard has determined that the burden of transferring personal annotations to a new edition of a chart or map on such an occasional basis is far outweighed by the increase in accuracy and reliability of a current chart or map. Therefore, for vessels that operate solely in U.S. navigable waters and on routes that are frequent, short, and generally limited to a few well-annotated charts or maps, § 164.72(b)(1)(ii)(A) would require the carriage of current editions of charts or maps on board.

''Currently corrected'' refers to the incorporation of corrective notices to a current edition of a chart or map that appear in Notices to Mariners. These notices, published by the Coast Guard and the Defense Mapping Agency (the Army Corps of Engineers also publishes Notices to Navigation), provide essential navigational information about specific waterways, weekly, including information on the location of dredging, obstructions in waterways, and changes in location of aids to navigation. Many towing companies indicated that they routinely use facsimile machines to transmit these notices to their vessels. However, during the public meeting there was some concern that the most recent Notices to Mariners might not always arrive on time. The Coast Guard is addressing this concern and is exploring the possibility of an electronic-bulletin-board system. Therefore, for vessels that operate seaward of U.S. navigable waters, and three nautical miles or more from shore on the Great Lakes, and on routes offshore, and for vessels that generally rely on several corrected charts or maps, § 164.72(b)(1)(ii)(B) would require the carriage of corrected charts or maps on board. To limit the administrative burden on operators or masters, this rule would require the entry only of those changes applicable to the vessel's transit and reasonably available to the operators or masters. For example, a towing vessel with a 3-meter draft would not have to update depths in a shallow creek used by recreational boaters.

Publications. Every towing vessel would have to carry appropriate navigational-safety publications for the areas where it operated. These publications provide crucial information beyond that found on charts or maps: bridges' clearances and terms of openings; channels for use on radio; local limits on speed or other activities; currents; and timely advice on hazards to navigation. The publications required by proposed § 164.72(b)(2) for the most part follow those recommended by the TSAC working group. For these publications as for charts or maps, ''currently corrected'' implies recency and relevance. The act of shifting information from notices to publications would cost each mariner around 20 minutes a week, and this slight expenditure of time would bring two big benefits. It would force the mariner into the notices, and it would leave him or her with accurate publications for ready reference.

10b. Public comment on marine charts or maps and publications. Six comments addressed the recommendation of the study by the Coast Guard, that charts (including maps) and publications be carried aboard towing vessels. Three of these six supported this recommendation for charts or maps. Two more of these six also supported this recommendation for current or corrected publications, and one of these two further contended that a requirement of this nature would enhance the safety of personnel and the environment. The other also suggested that the Coast Guard consider size of vessel and area of operation while developing these requirements.

Proposed § 164.72(b) would require charts or maps and publications that cover a vessel's operational area. It does not, however, take account of a vessel's size, except as it distinguishes by applicability between vessels of 8 or more meters in length and other vessels.

One comment opposed using river charts or maps for navigation. It contended that these charts or maps are unreliable because constant changes in the river make them outdated and because few show sets, depths, drafts, or accurate sailing lines. It added that the information on the charts or maps is often overly condensed, readable only by use of a magnifying glass.

The Coast Guard, recognizing the limits of some river charts or maps, believes charts or maps a necessary navigational tool. Individual annotation of river charts or maps adds to their utility.

One comment argued that charts or maps and publications aboard towing vessels on rivers should comprise charts or maps from the Army Corps of Engineers, Light Lists, Notices to Mariners with changes to charts or maps, and notices of regattas. (a) One comment urged that the Coast Guard accept charts or maps with changes added by hand, as well as recent charts or maps, in fulfillment of any requirement for charts or maps. (b) The same comment argued that updating publications daily is unnecessary—and a requirement of it unjustified—and suggested that the Coast Guard implement a system of looseleaf binders into which recently corrected pages could be inserted. This comment also urged that, because broadcasts to mariners by the Coast Guard are too infrequent and often are hard to understand, the Coast Guard develop a system of electronic Notices to Mariners under which current information could reach mariners at once but which, once printed, could be preserved for future reference.

The Coast Guard has allowed for the use of river charts or maps from the Army Corps of Engineers in appropriate areas. It understands the value of charts or maps with changes added by hand, but it does not regard out-of-date charts or maps, even ones annotated with care, as equivalent to current charts or maps. The Coast Guard is addressing the system of Notice to Mariners in a separate initiative and has included the issue of electronic updating within its scope rather than dealing with it piecemeal here.

11. Towline and terminal gear. Proposed §§ 164.74 and 164.76 would establish standards of minimal adequacy for towing hawsers, wire-rope towing cable, and associated gear and for their inspection and serviceability. Several participants in the public meeting noted that, unlike a conventional vessel, a towing vessel cannot navigate at all without taking account of another vessel or the equivalent: its tow. So an essential part of the overall navigation of a towing vessel is the gear making that vessel fast to its tow. Towlines and associated gear must be appropriate and must remain

intact throughout a voyage to ensure the safety of all mariners and of the environment.

Towing astern. To reflect current standards of industry, this proposed rule would codify guidelines developed by TSAC as set out by the Coast Guard in its NVIC 5–92, ''Guidelines for Wire Rope Towing Hawsers.'' But, for a vessel towing astern, this rule would go beyond NVIC 5–92 in two respects. It would require adherence to specific standards for inspection and serviceability. And, to ensure that these governed a towline wherever used, it would require that both an initial purchaser and any subsequent purchaser become aware of a towline's load-carrying capacity.

First, strength is of the essence. Towing vessels are the prime movers and sole providers of navigation for the barges, vessels, and objects they are towing. Towlines and associated gear enable them to transmit the forces necessary to maneuver their tows, and they can operate only within the limits of their gear. Undersize (understrength) towlines may break or, at best, reduce their—and therefore their tows'—ability to maneuver.

Proposed § 164.74(a) would require the owner, operator, or master of a vessel engaged in towing astern to ensure that towlines used to tow a barge, vessel, or other object meet certain minimum standards. The sizing ratio between a towing vessel's bollard-pull capability and the towline is crucial. Manufacturers, classification societies, and organizations such as the Cordage Institute provide extensive sizing guidelines listed by a towing vessel's bollard-pull capability, its horsepower rating, or a towline's working-load limit. The Coast Guard would have the mariner evaluate the intended use of the towline, the capabilities of the towing vessel, and other conditions as detailed in § 164.74(a)(1) to determine the appropriate towline size rather than setting specific ratios. This approach should keep the requirements flexible and accommodate technological advances in towline materials.

Second, strength must be readily ascertainable by any user. Towlines often pass among owners of towing vessels. Judging a used towline by the manufacturer's data (or the original tensile test) may lead to a false sense of its minimum breaking strength. A new owner, operator, or master should know the strength of the used towline before counting on the towline. This proposed rule would require a new owner to ascertain that strength.

Third, marlinspike seamanship, winches, and chafing gear affect towline strength. This proposed rule would require freedom from knots and, except in specified circumstances, from terminations in wire clips. It would also require winches that evenly spool and tightly wind towlines. These would extend the life of the towlines by reducing the dangers of crushing, kinking, and rusting.

Fourth, proper maintenance carried out according to regular inspections preserves strength. Plain fatigue may weaken towlines. Sections 164.74(a)(3)(iii) and (iv) propose visual inspections of towlines and assessments of their suitability by people who know what they are looking at; can do something to correct any problems found with it; and would inspect it at a frequency appropriate for the deterioration rate or at least appropriate for the important role the towline plays in navigation safety. Recognizing towline deterioration is not an easy task. Material, environment, and many other factors can affect the deterioration rate of a towline. Manufacturers' guides, training manuals, text books, and other guidelines are available for most materials used to construct towlines. By keeping the requirements general, the proposed rule would accommodate technological advances in towline materials and lets the owner, master, or operator tailor a towline-replacement schedule to specific towline use. The proposed requirement to record the inspections would ensure that personnel are aware of the towline's history.

Fifth, safety for the towing vessel and its tow is imperative. Safety of both the vessel and in some instances the barge is addressed by § 164.74(b)(4), which would require an emergency means to disconnect the towline from the vessel. Section 164.74(b)(7) would also require a winch brake capable of controlling the towline as it pays out, even if power to the winch is lost.

Pushing ahead or alongside. The Coast Guard and the TSAC working group also discussed towing vessels pushing ahead or alongside. Their gear is very different from conventional towlines, and general guidelines have not been developed. This proposed rule would recognize this, and in § 164.76 would require that owners, masters, or operators assess their gear for suitability. However, it does not detail requirements for size, maintenance, or serviceability. Further research and assessment of this type of gear is being done by a TSAC working group to determine whether additional guidance is necessary. The Coast Guard is soliciting comments on any guidance that would be appropriate to improve the safety of pushing ahead or towing alongside.

12. Navigation underway: towing vessels. This proposed rule would also require in § 164.78 that towing vessels operate under a regulatory regime similar to the navigational-safety regulations for self-propelled vessels of 1,600 or more gross tons when underway on the navigable waters of the United States [compare 33 CFR 164.11]. After all, towing vessels resemble these vessels in many relevant respects. They may handle barges, vessels, or other objects quite as large, various, and hard to control as are these vessels and so may demand equivalent expertise at maneuvering, especially in the various conditions of weather and current that often prevail on the rivers. This regime would apply regardless of the tows' configurations and of those conditions. It would govern both navigational equipment and operation. It would require that, before the towing of barges, vessels, or objects, the owners, operators, or masters of the towing vessels confirm the presence aboard in working order of the necessary gear and check and consider the weather and aids to and other means of navigation while they determine appropriate speed, lights, lookouts, and maneuvering.

13. Tests and inspections. Proposed § 164.80 would require that towing vessels test their navigational and control navigational equipment under a regulatory regime similar to the navigational-safety regulations for self-propelled vessels of 1,600 GT or more, detailed in 33 CFR 164.25. Verification of the navigational equipment to be used for maneuvering is essential and can prevent emergencies from arising during crucial transits. In addition, a basic inspection of the navigational equipment used to control the towing vessel, including the towline and terminal gear, would ensure that these essential systems are ready for use. The Coast Guard views the proposed tests and inspections as the least necessary to ascertain whether the vessel is prepared to safely navigate.

14. Maintenance, failure, and reporting. Proposed § 164.82 would require that owners, masters, and operators maintain navigational equipment in effective working order. Degraded, poorly maintained equipment can give them a false sense of security and prove more dangerous than inoperative equipment. Modern commercial-grade navigational equipment needs little maintenance and adjustment, but even this equipment may suffer damage by power surges or

improper installation. Older equipment needs appreciably more maintenance and adjustment; for example, slow degradation of radar performance over time may go unnoticed unless dealer-prescribed maintenance and checks take place.

Logs of inoperative equipment reflect the working order of a vessel's equipment to the owner, master, or operator. This proposed rule would require that owners, masters, or operators record inoperative equipment when it fails. This requirement would be similar to though less burdensome than the requirement for ships (compare 33 CFR 164.55). It is based on recommendations from the TSAC working group. Several people attending the public meeting suggested that the rule require only that the operator or master use due diligence to repair inoperative equipment in a timely way. The prompt recording of ''down'' equipment would certify the time of failure and would emphasize to the owners, masters, and operators the impact of inoperative equipment on the seaworthiness of towing vessels. For instance, where a vessel's only radar set fails during a voyage, the operator must enter the failure in the log and reckon his or her reduced capabilities (the vessel may continue the voyage if the dictates of good seamanship applied to the weather and other circumstances suggest the safety of continuing the voyage.). Even then, however, the operator must use due diligence to arrange for repairs.

Reporting inoperative equipment serves to notify the Coast Guard of the state of that equipment. The Coast Guard needs to know this when a vessel enters a traffic-dense area, such as a Vessel Traffic Service Area, or when the failure of a certain piece of equipment could severely hamper safe navigation. Under § 164.82(d), an owner, master, or operator would have to ask permission to deviate from the rules if he or she wanted to continue to operate his or her vessel with an inoperative radar 96 hours after it had failed. The Coast Guard expects that this permissive ''deviation'' from normal requirements would be invoked seldom. For radar sets, technical representatives and spare parts are available within 96 hours except in extraordinary cases.

Incorporation by Reference

The following material would be incorporated by reference in § 164.03: API Specification 9A, Section 3, ''Properties and Tests for Wire and Wire Rope''; ASTM D4268–93, ''Standard Methods of Testing Fiber Ropes''; CIA–3, ''Standard Test Methods including Required Terminations''; RTCM Paper 71–95/SC112–STD, ''RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1''; and RTCM Paper 191–93/SC112–STD, ''RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3.'' Copies of the material are available from the sources listed in § 164.03. Copies of the material are available, for inspection only, where indicated under **ADDRESSES**.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 (February 26, 1979)).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary follows.

This rule would apply to all towing vessels greater than 8 meters (26.25 feet) in length operating in U.S. waters. These vessels would have to retain manufacturing specifications on towlines and regularly maintain and inspect them. They would have to carry updated charts or maps and publications, marine radar, and searchlights. Some (depending on service) would also have to carry magnetic compasses or swing-meters, depth-sounders, and electronic position-fixing devices.

Summary of Benefits

The principal benefits of this proposed rule would be to enhance safety of navigation and reduce the risk of collisions, allisions, and groundings.

The allision in September, 1993, of a tow with a fixed railroad bridge near Mobile, Alabama, established the necessity of navigational-safety equipment for towing vessels. These requirements would reduce damage to the environment by increasing the number of tools at the disposal of a vessel operator, thereby decreasing the likelihood of an accident.

The preliminary findings of studies prepared after the derailment of the Sunset Limited indicate that many owners and operators of towing vessels voluntarily equip their vessels with much of the proposed gear. Review of the kind and amount of equipment voluntarily installed suggests the desirability of the industry's taking these proposed navigational-safety measures. In addition, reliability and performance of modern navigational equipment has improved, which also suggests that mariners are being provided with valued, accurate information. The benefits of each piece of gear being proposed are as follows:

A marine surface-navigation radar is an essential piece of navigational-safety equipment. Not only does it aid in detecting and avoiding other vessels; it helps in constricted waterways and during periods of decreased visibility.

A searchlight also helps in restricted waterways. And it is essential in checking the condition of tows and warning other vessels of the presence of towlines.

A magnetic compass indicates headings, which are critical to safe navigation of vessels in open waters. It allows dead-reckoning in restricted visibility, enables the vessel to fix its position, helps the vessel to determine the effect of winds and currents, and tells the rate of turn for the tow.

A swing-meter, or rate-of-turn indicator, tells the rate of turn for the towing vessel itself, which is valuable for every vessel pushing ahead and is critical for any large, multiple-barge tow pushing ahead. TSAC has indicated the considerable value of this device to a vessel pushing ahead.

A depth-sounder decreases the risk of grounding. It provides immediate information on depth, and also helps fix the vessel's position.

An electronic position-fixing device has become a basic navigational tool on board both offshore and coastal vessels. It supplants plotting by traditional means, for which few towing vessels have either the time or the personnel.

Updated charts or maps and publications have always been a basic navigational tool. They give detailed, recent information on obstructions, routes, bridge clearances, communication channels, river currents, and hazards to navigation.

Finally, owners' and operators' retention of manufacturers' data on the breaking strength of towlines, together with minimal standards of inspection and serviceability, would help to ensure that towlines remain intact throughout transits and are of the appropriate sizes or configurations. The desirability of

keeping tugs made up to their barges appears self-evident.

All of these requirements essentially serve the same purpose: to increase navigational safety for towing vessels and barges on U.S. waters. Although the Coast Guard recognizes that many prudent operators already satisfy them, this rule would codify them, provide basic performance standards for the gear, and compel compliance for vessels not conforming to the sound practices of the majority of the industry.

The benefits from these proposed requirements are significant. But the Coast Guard cannot quantify them from available data.

Summary of Costs

The present value of the costs to the towing industry of installing the proposed navigational equipment is, on a very conservative estimate, just under $31.5 million. This estimate is based on Coast Guard research. It assumes that a high proportion of vessels do not already carry the proposed equipment, and does not factor in the difference in requirements for the difference in routes. Therefore, although it does not include costs for maintenance and repair, the Coast Guard expects that the actual value of the costs to the industry will run significantly lower than $31.5 million.

The estimated cost for towing vessels 20 meters (65.62 feet) or more in length totals $9.9 million; this comes to about $4,600 a vessel. That for those between 8 and 20 meters totals $21.5 million; this comes to about $7,000 a vessel. The average cost for smaller vessels, paradoxically, is higher than that for larger ones because the Coast Guard's estimating methodology assumes that a larger proportion of smaller vessels do not already carry the proposed navigational-safety equipment.

This proposed rule would impose recurring costs in following years. There would be three annual components of recurring costs: updates, deviations, and towline testing. (a) Estimated cost of updates would be $520,000 a year for the purchase of new editions of charts or maps and publications as necessary. (b) Estimated costs of deviations would be about $50,000 a year, assuming 1,237 of them a year. This number is low because the rule would allow 96 hours to make any necessary repairs. This is to decrease the burden on industry, especially on small entities. (c) Finally, estimated cost of towline testing would be about $300 a test. At 1,041 tests a year (20 percent of vessels), this component would be $312,000 a year. These three annual components of recurring costs would total $882,000.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

This proposed rule would require towing vessels to carry and properly use certain navigational-safety equipment and to meet requirements for serviceability and inspection of towlines. It would apply to all towing vessels 8 meters (26.25 feet) or more in length operating on the navigable waters of the United States, except for certain yard and fleeting craft used in restricted service and for towing vessels engaged solely in rescue and assistance.

Voluntary carriage of the navigational-safety equipment addressed in this proposed rule is standard in the industry, and those vessels without equipment, charts or maps, and publications are the exception. The costs of this rule would consist of those incurred by enterprises, marginal in a legal if not an economic sense, to achieve compliance. For those owners, masters, or operators required to purchase equipment, charts or maps, and publications, the costs would be low in comparison with the value of their towing vessel, and in comparison with the damage that could be caused by an accident or a spill.

This proposed rule would provide a 1-year phase-in period for new radar, a 2-year phase-in period for extant radar, and a 5-year phase-in period for depth-sounders. The phase-in periods would let affected entities schedule conversions during normal downtime periods, and would permit small entities sufficient time to explore the market, line up capital, and arrange contracts in advance with retailers. Many suppliers are carrying excess capacity, and bargaining power should favor the small operators with the foresight to take advantage of the grace conferred by phase-in periods.

Because this proposed rule would exempt towing vessels of less than 8 meters in length, certain yard and fleeting craft, and assistance-towing vessels, because of the large number of vessels already in compliance, and because of the phase-in periods for several provisions, the Coast Guard certifies that this rule would not result in a significant economic impact on a substantial number of small entities.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule would have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposed rule contains collection-of-information requirements in the following sections: 164.72(b), 164.74(a), 164.78(b), and 164.82(b) through 164.82(d). The following particulars apply:

DOT No.: 2115.
OMB Control No.: 2115–AE91
Administration: U.S. Coast Guard.
Title: Navigational-Safety Equipment for Towing Vessels
Need for Information: This proposed rule would require the mariner to log or otherwise record information necessary for the safe operation of the vessel. These recordkeeping requirements are largely consistent with good commercial practices and the dictates of good seamanship for safe navigation and maintenance of critical navigational-safety equipment. The following is a section-by-section justification of the collection requirements.

Proposed § 164.72(b) would require towing vessels to have on board and maintain navigational charts or maps, and publications. Carriage and proper updating of these charts or maps is essential for safe navigation and is consistent with the dictates of good seamanship.

Proposed § 164.74(a) would require owners, masters, or operators to obtain written verification of towline strength and to maintain this verification either on board the vessel or in company records. It would also require monthly records of towline inspection. Recording of this information is necessary to ensure that the mariner knows the minimum breaking strength of the towline, and is aware of any unusual stress on or wear to the line.

Proposed § 164.78(b) would require a log entry or other onboard documentation of tests and inspections of equipment. Recording is necessary to provide inspectors of the Coast Guard or the company a written record ensuring performance of the required tests and inspections.

Proposed §§ 164.82(b)–(d) would require a record of inoperative navigational-safety equipment and a request for a deviation from these proposed rules if the radar is inoperative for 96 hours or more. This information is necessary because it lets towing vessels continue to operate when extraordinary circumstances make repair of inoperative navigational-safety equipment impracticable and there is no degradation of navigation safety in the vessels' continued operation.

Proposed Use of Information: The primary use of this information would be to ensure that the mariner records information necessary for the safe operation and maintenance of the vessel. The secondary use would be to help Coast Guard inspectors to determine whether a vessel is in compliance or, in the case of a casualty, whether failure to meet this proposed rule contributed to the casualty. The Coast Guard has no specific plan to collect these data for statistical analysis.

Frequency of Response: The various information called for by this proposed rule would be recorded at different intervals. Updates of charts or maps and publications under proposed § 164.72(b) would be recorded weekly. Towline verification would require, for each towline, recording (though not submittal) of initial manufacturing data once and retainment indefinitely. Entries in inspection logs or other documentation for towlines under proposed § 164.74(a) would require recording at least monthly. The recording under proposed § 164.78(b) of tests and inspections of equipment would be frequent, and consistent with the underway schedule of the vessel. Finally, the recording of inoperative equipment and the submittal of requests for deviations under proposed §§ 164.82(b) through (d) would occur infrequently, when certain navigational-safety equipment fails at all or certain other equipment is inoperative for greater than 96 hours.

Burden Estimate: 336,102.08 hours.

Respondents: 5,203 owners, masters, or operators of towing vessels.

Average Burden Hours A Respondent: 64.6 annual hours a respondent.

The Coast Guard has submitted the requirements to OMB for review under sub-§ 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraphs 2.B.2e(34) (d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns only equipment approval. Approved equipment should contribute to the reduction of the occurrences of ship-generated oil spills in the marine environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The citation of authority for Part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, paragraph (b) is added to read as follows:

§ 164.01 Applicability.

* * * * *

(b) Sections 164.70 through 164.82 of this part apply to each towing vessel of 8 meters (26.25 feet) or more in length operating in the navigable waters of the United States other than the St. Lawrence Seaway; except that a towing vessel is exempt from the requirements of § 164.72 if it is used solely—

(1) Within a limited geographic area, such as a particular fleeting-area for barges or commercial facility, and used solely for restricted service, such as making up or breaking up larger tows; or

(2) For assistance towing as defined by 46 CFR 10.103.

3. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are as follows:

American Petroleum Institute (API);
1220 L Street, Northwest, Washington, DC 20005, API Specification 9A, Section 3, Properties and Tests for Wire and Wire rope, 1984 ..... 164.74
American Society for Testing and Materials (ASTM):
1916 Race Street, Philadelphia, PA 19103. ASTM D4268–93, Standard Methods of Testing Fiber Ropes, 1993 ..... 164.74
Cordage Institute:
350 Lincoln Street, Hingham, MA 02043, CIA–3, Standard Test Methods including Required Terminations, 6/80 ..... 164.74
International Maritime Organization (IMO):
4 Albert Embankment, London SE1 7SR, U.K., IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975 ..... 164.13
International Telecommunication Union Radiocommunication Bureau (ITU–R):
Place de Nations CH–1211 Geneva 20 Switzerland:
(1) ITU–R Recommendation M.821, Optional Expansion of the Digital Selective-Calling System for use in the Maritime Mobile Service, 1992 ..... 164.43
(2) ITU–R Recommendation M.825, Characteristics of a Transponder System using Digital Selective-Calling Techniques for use with Vessel Traffic Services and Ship-to-Ship Identification, 1992 ..... 164.43
Radio Technical Commission for Maritime Services:
655 Fifteenth St., N.W., Suite 300, Washington, DC 20005:
(1) [Paper 12–78/DO–100], Minimum Performance Standards, Loran C Receiving Equipment, 12/20/77 ..... 164.41
(2) [Paper 194–93/SC104–STD], RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1, 1994 ..... 164.43

(3) [Paper 71–95/SC112–STD], RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, 1995 ..... 164.72
(4) [Paper 191–93/SC112–STD], RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3, 1993 ..... 164.72

4. Sections 164.70, 164.72, 164.74, 164.76, 164.78, 164.80, and 164.82 are added to read as follows:

§ 164.70 Definitions.

For the purposes of §§ 164.72 through 164.82, the term—

Current edition means the most recent published version of a publication, chart, or map required by § 164.72.

Currently corrected means a current or previous edition of a publication required by § 164.72, corrected with changes that come from Notices to Mariners or Notices to Navigation reasonably available and that apply to the vessel's transit.

Departing from port means departing from an anchorage or facility for a transit beyond U.S. navigable waters as established in 33 CFR 2.05–25.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between miles 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between miles 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

River means any river, canal, or other, similar body of water designated by the Officer in Charge, Marine Inspection.

Swing-meter means an electronic or electric device that indicates the rate of turn of the vessel on board which it is installed.

Towing vessel means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

Western rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational-demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen—Morgan City Alternative Route, and that part of the Atchafalaya River above its junction with the Port Allen—Morgan City Alternative Route including the Old River and the Red River and those waters specified by 33 CFR 89.25.

§ 164.72 Navigational-safety equipment, charts or maps, and publications required on towing vessels.

(a) Except as provided by § 164.01(b)(1) and (2), each towing vessel must be equipped with the following navigational-safety equipment:

(1) *Marine radar.* By [*date 1 year after the effective date of the final rule.*], a marine radar that meets the following applicable requirements:

(i) For a vessel of less than 300 gross tons that engages in towing on navigable waters of the U.S., including rivers and Western rivers, the radar must meet—

(A) The requirements of the Federal Communications Commission (FCC) specified by 47 CFR Part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category II and stabilization Category Bravo.

(ii) For a vessel of less than 300 gross tons that engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes, the radar must meet—

(A) The requirements of the FCC specified by 47 CFR Part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category I and stabilization Category Alpha.

(iii) For a vessel of 300 gross tons or more that engages in towing, the radar must meet RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.3, RTCM Paper 191–93/SC112–STD.

(iv) A towing vessel with an existing radar must meet the applicable requirements of paragraphs (a)(1) (i) through (iii) of this section by [*date 2 years after effective date of the final rule.*]; except that a towing vessel with an existing radar must meet the display and stabilization requirements of paragraph (a)(1)(ii)(B) of this section by [*date 5 years after effective date of the final rule.*].

(2) *Searchlight.* A searchlight, directable from the vessel's main steering station and intense enough to help aid in navigation, docking, and checking the condition of the tow.

(3) *VHF–FM radio.* An installation or multiple installations of VHF–FM radios as prescribed by Part 26 of this chapter and 47 CFR Part 80, to maintain a continuous listening watch on the designated calling channel, VHF–FM Channel 13 (except on portions of the Lower Mississippi River, where VHF–FM Channel 67 is the designated calling channel), and to separately monitor the International Distress and Calling Channel, VHF–FM Channel 16, except when transmitting or receiving traffic on other VHF–FM channels or when participating in a Vessel Traffic Service (VTS) or monitoring a channel of a VTS. (Each U.S. towing vessel of 26 feet (about 8 meters) or more in length, except a public vessel, must hold a ship-radio station license for radio transmitters (including radar and EPIRBS), and each operator must hold a restricted operator's licence or higher. To get an application for either license, call (800) 418–FORM or (202) 418–FORM, or write to the FCC; Wireless Bureau, Licensing Division; 1270 Fairfield Road; Gettysburg, PA 17325–7245.)

(4) *Magnetic compass.* Either—

(i) An illuminated swing-meter or card-type magnetic steering compass readable from the vessel's main steering station, if the vessel engages in towing exclusively on rivers or Western rivers; or

(ii) An illuminated card-type magnetic steering compass readable from the vessel's main steering station.

(5) *Echo depth-sounding device.* By [*date 5 years after the effective date of the final rule.*], an echo depth-sounding device readable from the vessel's main steering station, unless the vessel engages in towing exclusively on rivers or Western rivers.

(6) *Electronic position-fixing device.* An electronic position-fixing device, either a LORAN–C receiver or a satellite navigational system such as the Global Positioning System (GPS) as required by § 164.41, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(b) Each towing vessel must carry on board and maintain the following:

(1) *Charts or maps.* Marine charts or maps of the area to be transited, published by the National Ocean Service, the Army Corps of Engineers, or a river authority that are—

(i) Of a large enough scale and have enough detail to make safe navigation of the area possible; and

(ii) Either—

(A) The current edition, if the vessel engages in towing exclusively on navigable waters of the U.S., including rivers and Western rivers; or

(B) Currently corrected, if the vessel engages in towing seaward of navigable

waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(2) *General publications.* A currently corrected edition of, or an applicable currently corrected extract from, each of the following publications for the area to be transited:

(i) If the towing vessel is engaged in towing exclusively on rivers and Western rivers—

(A) U.S. Coast Guard Light List;

(B) Applicable Notice to Navigation published by the U.S. Army Corps of Engineers, or Local Notice to Mariners published by the Coast Guard, for the area to be transited, when available; and

(C) River-current tables published by the Army Corps of Engineers or a river authority, if available.

(ii) If the vessel is engaged other than in towing exclusively on rivers and Western rivers—

(A) Coast Guard Light List;

(B) Coast Guard Local Notice to Mariners;

(C) Tidal-current tables published by the National Ocean Service, or river-current tables published by the Army Corps of Engineers or a river authority;

(D) Tide tables published by the National Ocean Service; and

(E) U.S. Coast Pilot.

(3) *Inland Navigation Rules.* The owner, master, or operator of each self-propelled vessel of 12 meters (39.38 feet) or more in length shall carry on board and maintain for ready reference a current edition of the Inland Navigation Rules as required by 33 CFR 88.05.

(c) Table 164.72, following, summarizes the navigational-safety equipment, charts or maps, and publications required for towing vessels of 8 meters or more in length engaged in towing:

TABLE 164.72.—EQUIPMENT, CHARTS, AND PUBLICATIONS FOR TOWING VESSELS OF 8 METERS OR MORE IN LENGTH

	Rivers and western rivers	U.S. navigable waters other than rivers or western rivers	Waters seaward of U.S. navigable waters and 3 NM or more from shore on the Great Lakes
Marine Radar:			
(1) Towing Vessels of Less than 300 GT.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category I[2] Stabilization Category ALPHA.
(2) Towing Vessels of 300 GT or More.	RTCM Paper 191–93/SC112–STD Version 1.3.	RTCM Paper 191–93/SC112–STD Version 1.3.	RTCM Paper 191–93/SC112–STD Version 1.3.
Searchlight	X	X	X
VHF–FM Radios	X	X	X
Magnetic Compass	X[3]	X	X
Swing-Meter	X[3]	...	
Echo Depth—Sounding Device	...	X	X
Electronic Position—Fixing Device	...	...	X
Charts or Maps	(1) Large enough scale (2) Current edition	(1) Large enough scale (2) Current edition	(1) Large enough scale. (2) Currently corrected.
General Publications	(1) U.S. Coast Guard Light List (2) Notice to Navigator or Local Notice to Mariners. (3) River Current Tables	(1) U.S. Coast Guard Light List (2) Local Notice to Mariners (3) Tidal Current Tables (4) Tide Tables (5) U.S. Coast Pilot	(1) U.S. Coast Guard Light List. (2) Local Notice to Mariners. (3) Tidal Current Tables. (4) Tide Tables. (5) U.S. Coast Pilot.
Inland Navigation Rules (if the vessel is of 12 meters or more in length).	X	X	X

Notes:
[1] Towing vessels with existing radar must meet this requirement by [Date 2 years after effective date of the rule.]
[2] Towing vessels with existing radar must meet display and stablization requirements by [Date 5 years after effective date of the rule.]
[3] Towing vessels may carry either a swing—meter or a magnetic compass.

§ 164.74 Towline and terminal gear for towing astern.

(a) *Towline.* The owner, master, or operator of each vessel towing astern shall ensure that the strength of each towline is adequate for its intended service, considering at least the following factors:

(1) The size and material of each towline must be—

(i) Appropriate for the horsepower or bollard pull of the vessel;

(ii) Appropriate for the static loads and dynamic loads expected during the intended service;

(iii) Appropriate for the sea conditions expected during the intended service;

(iv) Appropriate for the temperatures of normal stowage and service on board the vessel;

(v) Compatible with associated navigational-safety equipment;

(vi) Appropriate for the likelihood of mechanical damage; and

(vii) Appropriate for exposure to the marine environment and to any chemicals used or carried on board the vessel.

(2) Each towline as rigged must—

(i) Be free of knots;

(ii) Be spliced with a thimble, or have a poured socket at its end; and

(iii) Be free of wire clips except for temporary repair. In the case of temporary repair, the towline must have a thimble and either five wire clips or as many wire clips as the manufacturer specifies for the nominal diameter and construction of the towline, whichever is more.

(3) The condition of each towline must be monitored through the—

(i) Keeping on board the towing vessel or in company files of a record of the towline's initial minimum breaking strength as determined by the manufacturer, by a recognized classification society, or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods;

(ii) Keeping on board the towing vessel or in company files of a record of each retest of the towline's minimum

breaking strength as determined by a recognized classification society or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods, if the towline is purchased from another owner, master, or operator of a towing vessel with the intent to use it as a towline or if the towline is retested for any reason;

(iii) Conducting of visual inspections of the towline in accordance with the manufacturer's recommendations, or at least monthly, and whenever the serviceability of the towline is in doubt (the inspections must be conducted by the owner, master, or operator, or by a person on whom the owner, master, or operator confers the responsibility to take corrective measures appropriate for the use of the towline);

(iv) Evaluating of the serviceability of the whole towline or any part of the towline, and removing the whole or part from service either as recommended by the manufacturer or a recognized classification society or in accordance with a replacement schedule developed by the owner, master, or operator that accounts for at least the—

(A) Sea miles or time in service of the towline;

(B) Operating conditions experienced by the towline;

(C) History of loading, including any shock loading, of the towline;

(D) Surface condition, including corrosion and discoloration, of the towline;

(E) Amount of visible damage to the towline;

(F) Amount of material deterioration indicated by measurements of diameter and, if applicable, of lay extension of the towline; and

(G) Point at which a tensile test proves the minimum breaking strength of the towline inadequate by the standards of paragraph (a)(1) of this section; and

(v) Keeping on board the towing vessel or in company files of a record of the material condition of the towline when inspected under paragraph (a)(3)(iii) of this section. Once this record lapses for three months or more, except for a vessel that is laid up or out of service or has not deployed its towline, the owner, master, or operator shall retest the towline or remove it from service.

(b) *Terminal gear.* The owner, master, or operator of each vessel towing astern shall ensure that the gear used to control, protect, and connect each towline meets the following criteria:

(1) The material and size of the terminal gear are appropriate for the strength and anticipated loading of the towline and for the environment;

(2) Each connection is secured by at least one nut with at least one cotter pin or other means of preventing its failure;

(3) The lead of the towline is appropriate to prevent sharp bends in the towline from fairlead blocks, chocks, or tackle;

(4) There is provided a method, whether mechanical or non-mechanical, of emergency release for the towline that does not endanger operating personnel;

(5) The towline is protected from abrasion or chafing by chafing gear, lagging, or other means;

(6) Except on board a vessel towing in ice on Western rivers or one using a towline of synthetic or natural fiber, there is fitted a winch that evenly spools and tightly winds the towline; and

(7) If a winch is fitted, there is attached to the main drum a brake that has a holding power appropriate for the horsepower or bollard pull of the towing vessel and can be operated without power to the winch.

§ 164.76 Towline and terminal gear for towing alongside and pushing ahead.

The owner, master, or operator of each vessel towing alongside or pushing ahead shall ensure that the face wires, spring lines, and push gear used are appropriate for the vessel's horsepower, are appropriate for the arrangement of the tow, are frequently inspected, and remain serviceable.

§ 164.78 Navigation underway: towing vessels.

(a) The owner, master, or operator of each vessel towing shall ensure that each person directing and controlling the movement of the vessel—

(1) Understands the arrangement of the tow and the effects of maneuvering on the towing vessel and on the vessel, barge, or object being towed;

(2) Can fix the position of the vessel using installed navigational equipment, external fixed aids to navigation, geographic reference-points, and hydrographic contours;

(3) Does not fix the position of the vessel using buoys alone (Buoys are aids to navigation placed in approximate positions either to alert mariners to hazards to navigation or to indicate the orientation of a channel. They may not maintain exact charted positions, because strong or varying currents, heavy seas, ice, and collisions with vessels can move or sink them or set them adrift. Although they may corroborate a position fixed by other means, they cannot fix a position; however, if no other aids are available, buoys alone may establish an estimated position.);

(4) Evaluates the danger of each closing visual or radar contact;

(5) Knows and applies the variation and deviation where a magnetic compass is fitted and where charts or maps have enough detail to enable this type of correction;

(6) Knows the current speed, current direction, set, drift, and tidal state for the area to be transited; and

(7) Proceeds at a speed prudent for the weather, visibility, traffic density, tow draft, possibility of wake damage, current speed, and local speed-limits.

(b) The owner, master, or operator of each vessel towing shall ensure that the tests and inspections required by § 164.80 are conducted and that the results are entered in the log or other record carried on board.

§ 164.80 Tests and inspections.

(a) The owner, master, or operator of each towing vessel of less than 1600 GT shall ensure that tests and inspections of gear occur before departing from port or at least weekly, to include—

(1) *Steering-systems.* A test of the steering-gear-control system; a test of the main steering gear from the alternative power supply, if installed; a verification of the rudder-angle indicator relative to the actual position of the rudder; and a visual inspection of the steering gear and its linkage;

(2) *Communications.* Operation of all internal vessel-control communications and vessel-control alarms, if installed;

(3) *Lights.* Operation of navigational lights and all searchlights;

(4) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of winch-brake mechanism, if installed; and

(5) *Propulsion systems.* Visual inspection of the spaces for main propulsion machinery, of machinery, and of devices for monitoring machinery.

(b) The owner, master, or operator of each towing vessel of 1600 GT or more shall ensure that tests of equipment occur at the frequency required by § 164.25 and that inspections of gear occur before departing from port or at least weekly, to include—

(1) *Navigational equipment.* Tests of onboard equipment as required by § 164.25; and

(2) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch-brake mechanism, if installed.

§ 164.82 Maintenance, failure, and reporting.

(a) *Maintenance.* The owner, master, or operator of each towing vessel shall

maintain operative, the navigational-safety equipment required by § 164.72.

(b) *Failure.* If any of the navigational-safety equipment required by § 164.72 fails during a voyage, the owner, master, or operator of the towing vessel shall exercise due diligence to repair it at the earliest practicable time. He or she shall enter its failure in the log or other record carried on board. The failure of equipment, in itself, does not constitute a violation of this rule; nor does it constitute unseaworthiness per se; nor does it obligate an owner, master, or operator to moor or anchor the vessel. However, the owner, master, or operator shall consider the state of the equipment—along with such factors as weather, visibility, traffic, and the dictates of good seamanship—in deciding whether it is safe for the vessel to proceed.

(c) *Reporting.* The owner, master, or operator of each towing vessel whose equipment is inoperative or otherwise impaired while the vessel is operating within a Vessel Traffic Service Area shall report the fact as required by 33 CFR 161.124.

(d) *Deviation.* The owner, master, or operator of each towing vessel unable to repair within 96 hours an inoperative marine radar required by § 164.72(a) shall seek from the Captain of the Port both deviation from the requirements of this section and authorization for continued operation in the area to be transited. Failure of redundant navigational-safety equipment, including but not limited to failure of one of two installed radars, where both satisfy § 164.72(a), does not necessitate either deviation or authorization.

(1) The request for deviation must be written, must explain why immediate repair is impracticable, and must state when and by whom the repairs will be made.

(2) The Captain of the Port, upon written request, may, in writing, authorize a deviation from any of the provisions of §§ 164.70 through 164.82 for a specified, limited time if he or she decides that the deviation would not impair the safe navigation of the vessel under anticipated conditions.

Dated: September 26, 1995.

J.A. Creech,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

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Friday
November 3, 1995

Part III

Department of Transportation

Coast Guard

33 CFR Part 157

46 CFR Parts 31 and 35

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

46 CFR Parts 31 and 35

[CGD 91–045]

RIN 2115–AE01

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations that would require the owners, masters, or operators of tank vessels of 5,000 gross tons (GT) or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. The proposed regulations contain requirements for bridge resource management training, rest hour minimums, enhanced surveys, maneuvering performance capability requirements, and other measures aimed at reducing the likelihood of an oil discharge from these vessels. Additionally, the Coast Guard proposes to amend requirements for the carriage of onboard emergency lightering equipment. These proposed regulations represent the second step in the Coast Guard's three-step effort to establish structural and operational measures for tank vessels without double hulls as required by the Oil Pollution Act of 1990 (OPA 90).

DATES: Comments must be received on or before February 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–045), 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. 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.

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.

A copy of the material listed in ''Incorporation by Reference'' of this preamble and references for this preamble are available for inspection at room 1312, U.S. Coast Guard Headquarters and have also been included in the public docket.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Standards Evaluation and Development Division, at (202) 267–6490. This number is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–045) and the specific section of this proposal 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.

On January 20, 1994, the Coast Guard held a public meeting on structural and operational measures for tank vessels. The Coast Guard plans no additional public meetings. Persons may request a public meeting by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If it determines that an additional opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are LCDR Suzanne Englebert, Project Manager, and Jacqueline Sullivan, Project Counsel, Office of Chief Counsel.

Regulatory History

Section 4115(b) of the Oil Pollution Act of 1990 (OPA 90) (which appears as a statutory note following 46 U.S.C. 3703a) directs the Coast Guard to develop structural or operational requirements for tank vessels of 5,000 gross tons or more without double hulls to serve as regulations until 2015, when all tank vessels operating in U.S. waters are required to have double hulls under section 4115(a) of OPA 90 (46 U.S.C. 3703a). Regulations issued under the authority of section 4115(b) must provide as substantial protection to the environment as is economically and technologically feasible.

On November 1, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 56284) which discussed structural and operational measures intended to meet the requirements of section 4115(b) of OPA 90. The ANPRM included a request for data on the technical and economic feasibility of those measures for use on vessels covered by section 4115(b). Eighty-eight comments were received by the close of the extended comment period, which ended on January 30, 1992 (57 FR 1243).

After reviewing the comments, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls'' (Existing Vessels) on October 22, 1993 (58 FR 54870). The Coast Guard issued two subsequent correction notices on November 19, 1993 (58 FR 61143), and December 14, 1993 (58 FR 65298), which made technical corrections to the NPRM. In response to several comments received on the NPRM, the Coast Guard published on December 16, 1993, a notice of public meeting and extension of comment period (58 FR 65683).

The Coast Guard held a public meeting on January 20, 1994, to obtain information from the public on the proposed regulations. Topics addressed by speakers included applicability, differences between tank barges and tankships, exemptions, and economic and technical feasibility of the proposed regulations. Some of the basic assumptions of the proposed regulations related to certain structural measures were also discussed, particularly their reliance on Regulation 13G of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Information on the public meeting is available for public review at the address under **ADDRESSES.**

In light of the comments received at the public meeting and in response to the written comments received on the NPRM, the Coast Guard is reviewing the proposed requirements for structural measures. To expedite the implementation of section 4115(b) of OPA 90, the Coast Guard developed a three-pronged approach which

encompassed three separate rulemaking projects. First, the Coast Guard issued a final rule on August 5, 1994, requiring the carriage of emergency lightering equipment and the inclusion of the vessel's International Maritime Organization (IMO) number in the advance notice of arrival report (59 FR 40186); second, it is issuing this supplemental notice of proposed rulemaking (SNPRM) regarding additional operational measures; and third, it is reviewing comments on the NPRM for major structural measures and revising the Regulatory Assessment (RA) before issuing an SNPRM regarding structural requirements for tank vessels. Structural measures that will be addressed in this third step include hydrostatic loading requirements, structural refit of existing hull areas, emergency cargo off-loading capabilities and other structural adaptations or major cargo carrying adjustments.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) mandates regulations to provide improved protection from oil spills from tank vessels in waters subject to the jurisdiction of the United States due to collisions and groundings. This section applies to tank vessels that are constructed or adapted to carry, or that carry oil in bulk as cargo or cargo residue.

The Coast Guard has determined that the applicability of these proposed regulations would reflect section 4115(a) of OPA 90 which requires certain existing tank vessels without double hulls to be phased out of operation by 2015. The Coast Guard rulemaking implementing section 4115(a) entitled ''Double Hull Standards for Vessels Carrying Oil in Bulk'' (CGD 90–051) (57 FR 36222) added 33 CFR 157.10(d), which establishes the applicability of the regulations. The regulations also apply to certain tank vessels carrying oil in bulk as cargo operating in U.S. waters, including vessels unloading oil as cargo at deepwater ports, lightering in established lightering zones, or lightering more than 60 miles from the territorial sea baseline; they also apply to non-dedicated oil spill response vessels (OSRVs). The Navigation and Inspection Circular (NVIC) 10–94, ''Guidance for Determination and Documentation of the Oil Pollution Act of 1990 (OPA 90) Phaseout Schedule for Existing Single Hull Vessel Carrying Oil in Bulk,'' provides a detailed explanation of the applicability of section 4115(a).

In the preamble to the Existing Tank Vessels NPRM, the Coast Guard proposed to limit the applicability of the rule to ''oil tankers'' as defined in 33 CFR 157.03(oo) rather than tank vessels as defined in 33 CFR 157.03(v). The NPRM specifically excluded vessels carrying only animal fats and vegetable oils because the proposed structural requirements were believed to be too costly for vessels carrying only non-petroleum oils. Additionally, the exemption was proposed in an effort to be consistent with the international standards of MARPOL 73/78, which also establishes structural measures for certain existing vessels. The Coast Guard has determined that the operational requirements proposed in this SNPRM would be applied to all existing tank vessels, including vessels which carry only non-petroleum oils. The Coast Guard has long contended that a discharge of non-petroleum oils can be as damaging to the environment as a discharge of petroleum oil, especially if spilled in bulk. In 1992, an IMO study entitled ''Harmful Effects on Birds of Floating Lipophilic Substances Discharge from Ships On the Plumage of Birds'' was published by the Netherlands Institute for Sea Research. This study gives numerous examples of lethal contamination of seabirds by certain non-petroleum oils spilled from ships. This study is available for public inspection at the address under **ADDRESSES**. The Coast Guard also researched the number of tank vessels potentially affected by this proposal and found no tank vessels which are certificated to carry only non-petroleum oils. The Coast Guard requests comments on the impact of this proposed rulemaking on vessels that carry only non-petroleum oils. Comments on the impact of the proposed rulemaking on areas that could be adversely affected by a non-petroleum spill are also requested.

The Coast Guard proposes to revise the applicability of § 157.400 of the Existing Tank Vessels final rule issued on August 5, 1994 (59 FR 40186), which requires oil tankers to carry emergency lightering equipment and report the vessel's IMO number in the advance notice of arrival report. The SNPRM proposes to apply the lightering equipment requirement to all tank vessels. A separate rulemaking proposes to change the reporting requirements of a vessel's IMO number to include vessels 300 gross tons (GT) or more.

To clarify how each of these regulations, both existing and proposed, apply to foreign flag vessels, the Coast Guard proposes to amend the applicability section of 33 CFR part 157. The proposed change would ensure that, to be consistent with international law, the regulations do not apply to foreign flag vessels in innocent passage in U.S. navigable waters, including the territorial sea of the United States, or while operating in the Exclusive Economic Zone (EEZ) unless they are engaging in lightering operations or off-loading oil in bulk at a deepwater port.

This proposal would also require a barge owner to assume additional responsibility for the actions of the towing vessel. Barge operations for loading cargo are generally handled by company representatives or facility personnel. However, navigational control of the tank barge has historically been the responsibility of the towing vessel. Although section 4115(b) of OPA 90 did not specifically recognize the towing vessel's shared role in tank barge operations, the towing vessel's role in the navigation and control of the tank barge must be addressed to reduce accident risk from tank barges. The proposed regulations require the tank barge owner or operator to ensure the towing vessel meets certain standards comparable to those proposed for tankships.

This additional level of control should have a minimal effect on tank barge companies because most tank barge owners or operators also own the towing vessels and employ their crews. For those tank barge companies that rely on leased towing vessels to move their tank barges, these proposed requirements could result in some additional contractual arrangements, additional oversight of the towing vessel companies, or hiring criteria that incorporate these requirements. These measures would ensure that tank barge owners exercise direct control over the manner in which their cargo is transported. This direct oversight is prudent for tank barge owners because in most cases, under section 1002 of OPA 90, tank barge owners are held financially responsible for any removal costs and damages for discharged oil. The Coast Guard is soliciting comments on the extension of certain towing vessel requirements to the tank barge industry.

Discussion of Comments and Changes

Background information on proposals for structural measures for existing vessels without double hulls is provided in the preambles to the ANPRM and the NPRM. Operational measures were discussed in both the ANPRM and the NPRM; however, the NPRM focused on measures to reduce oil outflow after collisions and groundings, not on the mishap risk reduction for these vessels.

The Coast Guard has issued many requirements that could be considered operational in nature. Other regulations mandated by OPA 90 affect the marine industry, especially the tank vessel fleet. To address the most common hazardous operational deficiencies on tank vessels today, the Coast Guard has conducted a qualitative evaluation of the tank vessel operating system. Previous studies of this type include (1) ''Research Needs to Reduce Maritime Collisions, Rammings, and Groundings'' by the Maritime Transportation Research Board (1981); (2) ''Development and Assessment of Measures to Reduce Accidental Oil Outflow from Tank Ships'' by the Coast Guard (May 1989); and (3) ''Human Error in Merchant Marine Safety'' by the Maritime Transportation Research Board (1976). These studies along with other risk analysis literature formed the baseline for the ''fault trees'' depicted in the following figures:

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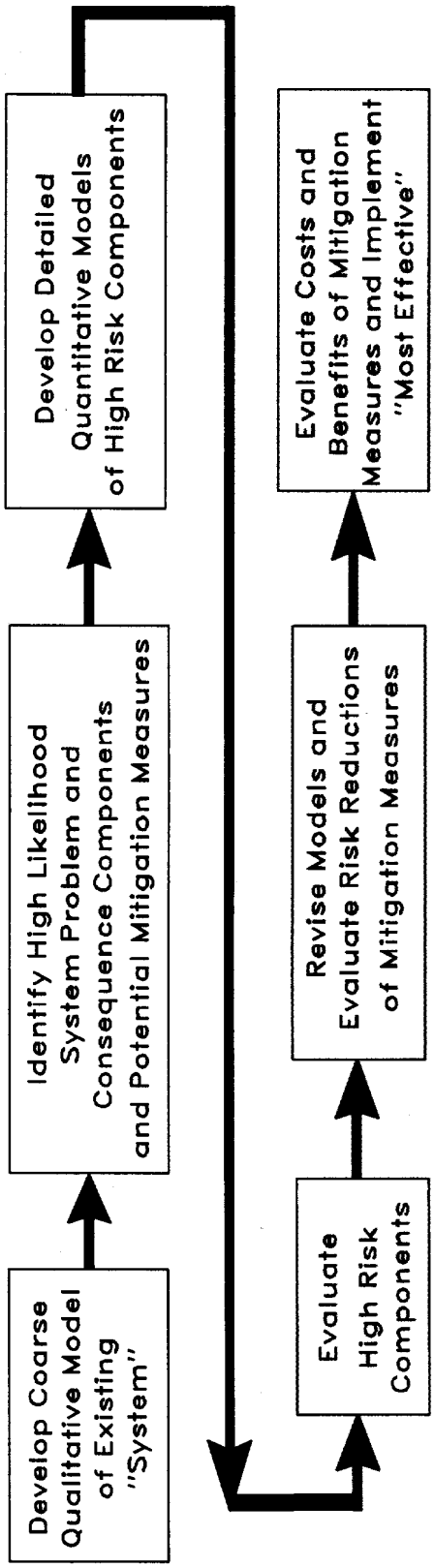

Figure 1: Operational Measures — Overall Analysis Methodology

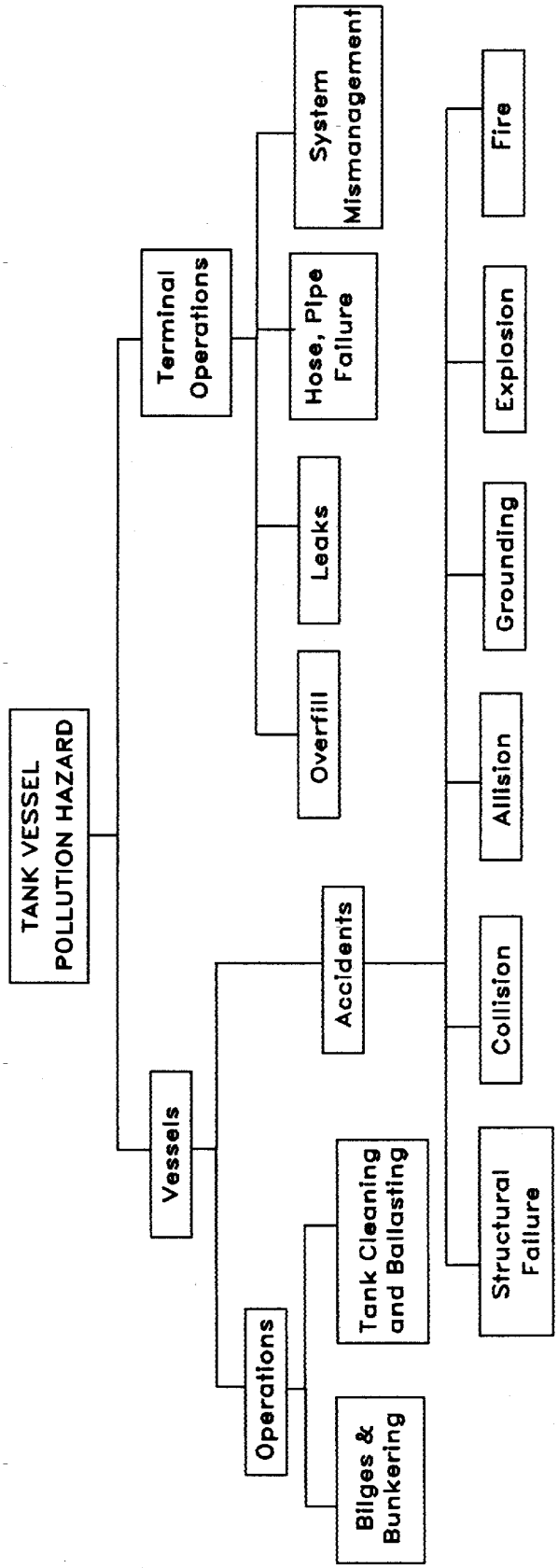

Figure 2: Coarse Qualitative Model of Existing System

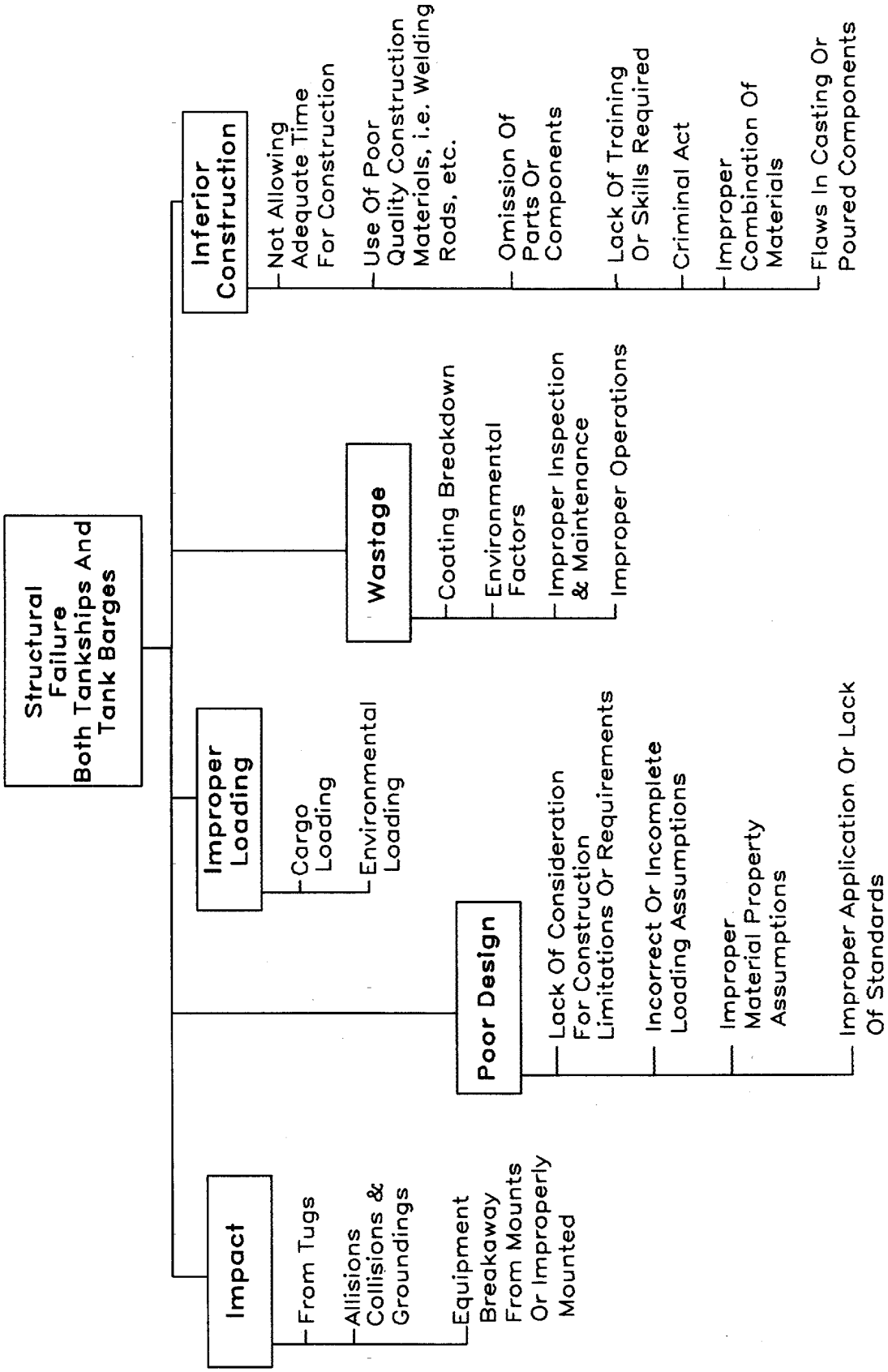

Figure 3: Structural Qualitative Model With Components

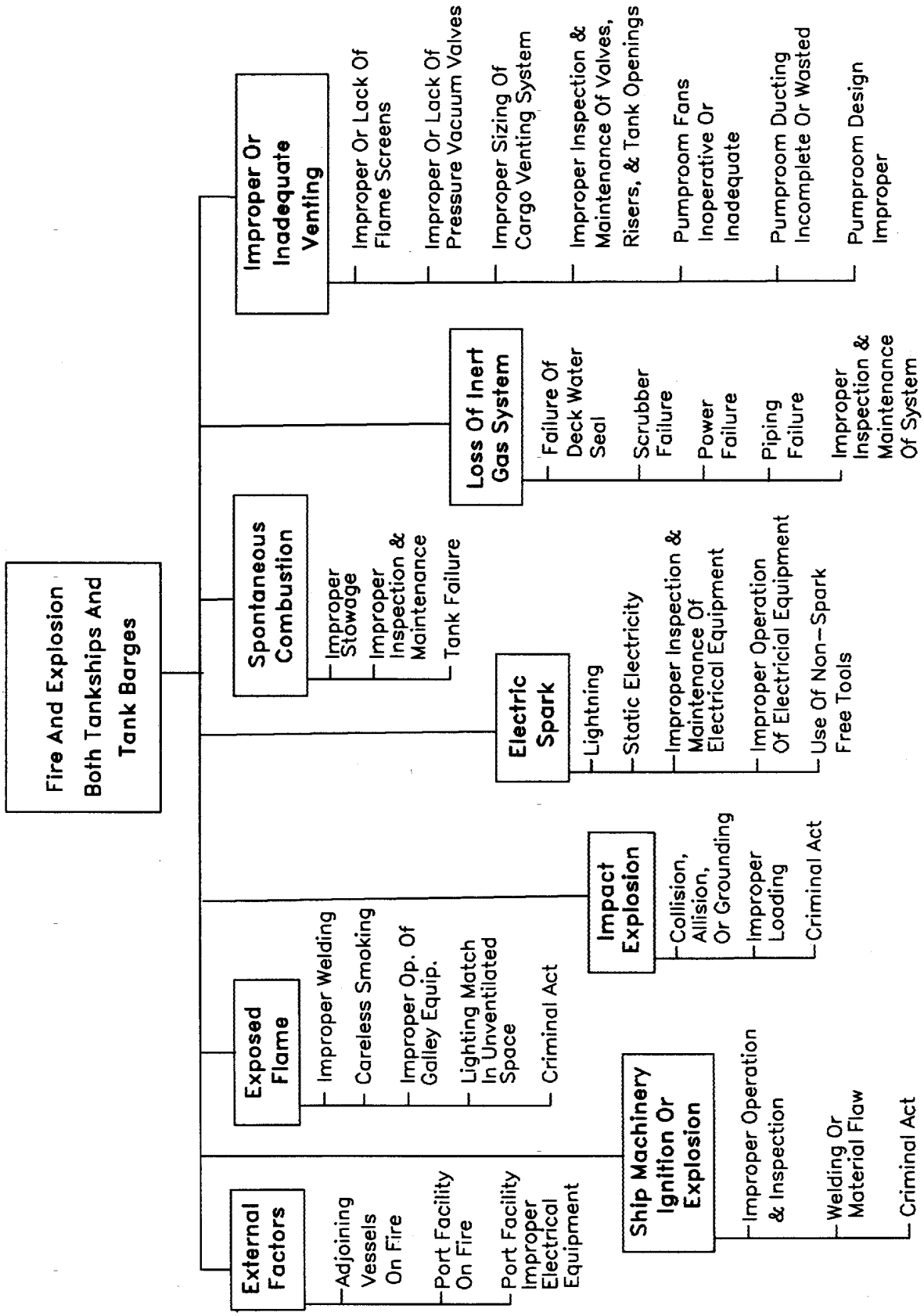

Figure 4: Fire And Explosion Qualitative Model With Components

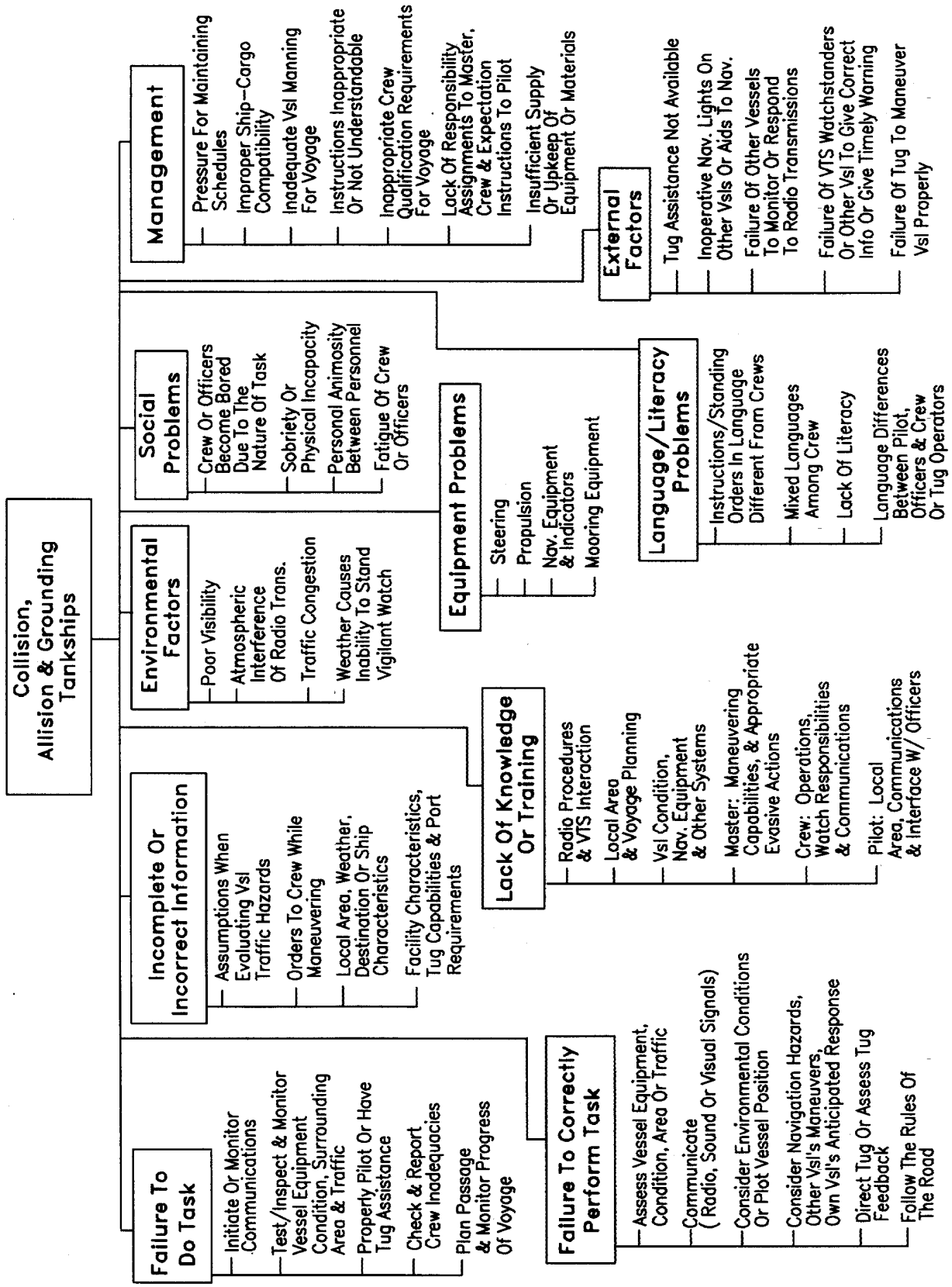

Figure 5: Tankship Qualitative Model With Components

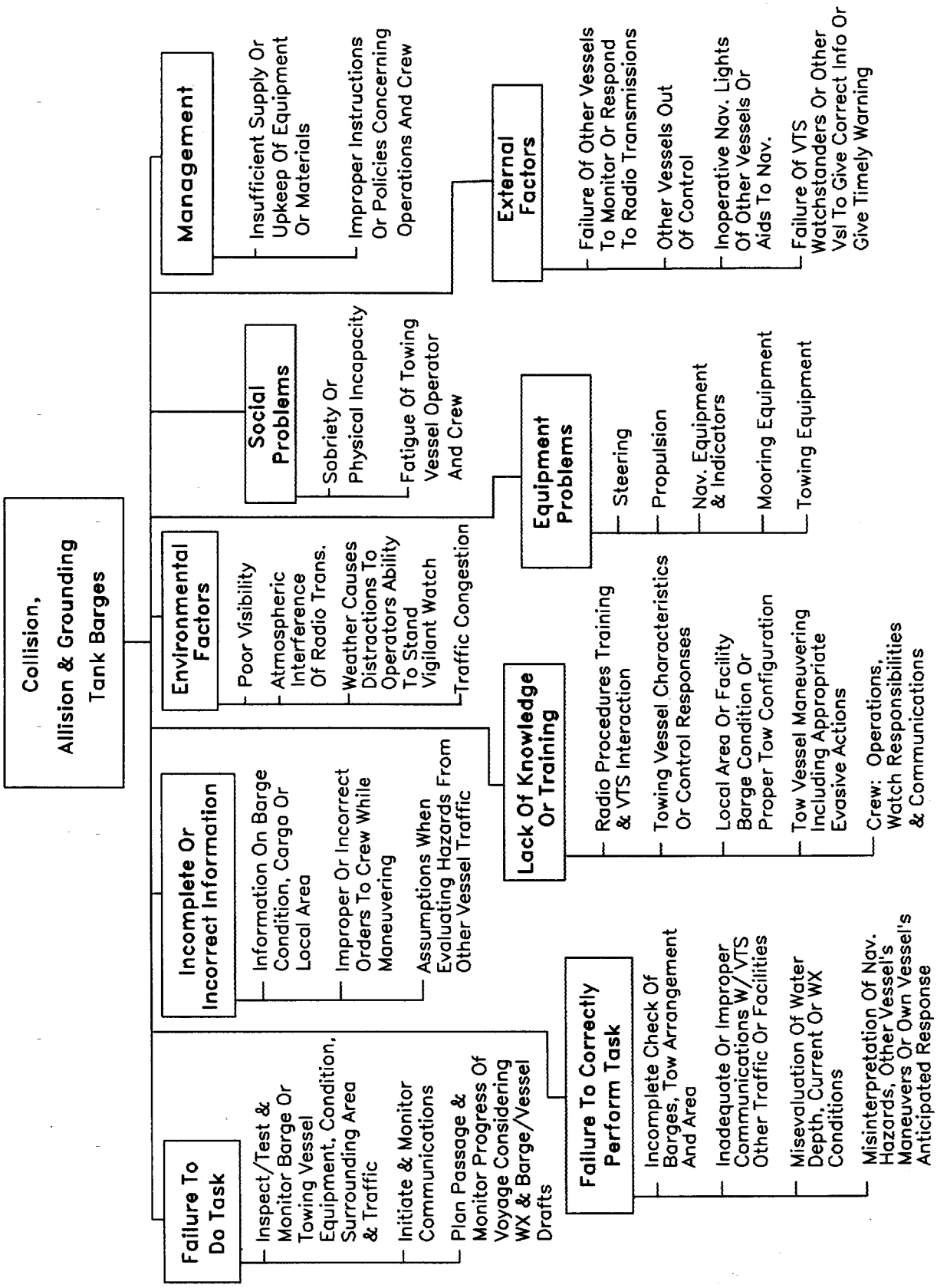

Figure 6: Tank Barge Qualitative Model With Components

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Figure 1 shows how a qualitative evaluation of a marine system can identify effective improvements for existing or proposed regulations. Figure 2 identifies the general pollution hazard created by tank vessels. The scope of this analysis was further narrowed to those areas where a tank vessel without a double hull may pose a higher risk than other vessels or to areas where inconsistencies exist between requirements for U.S. domestic vessels and foreign certificated vessels. The Coast Guard developed detailed qualitative models for structural and fire or explosion accidents because the majority of the existing tank vessel fleet is older and not required to conform to many of the recent safety regulations. Collisions, allisions, and groundings were considered because of the oil spill potential of these incidents. The operational spill segment of the fault tree in Figure 2 and the terminal operations portion are only included in this analysis in areas where present regulations do not hold U.S. and foreign vessels to comparable standards. Figures 3 through 6 display the detailed qualitative models and associated high risk components within each identified hazard.

This type of analysis contains a subjective element. The Coast Guard has drawn from the knowledge of its experienced inspectors and licensed mariners to develop the fault trees identified in Figures 3–6. These fault trees are not meant to be comprehensive, instead they are used to clarify further discussion within this proposed regulation by identifying major operational causes of oil discharges and the measures that could potentially mitigate these causes from a tank vessel without a double hull.

As an example of this process, 33 CFR 164.35(g) requires all ships of 1,600 GT or more to post a list in the wheelhouse which identifies the vessel's general maneuvering characteristics. This requirement mitigates problems arising from ''lack of knowledge'' which may cause a collision, allision, or grounding as identified in Figure 5. In analyzing this requirement's effectiveness to mitigate this ''lack of knowledge'' component, it becomes clear that the requirement may not be as effective as it could be. A discussion of this issue can be found in a recent ''Marine Technology'' paper entitled ''Maneuvering Information for the Pilot/Navigator: Its Source Value and Limitations,'' written by Mr. Thomas G. Knierim (Vol 31, No. 2, April 1994, pp. 123–144).

The Coast Guard received a total of 132 comments on the Existing Vessel NPRM. Thirty of these comments discussed over 70 issues relating to operational measures. The following discussion is divided into seven categories: (1) General comments which address broad issues and the general content of the NPRM; (2) comments on proposed revisions to emergency lightering equipment requirements in 33 CFR 157.410; (3) comments on personnel training and information (see the fault-tree components of Figures 5 and 6 which address failure to perform a task, failure to correctly perform a task, and lack of knowledge or training); (4) comments on vessel maintenance surveys (see the components of Figures 3 through 6 for equipment failure, hull structural failure, or failure due to explosion); (5) comments on navigation and maneuverability (see the components of Figures 5 and 6 involving a lack of knowledge, training, or the use of incorrect information); (6) comments on requirements for the control and movement of tank barges (see the components of Figure 6 related to towing vessel operations and equipment); (7) comments on operational measures that are not addressed elsewhere in this SNPRM.

1. General

Several comments expressed concern that the proposed regulations do not reflect congressional intent. The comments stated that the NPRM improperly emphasized structural measures without adequate regard for operational measures which could have an equal or greater benefit for the environment at less cost. They also stated that the failure to assess significant regulatory alternatives violates the statutory mandate of OPA 90 and the requirements of Executive Order 12866. This SNPRM proposes operational measures that meet both the statutory mandate of OPA 90 and the mandate of the Executive Order.

Some of the comments stated that the requirements proposed in the NPRM would not satisfy the statutory mandate to provide ''as substantial protection to the environment as is economically and technologically feasible'' as required by section 4115(b) of OPA 90. One comment stated that operational measures would do more to protect the environment because 80 percent of all oil pollution is caused by human error, not by structural malfunctions. Several comments indicated that the operational measures could be implemented more quickly than structural measures. Many comments stressed the need for operational measures to prevent collisions or groundings, rather than structural requirements to reduce oil outflow after a vessel collision or grounding.

This SNPRM proposes operational measures for both foreign and U.S. vessels that should improve the overall quality of tank vessel operations. Rulemakings complementing this effort propose navigation equipment for towing vessels and towing vessel operating license changes.

One comment suggested that vessel owners should be able to choose from a list of measures that, when used together, would equal a specified level of protection. This would require that each operational measure be assigned a credit based upon additional prevention or decreased oil outflow.

The Coast Guard considered various ways of allotting credits and developing a minimum level of protection. This concept did not address the different objectives of each proposed requirement. For example, how could a requirement for the pilot to plan a passage, intended to reduce the risk of a collision, allision, or grounding (Figure 5), be quantified in relation to a maintenance program intended to reduce the risk of a structural failure (Figure 3)? Blurring the lines between failure modes and risk components would not achieve equitable risk reduction among affected tank vessels. An ''a la carte'' idea was also researched to compare each failure mode with a list of possible risk reduction measures. Equivalencies between each measure could not be determined because, even among the components, an accurate quantitative assessment method was not available.

Instead, the Coast Guard evaluated these operational measures in terms of the failure mode which they address, whether vessel personnel, navigation, or maintenance practices. The Coast Guard is proposing minimum training requirements to address vessel personnel, information requirements and minimum equipment and tests to address navigation and maneuvering problems, and survey and physical prevention measures to address the integrity of the vessel's structure. Where the same risk component is addressed, within each measure, some equivalency determinations are provided to allow individual companies or vessels to tailor requirements to their operational needs. The proposed measures consider both the technical and economical feasibility mandates of the statute.

Other comments recommended that the Coast Guard strictly enforce its current pollution prevention regulations. The Coast Guard enforces the requirements of both international and domestic law. Additional

enforcement measures have been established and implemented that include the increased scrutiny of certain vessels that consistently violate laws or have a history of casualties. Until the effectiveness of these recent enforcement measures has been assessed, the Coast Guard does not intend to propose additional measures.

One comment requested that Canadian or other foreign flag vessels passing through the St. Lawrence Seaway in route to a Canadian port be exempt from these proposals. The comment estimated that the true cost of the proposals would be four to five times those quoted by the Coast Guard. Another comment requested that tankers calling at deepwater ports, where there are already various operational measures in effect, be exempted. One comment requested exemption for vessels which lighter 60 miles offshore and for those that call at the Louisiana. Offshore Oil Port (LOOP) because section 3703a of title 46 of the United States Code does not apply to them. As previously discussed, these vessels do have phaseout requirements and are subject to the provisions in section 4115(b). The Coast Guard has determined that the proposed operational measures are appropriate and do not conflict with St. Lawrence Seaway or LOOP operations.

One company requested that asphalt carriers be exempted from the proposed rule; the Coast Guard does not agree. Asphalt is a petroleum-based cargo and the requirements contained in this portion of the rulemaking present no unique difficulties for an asphalt carrier.

Two comments requested that vessels transporting oil to American Samoa be exempted because of the remoteness of the islands and the fragility of the economy. Both comments stated that vessels calling there satisfy international requirements and will have no incentive to incur the additional cost these rules would impose. One of these comments contended that if this regulation were applied to these vessels, the supply of crude oil and petroleum products to American Samoa would be in jeopardy and the cost of fuel would rise. The other comment specifically requested that vessels transporting oil to the Pacific Islands be exempt from the requirements of the proposed rule that exceed the requirements of Regulation 13G of MARPOL 73/78. This would include the Hawaiian Islands, American Samoa, Guam, the commonwealth of the Northern Mariana Islands, and other U.S. possessions in the Western Pacific. The comment stated that the small number of foreign tanker operators willing to comply with the regulation, coupled with the limited U.S. flag product tanker fleet, will severely limit the supply of essential petroleum products to the Pacific Islands.

The Coast Guard believes that the operational requirements contained in this rulemaking are economically feasible for vessels transporting oil to all of these areas. Equivalency provisions offer flexibility in compliance with certain requirements. Incorporated international standards accommodate both the foreign and domestic industry. The Coast Guard requests comments on the impact of this proposed rulemaking on vessels transporting oil to specific remote geographic areas like American Samoa and other Pacific Islands. Comments on the impact of the proposed rulemaking on areas that are economically dependent on tourism or fishing are also requested.

2. Emergency Lightering Requirements

The Coast Guard is proposing revisions to requirements for emergency lightering equipment published in a final rule on August 5, 1994, (59 FR 40186) entitled ''Emergency Ligthering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls.'' Section 157.410(c) of the final rule referenced the requirements of 46 CFR part 56.25 for cast iron and malleable iron fittings and flanges. Cast iron and malleable iron have very high failure rates in cargo piping systems due to their low cycle fatigue susceptibility and tendency to weaken when subjected to high temperatures. To ensure that these fittings are not installed in piping lines carrying flammable or combustible fluids near open flame, or any parts reaching temperatures above 260°C (500°F), this SNPRM proposes to amend § 157.410(c) to specifically prohibit the use of such valves or fittings.

3. Personnel Training and Information

Data attributes 80 percent of marine accidents to some form of human error. Human factors are broadly defined as a scientific and engineering discipline concerned with analysis, research, design development, and evaluation of human/human, human/machine, human/information and human/environment interfaces. Human factors issues include any condition or circumstance which affects the quality of human performance required to accomplish a complex task or series of tasks safely and effectively. As related to vessel navigation, this applies to four general subjects: error trapping or human intervention, task or mission coordination, team communication, and vessel integration. Error trapping or human intervention is responsible for ''near misses'' as discussed in the report entitled ''The Role of Human Error in Design, Construction, and Reliability of Marine Structures'' published by the Ship Structure Committee (SSC–378, November 1994). Error trapping occurs when humans intervene to interrupt potentially catastrophic combinations of actions and events to bring systems back to within safe operating conditions. This SNPRM emphasizes human factors issues which would reduce the risk of accidents caused by ship personnel: failing to perform tasks, incorrectly performing tasks, lacking knowledge or training to perform assigned tasks, using incomplete or incorrect information, and failing to identify or correct social or managerial problems.

Because the prevention of accidents through improving the people involved in the system is an effective way to reduce risk within the marine industry, the Coast Guard established a task group on January 13, 1995 (60 FR 3289), formed by the Chief, Office of Marine Safety, Security and Environmental Protection to develop a long-term strategy to focus prevention efforts on casualties caused by human error. The Coast Guard's Prevention Through People (PTP) initiative has established a framework by which the Coast Guard, other government agencies, and the maritime industry, nationally and internationally, can work together outside of the regulatory process to manage maritime risks systematically. The task force report entitled ''Prevention Through People'' stresses the use of risk management tools to identify root causes and cost effective preventive measures; the employment of proactive action to detect, assess, and prevent human errors that affect safety; and improvement of investigative methods, data collection, analyses, and feedback. This report is available for public inspection at the address under **ADDRESSES.**

Training. The Coast Guard received several comments on improving personnel training. Six comments stated that additional personnel training was needed to ensure the competency of the crew. One of these comments urged the Coast Guard to require specific in-house training. Another of these comments suggested that drug and alcohol testing and awareness training be required.

Proposed §§ 157.415 and 157.420 include training requirements and performance standards to ensure the development and retention of certain skills. Drug and alcohol testing program requirements already exist and are applicable to the crews of tank vessels. For this SNPRM, existing drug and

alcohol requirements were considered. The Coast Guard has determined that additional requirements are not needed for drug and alcohol testing or awareness training at this time. The Coast Guard, however, commends companies with programs that exceed Federal requirements.

Three comments stated that bridge management training, including simulator training, would improve the competency of the crew. They recommended that vessels carry a bridge management manual which codifies the company's standards, practices, policies, and procedures.

Two different risk reduction solutions were proposed by the comments. The first solution addressed additional training requirements for improving crew navigational skills or development of management skills for the bridge crew. The second solution pertained to developing extensive operational procedures for various shipboard operations and navigational situations. Both risk reduction solutions address the lack of knowledge and the management components noted in Figure 5.

Company management generally develops various operational procedures in the form of bridge reference material. The crew is then expected to review the material and refer to it, if time permits, prior to acting in an emergency or a unique situation. Several sections of OPA 90 contain extensive planning requirements for emergency situations (i.e., the Vessel Response Plan requirement in 33 CFR part 155.) In contrast to these written procedures, recently developed team training techniques focus on the operation of the bridge team during both normal and emergency situations. This type of training is an example of reducing the risk of a marine casualty through improving the response of the people directly involved with the system.

The Coast Guard has proposed general bridge management training requirements to the Standards of Training and Watchkeeping (STW) Subcommittee of the International Maritime Organization (IMO) since 1991. However, the STW Subcommittee has not yet developed a training standard. The Coast Guard consider such training desirable for the crews of all vessels. This rulemaking may serve as the precedent for future regulations addressing the reduction of accident risk due to human error through team management training programs.

The bridge resource management (BRM) training proposed in § 157.415 of this SNPRM is similar to the techniques and practices that have been used in the aviation field. BRM is not intended to teach the more ''traditional'' aspects of bridge watchstanding (i.e., navigation, shiphandling, and collision avoidance); rather, it focuses on integrating ''traditional'' technical skills with human factors skills to reduce the risk of human error-related accidents. These concepts reflect an emphasis on effective communication among watchstanders; the proper delegation of tasks and responsibilities; the importance of using all available resources (equipment, information, and personnel); and the need for watchstanders to understand the way stress and fatigue affect their performance.

The Coast Guard seeks uniform curriculum requirements for both U.S. and foreign licensed officers, and is presently working within IMO to develop these requirements. If IMO develops and adopts a resolution or other instrument that includes BRM skills and course curriculum, the Coast Guard intends to substitute, incorporate by reference or propose rules which reflect these international standards. In the interim, a general course curriculum was developed based on review of various existing courses used to train pilots, masters, mates, and military personnel. The Coast Guard proposes this general curriculum to ensure that the training courses emphasize open team communications, task coordination, and the integration of operations. Specific course length and a requirement for simulator training have not been included. The following references were used to develop the general course curriculum proposed in this rulemaking:

(1) IMO Guidelines ''Human Relationships, 1.21'' and ''Ship Simulator and Bridge Teamwork, 1.22'';

(2) American Petroleum Institute's ''Guidelines for Developing Bridge Management Teams'';

(3) U.S. proposal papers for both the Standards, Training and Watchkeeping Subcommittee (STW 25/3/14, STW 26/4/13) and the Safety of Navigation Subcommittee (NAV 38/13);

(4) Presentation on ''Bridge Resource Management'' by Mr. Richard T. Johnson, et al. (Society of Naval Architects and Marine Engineers Panel 0–44), to the International Conference on Marine Simulation and Ship Manoeuvrability (MARSIM 93), Saint John, Newfoundland, Canada, September 1993;

(5) SAS Flight Academy's course curriculum for its ''Bridge Resource Management'' course;

(6) ARCO Marine's Bridge Team Management Training course curriculum utilizing SimShip and the Star 360° simulator; and

(7) The Coast Guard's student handbook for its course on ''Team Coordination Training.''

The training proposed in § 157.415 would be required for designated officers in charge of a navigational watch serving on either tankships and towing vessels. The Towing Safety Advisory Committee (TSAC) recommended that this type of training be required for towing vessel personnel as well as tankship personnel because it is an effective means of preventing accidents. Thus, an example of the personnel affected by § 157.415 would be the master, chief mate, one second mate, and the two third mates (a typical tankship officer complement) or the master and two mates (a towing vessel's officer complement). These individuals would be required to attend the initial BRM training and refresher training no less than once every 5 years. Initial course completion including a series of performance standards and course completion documentation is proposed in § 157.415 to verify that a vessel's officers have been adequately trained. The 5-year refresher training would coincide with present license renewal requirements. For U.S. licensed individuals, a rulemaking to propose requirements for this training and provisions for an endorsement directly onto the license is under development.

The Coast Guard recognizes that vessel owners, masters, or operators would be required to research course availability and to establish training programs to comply with the proposed bridge resource management training requirements. Therefore, in § 157.415(a) the Coast Guard is proposing that compliance with these requirements would not be required until 1 year after the effective date of the final rule. In addition, the Coast Guard recognizes that a substantial pool of merchant mariners already have received comparable BRM training and is proposing that these individuals be credited for the completion of this training if it has occurred within 3 years of the effective date of the final rule.

A more aggressive measure to address the entire crew and their interaction with the vessel operations is ''Vessel Resource Management'' training. This training course would apply to engine room personnel as well as other personnel assigned to the vessel. The integration of support services, bridge functions, engine room functions, maintenance, and communications with facilities or company management would be covered by this training. The Coast Guard recognizes the value of this

training and solicits comments on whether this type of comprehensive training should be required or recommended.

Training of unlicensed watchstanding personnel is also imperative. The Coast Guard is proposing vessel specific watch training for those watchstanding personnel who assist the officer in charge of a navigational watch. TSAC also recommended that this training requirement be applied to towing vessel personnel. This training would ensure that unlicensed watchstanders receive training tailored to management expectations and the equipment on board either the tankship or the primary towing vessel, prior to taking on watchstanding duties. General subjects for training are listed in § 157.420(a) to ensure watchstanders receive instruction on essential items that would enable them to provide accurate and useful information to the officer in charge of a navigational watch or other senior personnel. To ensure this training remains current and to account for personnel changes or equipment upgrades, an annual refresher of this watchstanding training is proposed.

The Coast Guard has included a proposed definition for the term ''officer in charge of a navigational watch'' to clarify which personnel would be required to complete the bridge resource management training. This term would also provide consistency with the terminology of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). The proposed definitions for ''primary towing vessel'' and for ''fleeting or assist towing vessel'' would clarify that personnel on the towing vessel responsible for the navigation and control of the tank barge during most of the voyage would be required to have bridge resource management training, vessel specific watch training, and certain other requirements proposed in this rulemaking. This distinction is made because (1) during assist towing operations, the towing vessel personnel that made the transit with the barge (the primary towing vessel) generally stay on site and direct the mooring or anchoring operation; (2) in most cases, the tank barge company has management control over the primary towing vessel and its personnel because they directly own the vessel and employ its crew; and (3) this would ensure integrated tug barge operations are included in the rulemaking.

Pilot Licensing Programs. Three comments suggested improvements to the pilot licensing process. One comment recommended more aggressive pilot licensing and revocation procedures and the adoption of more rigorous penalty standards. Another comment recommended a comprehensive review of mariner licensing standards and more rigorous enforcement of current regulations such as background checks; one recommended checking the National Drivers Register (NDR) before issuing a license.

A separate NPRM published on March 13, 1995 (60 FR 13570), proposed the incorporation of an NDR check prior to issuing a license. A licensing study is underway and revisions to current requirements are anticipated. In conjunction with the licensing study, a 1994 National Research Council Committee on Advances in Navigation and Piloting report entitled ''Minding the Helm'' (ISBN 0–309–04829–X) discusses and recommends several actions that could be taken by the Coast Guard to improve marine navigation and piloting. The Coast Guard is presently reviewing this report and anticipates future rulemakings to implement some of the recommendations.

Minimum Rest Hour Requirement. Another component of the accident hazards, shown in Figures 4, 5, and 6, deals with fatigue. Current work hour restrictions and rest hour requirements attempt to mitigate the risk of accidents. The Coast Guard evaluated existing requirements and proposes to expand the rest hour requirement for both foreign and U.S. crew members with duties directly related to vessel safety and oil transfer operations.

Proposed § 157.425 would require the owner, master, or operator of each tank vessel to ensure crew members involved in navigation, engineering, or oil transfer operations are provided a minimum of 6 continuous hours of rest within 12 hours prior to departing port or prior to cargo transfer operations. Because the operation and safe navigation of the tank barge hinges on the actions of the towing vessel personnel, tank barge owners would have to ensure that the towing vessel master or operator, any crew member assigned to helm or lookout tasks, as well as any personnel assigned tankerman duties for the barge cargo complied with these requirements. For tank barge companies that do not directly own the towing vessel or employ its crew, this requirement could be met by management oversight of the towing vessel company, a contractual agreement, or by towing vessel hiring practices.

A definition for ''rest hour'' is proposed to be added to § 157.03. This term is borrowed from STCW. Watchstanding, assigned clerical duties, assigned painting, maintenance, or housekeeping duties all fall within a crewman's typical daily work load. A rest hour is that period during which a crew member has no assigned tasks. A rest hour, however, does include the time spent on drills or during an emergency situation. The Coast Guard also recognizes travel to a work site is not addressed in this proposal. The intention of this proposal is to ensure that well rested individuals are assigned to tasks that are important to vessel operations. Travel can have a negative effect on an individual's alertness; however, some commute time to the job site is standard for every profession. The Coast Guard is soliciting comments on when and how travel time should be factored into a rest hour requirement.

The Coast Guard recognizes the benefit of adequate rest for all mariners and is working within the IMO framework to establish an international standard. If IMO develops and adopts a resolution or other instrument that includes provisions for rest, the Coast Guard intends to substitute, incorporate by reference, or propose rules which reflect these international standards. The Coast Guard is also considering the incorporation of the more stringent work hour and rest hour requirements found in section 4114 of OPA 90 to include foreign tankships and other tank vessels. These work hour requirements have been included in the Designation of Lightering Zones Final Rule published on August 29, 1995 (60 FR 45006). The Coast Guard is soliciting comments on the feasibility of expanding application of the work hour and rest hour restrictions of section 4114 or the adoption of similar IMO provisions, under the authority of section 4115(b) of OPA 90.

4. Vessel Maintenance Surveys

Figure 3 depicts the qualitative evaluation of a structural failure hazard to a tank vessel. These types of hazards have been reduced in the past through drydock examinations, classification society requirements, and construction requirements such as the welding qualifications of 46 CFR part 57. The Coast Guard analyzed past requirements addressing structural failures and equipment failures as indicated in Figures 5 and 6. More significantly, because these vessels have been scheduled for a mandatory phase-out, it is suspected that the human factors issues related to management's reluctance to sufficiently supply or upkeep the vessel, and the vessel operator's failure to inspect or test the

tank vessel equipment may become more frequent. Vessel owners or operators may begin to weigh the maintenance investment against the short-lived return and could down-scale vessel upkeep accordingly. The Coast Guard recognizes this possibility and has evaluated existing requirements that would ensure vessel structure and equipment remain in safe operating condition. This analysis indicated that some additional measures could reduce the risk of a structural or equipment failure, and the risk of a collision, allision, or grounding due to equipment or upkeep problems.

The Coast Guard received several comments on improved maintenance aboard vessels. Three comments suggested that the Coast Guard require internal audits of vessel operations, equipment, and personnel for compliance with all applicable regulations and company standards. One comment recommended preventive maintenance programs on ships; another suggested formal in-house ship inspection programs.

In §§ 157.430 and 157.435, the Coast Guard is proposing a two-step approach to ensuring existing tank vessels are maintained at a level that will reduce the risk of a structural or equipment failure. Under this proposal, tankships, integrated tug barges, and tank barges would be required to (1) have an enhanced survey or an enhanced survey equivalent, and (2) conduct frequent vital system surveys.

Enhanced Surveys. Proposed § 157.430(a) would require an enhanced survey for all tank vessels of 5,000 GT or more as detailed in IMO Resolution A.744(18), entitled ''Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers.'' To prevent the need for additional drydockings, the requirement would reflect either the frequency of the U.S. scheduled drydock exam requirements in 46 CFR part 31 or that of a foreign vessel's flag administration. This requirement already exists under the International Convention for the Prevention of Pollution from Ships, 1973 and the related amendment to Annex I of MARPOL 73/78; however, the U.S. has expanded the scope of this requirement to include tank vessels of 5,000 GT or more that do not have double hulls. This survey requires detailed visual inspection as well as specific gauging. This survey should reduce the risk of both a global and local structural failure by closely recording and inspecting the hull prior to the vessel's phaseout date. It would also ensure that a detailed survey of the cargo piping and hull are available for Coast Guard examination. This would enable the Coast Guard to affirm that vessel upkeep is adequate for safe operation.

Alternate Enhanced Surveys. To allow companies flexibility and credit for existing in-house survey programs, tankships not required to meet Annex I of MARPOL 73/78 and all tank barges would have the option of meeting an equivalent standard. This provision is proposed in § 157.430(b) and would allow companies with established in-house survey programs to simply upgrade them slightly and include oversight provisions.

The Coast Guard anticipates that many tank barge owners and small tankship owners already have preventive maintenance programs that include routine hull gaugings, pipe gaugings, and inspections beyond current Coast Guard requirements. These programs provide company management personnel with material condition documentation necessary for long-range company planning of vessel replacement or overhaul scheduling. Proposed § 157.430(b) would permit the company to follow its own program rather than start an entirely new process if the company can document that the present survey process is comparable in scope and recordkeeping to the IMO requirements. In addition, this section would require oversight of these programs to ensure that the vessel is adequately surveyed until it is phased out of service. Review of the gauging and inspection analysis would provide clear assessment of the vessel's structural soundness. The enhanced survey or preventive maintenance program reports would be required to be retained on board or made available within 24 hours to enable Coast Guard personnel to readily assess the vessel's suitability for service and also to assist in any emergency cargo transfer operations or emergency repairs.

Vital Systems Surveys. While an enhanced survey reduces the risk of both catastrophic and local hull failure, it does not directly address risk of equipment failure or the risk of a fire or an explosion. Figures 3 through 6 indicate certain mechanical or equipment failures which may contribute to or cause these types of accidents. The Coast Guard researched the present inspection and regulatory requirements in effect for each system. Many of these systems are inspected annually by either flag or port administrations. However, while 33 CFR 164.25 requires some tests and inspections, it does not detail some of the systems unique to tank vessels. While most companies already have routine equipment maintenance and inspection programs, several systems are overlooked or not included in these programs.

In § 157.435, the Coast Guard is proposing more frequent surveys of systems deemed vital to the safe transfer of cargo, fire and explosion risk reduction, and maintaining navigational control. To ensure these systems get the maintenance they need to remain safe, these inspections would be conducted by vessel personnel, company personnel, or company designated representatives that are knowledgeable of the equipment's safe operating parameters and that have the authority, capability, and responsibility to initiate corrective action when equipment is not functioning properly. Because tank barge systems require similar vigilance to ensure they remain safe, tank barge owners, masters, or operators would be included in this requirement and would have a responsibility to ensure the barge systems outlined in proposed § 157.435 are surveyed by the appropriate personnel.

Those systems related to vessel control, such as steering and navigational equipment, are presently required to be tested and inspected as specified in 33 CFR part 164 if the vessel is 1,600 GT or more. For towing vessels, the Coast Guard recently proposed similar control and navigational equipment checks. However, the inspection of the emergency towing equipment required in the IFR published December 22, 1993 (58 FR 67988), is not covered in 33 CFR part 164. This emergency towing equipment is generally located on the vessel's deck and is required to be rigged for ready use. This towing equipment along with mooring lines and similar equipment are included as a vital system survey because of their exposure to prolonged adverse environmental conditions and their infrequent use. The Coast Guard solicits comments on these vital systems survey requirements. The Coast Guard specifically requests comment on whether additional systems should be surveyed to prevent equipment failure, which could lead to an oil spill, fire, or an explosion during cargo transfer operations, and whether specific emergency systems should be inspected more frequently than proposed or required.

This proposal also would require the inspection findings to be logged in the Oil Record Book required by 33 CFR 151, in the vessel's log, or other similar onboard documentation to ensure that the master or operator is aware of the condition of these vital systems.

No reporting requirements are proposed in § 157.435; however, there are existing port specific reporting requirements or port entry restrictions that would remain in effect if this proposal became a final rule. The Coast Guard solicits comments on reporting requirements for the failure of specific components within the proposed vital systems.

5. Navigation and Maneuverability

Improved navigation equipment and maneuvering systems would mitigate the risk of a collision, allision, or grounding attributable to lack of knowledge or reliance on incomplete or incorrect data. These two components within Figure 5 and 6 can be effectively addressed in various ways. Present regulations reflect highly technical navigation equipment requirements for tank vessels in 33 CFR part 164. This navigation equipment is being improved almost daily as computing systems and programming capabilities increase. Human error in reading the equipment or interpreting the data is also addressed within present requirements through radar operator endorsement requirements and other licensing requirements. The risk of an accident due to navigation equipment failure is also mitigated by the reporting requirements of 33 CFR parts 160 (Ports and Waterways Safety) and 164 (Navigation). Maneuvering systems are addressed in present requirements for information about the vessel's maneuvering characteristics and reliability of the vessel's control systems.

Autopilot Alarm. One comment stated that vessels should be equipped with an alarm that sounds when the helm is turned more than 5° from amidships while the autopilot is engaged.

The Coast Guard agrees with this practical and simple alarm requirement and in § 157.440(a) is proposing a requirement for an additional alarm on all tankships with installed autopilot equipment. As recommended by TSAC, a tank barge owner or operator would be required to ensure that the towing vessel has a means to indicate to the towing vessel operator that the autopilot is engaged and manual rudder commands would not be effective unless the autopilot is shut off. Because a towing vessel wheelhouse is generally arranged for a single operator and the autopilot system is simplistic, a physical indicator to remind the master or operator that the autopilot is engaged would serve as adequate warning. On tankships, there are multiple watchstanders, frequent duty rotations, and complex autopilot systems that make it easier to lose track of the autopilot status. An alarm requirement on a tankship would ensure both the officer in charge of a navigational watch and the helmsman are aware of the autopilot status.

Accident data indicates that there have been incidents when bridge crew personnel were unaware of the autopilot status and attempted to manually steer the vessel while the autopilot was engaged. In some instances their actions did not result in the desired change to the ship's heading or rudder angle due to the autopilot settings. The requirements proposed under § 157.440 would be in addition to requirements in 33 CFR 164.13 which restrict the use of an autopilot on tank vessels of 1,600 GT or more in certain areas and under certain conditions. These two requirements would not conflict because 33 CFR part 164 restricts the use of the autopilot, while this proposal would alert the tankship officer in charge of a navigational watch and the helmsman if the helm is turned manually while the autopilot is engaged. The Coast Guard is soliciting comments on the inclusion of a requirement for primary towing vessels to have a restriction on the use of the autopilot similar to 33 CFR 164.13(d).

Maneuvering Performance Capability. Proposed § 157.445 addresses both the lack of knowledge component and the use of incorrect or incomplete information component in Figure 5. Maneuvering performance capability is directly related to the vessel's design and can easily be established. The standards for ship maneuverability outlined in IMO Resolution A.751(18) use conventional trial maneuvers to evaluate vital maneuverability characteristics. IMO has deliberated ship maneuvering issues since 1968. Resolution A.601(15), entitled ''Provision and Display of Maneuvering Information On Board Ships,'' was adopted in 1987. Resolution A.751(18) was adopted in November 1993, and is based on the premise that vessel maneuvering characteristics can be assessed from the results of typical sea trials. It differs from the present posting requirements of 33 CFR part 164 in two fundamental ways: (1) It scales maneuvering test results against minimum criteria; and (2) it requires zigzag maneuvers to establish first and second overshoot angles.

This performance standard serves to highlight those vessels with poor control capabilities due to design, or vessels that experience dynamic instability during some maneuvers. Under proposed § 157.445(b), the owner, master, or operator must inform the COTP if the vessel fails to meet the IMO minimum criteria in any of the seven test areas. This provides the port state a guideline for recognizing the capabilities of approaching vessels and for taking appropriate action to reduce the risk of a grounding, allision, or collision. Providing advance notice to the Captain of the Port (COTP) that a vessel does not meet this performance standard mitigates the external factor component of Figure 5.

The Coast Guard also recognizes the twofold potential for these test results to assist a pilot: (1) They provide overshoot angle information; and (2) they provide the maneuvering information in relationship to the ship's length. This type of information is not contained within IMO's Resolution A.601(15) maneuvering wheelhouse poster nor in the existing 33 CFR part 164 wheelhouse maneuvering characteristic requirement. Posting of the test results of this performance standard would provide pilots with nondimensional maneuvering information. In addition, a thorough knowledge of this performance standard and its development would enable the pilot to compare the test results among vessels. It provides a benchmark for quantifying how well the vessel can be expected to respond under general conditions.

The Coast Guard has considered the applicability of these performance standards. The IMO resolution applies only to vessels of 100 meters or more in length constructed on or after July 1, 1994. The Coast Guard proposes to apply these requirements to all tankships of 5,000 GT or more that do not have double hulls. The IMO performance criteria was based on a study of 600 existing vessel designs and reflects simple, practical changes to current ship maneuverability trials. For those vessels which do not meet this standard, the proposed regulation does not bar them from port entry. Proposed § 157.445(b) would allow vessels which do not meet the standard to continue port entry; however, a vessel would be required to comply with a mandatory reporting requirement to ensure that the COTP is alerted to the inferior maneuvering performance of the vessel.

The Coast Guard recognizes that vessel owners and operators would require adequate time to perform the maneuverability tests required by this proposed requirement; therefore, under proposed § 157.445(a), the Coast Guard intends to delay the implementation of this proposed measure until 1 year after the final rule is published in the Federal Register.

Maneuvering and Vessel Status Information. Section 157.450 proposes to incorporate by reference an IMO resolution with three specific requirements: (1) standardizing the presentation of the maneuvering information required by 33 CFR part 164; (2) requiring the use of a pilot card; and (3) requiring a maneuvering booklet to be available to the master on board the vessel. The maneuvering poster required by this resolution incorporates all of the information that is required to be displayed by a vessel of 1,600 GT or more under 33 CFR part 164. This proposed requirement would ensure that every tankship presents this maneuvering data in the same format so the pilot can quickly assess the maneuvering characteristics of the vessel. The pilot card provides a ''snapshot'' of the vessel's current equipment status and maneuvering information unique to the transit. The maneuvering booklet gives detailed information on the specific maneuvering capabilities at various drafts and in various hydrodynamic situations. These details, along with squat characteristics, are essential for difficult transits through constricted channels and for damage control situations in the event of a marine casualty.

All three of these requirements have been recommended by the Coast Guard since 1989 through NVIC 7–89, ''Maneuvering Information.'' Use of standardized forms to help prevent omission of important information is a common theme within bridge resource management philosophy. The Coast Guard also solicits comments on whether the pilot card should have additional information.

Minimum Under-keel Clearance. Three comments favored the implementation of minimum under-keel clearance requirements to prevent groundings. The Coast Guard agrees and in § 157.455 is proposing regulations which would establish a minimum under-keel clearance requirement for all tank vessels departing or entering a port. This proposed regulation is intended for both tankships and tank barges. The tank barge company would be required to ensure the tank barge meets this minimum under-keel clearance requirement either through establishing and enforcing company policy, through a contractual agreement with the towing vessel company, through hiring practices, or through direct company oversight of the tank barge's under-keel clearance calculations prior to port entry or departing port.

This requirement has been suggested in several forms over the past 10 years. The Coast Guard, with the aid of the Navigation Safety Advisory Council (NAVSAC), considered a draft for similar requirements in 1991. After much debate, it decided not to pursue a federally-mandated clearance requirement. The difference between the current proposal and past proposals is fundamental. Past proposals considered ''real-time'' or actual under-keel depth and minimum under-keel depth throughout a transit. Problems with this type of requirement were substantial. The accuracy of the onboard depth sounder, the number of depth sounders and their hull placement, and the inconsistencies between published data and actual water depth, all complicated the task of regulating actual under-keel depth.

The proposed requirements in § 157.455 are based on anticipated under-keel depth and represent a fundamental passage planning requirement. IMO has provided guidance on general under-keel clearance considerations since 1978 in its ''Guide to the Planning and Conduct of Passages'' (SN/Circ. 92, 23 October 1978). As a passage planning requirement, this proposal would reduce human error by ensuring the hazard components (shown in Figures 5 and 6) related to failure to do a task, failure to correctly perform a task, incomplete or incorrect information, and lack of knowledge or training are addressed on those tank vessels presenting a higher oil spill risk, due to design, if a grounding occurs. Conscientious operators already carefully calculate the deepest draft of the vessel and then review the intended route to ensure there is adequate depth underneath the keel. Several companies already have policies dictating this planning requirement and several U.S. ports, such as the ports of Long Beach and Los Angeles, already have established guidance for minimum under-keel clearances. NAVSAC recommended that an adequate depth for transit determination be made by a joint agreement between the local Captain of the Port (COTP) and the port and harbor safety authority or association or other similar group. This recommendation would be appropriate if the safe navigation of a particular port indicates that it is necessary to establish permanent under-keel clearance requirements. The Coast Guard recognizes that some local COTP and port and harbor safety authorities presently have or may wish to establish clearance requirements. This proposal would not preempt present or future local standards. The proposal establishes an anticipated minimum under-keel clearance of at least .5 meters (2 feet) for all ports. If a local standard is less than the proposed .5 meter clearance, the proposed notification requirement enables the COTP to positively control the local policy. It is anticipated that a local under-keel clearance requirement that is more stringent than the .5 meter clearance would be enforced through a joint COTP and harbor safety authority agreement. This proposed clearance reflects general industry standards and provides an added cushion of safety for vessels while operating in areas where charted depths may not have been updated by surveying agencies for sometime. Tank vessels fitted with double bottoms would be exempt from this under-keep clearance requirement because within the risk framework developed for this rulemaking, the double bottoms provide protection from oil spills that may be caused by this type of accidental or non-emergency intentional grounding.

A vessel's log or similar onboard documentation should indicate that the master or operator has considered the factors that may affect a vessel's draft and has reviewed the appropriate scaled charts, tide tables, and other applicable publications to calculate the anticipated controlling depth. Charts and publications may contain conflicting water depth information. Some of these variances are due to different survey periods, survey techniques, or recording purposes. The most conservative depth should be used to calculate the anticipated depth.

This preventive measure would require all affected vessels to carefully plan port transits. Grounding would not indicate a violation of the requirements in proposed § 157.455 if the owner, master, or operator has properly logged or documented the proposed planning requirements and can recreate the calculations done prior to port entry or departure. Satisfying the planning requirements, however, does not relieve the owner, master, or operator of ensuring that other navigational requirements and practices are followed.

Intentional grounding during a transit, unless done to reduce the risk of a collision or allision, or during a similar type of emergency, would violate the regulation if done with without the express approval of the COTP. This proposed restriction on intentional grounding is not intended to unconditionally prohibit this practice rather, it focuses on ensuring that the local COTP understands the vessel's operation and agrees to the practice. In areas where port bottom conditions are

known and do not pose a threat to the integrity of the hull, approval for certain vessels to load cargo by intentionally grounding would be acceptable. An anticipated caveat to a vessel being allowed to routinely ground for loading operations is a specific shell plate and weld condition survey or some other type of structural review provision to ensure the vessel remains structurally fit for the additional loading stresses.

Pilotage Passage Plans. One comment recommended that the Coast Guard require pilot passage plans. This would require the pilot to prepare a written passage plan prior to boarding a vessel, provide copies of the plan to the bridge team, and discuss the plan with the bridge team prior to beginning the passage. Guidance on this issue has been developed by IMO and is entitled, ''Guide to the Planning and Conduct of Passages'' (SN/Circ. 92, 23 October 1978).

Although many pilots already prepare plans for passage through a port, the vessel's crew also needs to actively communicate with the pilot prior to a port transit. This proposed rulemaking addresses only the vessel's responsibility to accurately inform the pilot of the vessel's status and to monitor the pilot during a transit by incorporation of pilot cards and bridge resource management training. The Coast Guard and IMO are undertaking a separate initiative to address the pilot's responsibilities to the vessel.

Navigation Equipment. Several comments stressed the need for improved navigation equipment and suggested requiring state-of-the-art navigation equipment such as a Global Positioning System (GPS) Receiver and collision avoidance radar. Other suggestions included electronic charts, advanced sonar systems and a speed log.

Within both the international community and among U.S. vessel operators, a significant amount of discussion has centered on the value of navigational information versus the training of navigators. While equipment with additional capabilities is extremely useful, navigational safety also depends on the officer using this information. The Coast Guard has determined that the present automatic radar plotting aid (ARPA) requirements and the electronic positioning device required in 33 CFR part 164 set an adequate minimum standard. The proposed bridge resource management training would give the officers responsible for vessel navigation the tools they need to interpret and use all the information gathering systems at their disposal. The Coast Guard is considering future proposals for Electronic Chart Display and Information System (ECDIS) or differential GPS (DGPS) capabilities on vessels. While ECDIS may indicate the ship's actual position on an electronically generated chart, any requirement for electronic positioning devices is premature until standards for equipment have been developed and DGPS signals can provide an accurate, high integrity signal throughout the United States. However, owners purchasing new units should consider a GPS unit capable of receiving a DGPS signal or interfacing with a differential receiver.

VEssel Traffic Service Systems. Several comments stated that the Coast Guard needs to develop stronger rules for Vessel Traffic Service Systems (VTS). Three comments stated that the Coast Guard should require a vessel's mandatory participation in a harbor's active VTS. Other comments stated that more ports were in need of VTS. One comment stated that the VTS existing in Valdez, AK, San Francisco, CA, New Orleans, LA, and New York, NY, have deficiencies including inadequate funding, lack of maintenance and poor training. Most comments stated that VTS are an obvious measure to reduce oil pollution which should be improved and extended to more ports.

Section 4107(b)(1)(B) of OPA requires the Secretary to study the need for new, expanded or improved VTS. The 1991 Port Needs Study (Vessel Traffic Service Benefits) documents the benefits and costs of Coast Guard VTS in 23 selected ports on the Atlantic, Gulf, and Pacific coasts. The study employs a comprehensive cost-benefit model that considers the far-reaching consequences of marine accidents based on navigational risk. The results are being used by the Coast Guard to make capital investment decisions for the entire VTS program. One change is the establishment of requirements and procedures which simplify previous VTS regulations and mandate participation in all VTS (59 FR 36316; July 15, 1994). Other VTS developments are being proposed in separate documents and are not within the ambit of this rulemaking.

Voyage Data Recorder (Black Box). Another comment suggested installation of a comprehensive event recorder (black box) to allow investigators to reconstruct the events leading to a near-miss or marine casualty.

As indicated in Figures 3 through 6, a black box would not directly reduce the risk of an accident. Present regulations require recording capabilities on depth sounding devices and logging requirements for various other navigation indicators. This information has been used in the past to reconstruct accident events. A comprehensive recording system such as a black box could improve investigation quality and reduce the time needed to reconstruct accident events. Additionally, it might be a factor in reducing the risk of future casualties if used as a management oversight tool to heighten management's awareness of vessel operations. In addition, use of the black box could provide information on near-misses which could be used to assess regulatory effectiveness and pinpoint potential areas of traffic or operational concern.

Other types of recorders that include active warning systems (linked into existing VTS or capable of alarming a vessel automatically in a potential collision situation) are in use on some offshore oil platforms. These early warning systems work in conjunction with DGPS and ECDIS. Because of their dependence on DGPS and ECDIS, the Coast Guard believes that it is premature to require active warning systems. While voyage data recorders and early warning systems are both technologically feasible, they are costly. A general requirement for an automatic, tamper proof voyage recording system that would record voice, radar, position information, engine, and course data would impose significant costs. This SNPRM solicits comments on a voyage data recorder requirement, inclusion of an early warning capability in a recording device, and recommended provisions for near miss data collection.

Escort Vessels

Several comments pointed out the value of escort vessels. One comment also recommended requiring bow thrusters for tankers without tug escorts. The escort vessel issue is being addressed in a separate regulatory project. This proposed rule considers escorts as a possible alternative when the vessel does not meet certain maneuverability performance standards. The Coast Guard has determined that the proposed requirements for emergency steering capabilities combined with maneuvering performance standards would reduce the risk of a collision, allision, or grounding due to poor maneuverability and mitigates some of the equipment failure components in Figure 5. Comments on possible requirements for bow thrusters are solicited in this proposed rulemaking.

Routing Restrictions.

Several comments suggested various route restrictions to increase safety.

Four comments recommended more stringent pilotage requirements. Five comments recommended limitation of vessel movement. Two other comments recommended voluntary routing. One comment recommended mandatory speed limits. One comment suggested that the Coast Guard identify those ports with rocky bottoms and prohibit entry by tankers without double bottoms. Such provisions directly correlate with the risks of structural failure (Figure 3) from impact.

Although the Coast Guard recognizes that groundings and collisions could be reduced through routing restrictions, it does not have the authority at this time to enforce mandatory routing restrictions or exclusionary transit zones on foreign vessels outside of U.S. navigable waters. At the sixty-fifth session of the Marine Safety Committee (MSC), in May of 1995, the Committee adopted amendments to the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, which would permit the establishment of mandatory routing measures through IMO. This MSC resolution, MSC 46(65), becomes effective January 1, 1997.

Present routing practices off the coast of California are voluntary and were developed after extensive research. Diverse weather patterns, vessel traffic, marine life considerations, and other factors pose safety problems in some geographic areas. Because of the unique nature of each port and offshore area, the Coast Guard has traditionally left speed limit, safety zone and other restrictions to the local COTP. As required by section 4111(b) of OPA 90, the Coast Guard is currently studying tanker routing and solicits comments on establishing routing restriction requirements.

6. Additional Operational Requirements for Tank Barges

Several comments suggested improvements to towing vessels. One comment stated that the Coast Guard should require navigation equipment on towing vessels. Another comment stated that independent emergency steering capability should be required on towing vessels. One comment recommended restrictions on tandem towing when loaded, requiring twin screw tugs, and requiring towing vessel horsepower to barge deadweight ratios. One comment recommended that the Navigational Safety requirements of 33 CFR part 164 be extended to towing vessels. One comment suggested two independent propulsion systems.

The Coast Guard has issued several rulemakings affecting the entire commercial towing industry. The recent proposed rulemaking entitled ''Navigation Safety Equipment for Towing Vessels'' (60 FR XXXX) contains several of the requirements mentioned above. It proposes requirements for vessels engaged in towing that are 8 meters or more in length. These requirements include certain navigational equipment, such as radar; searchlights; and electronic position fixing devices, depending on the vessel's area of operation; general navigation safety requirements; and towline inspections for vessels engaged in towing astern. Further requirements on licensing for towing vessel operators also may be proposed.

Emergency Steering Capability. In § 157.460(a), the Coast Guard is proposing that the owner or operator of a tank barge would be responsible for ensuring the primary towing vessel has either twin screws with independent power or a backup steering system. Twin propulsion designs with separate engine controls, dual shafts, and propellers certainly would meet the intent of this requirement and are allowed under this proposal. To reduce the impact of this regulation and to allow vessel owners time to schedule shipyard facilities, the Coast Guard proposes a 1-year delayed implementation of this requirement.

This requirement was proposed after review of the risks of equipment failure and loss of steering as shown in Figures 5 and 6. Loss of steering for tankships is addressed by 33 CFR 164.39, 46 CFR 58.25, and the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, with amendments, Chapter II–1, Part C, regulation 29. Therefore, this SNPRM does not propose additional steering requirements for tankships.

Fendering Systems. The qualitative evaluation of the structural failure hazard (Figure 3) revealed that structural fractures due to the stress on local hull areas of a tank barge, where a towing vessel or a pier routinely comes in contact with the barge, have not been addressed and could contribute to the cause of some oil spills. While this type of fracturing may be identified by the enhanced survey requirements proposed in § 157.430 of this SNPRM, a more fundamental and cost effective solution is adequate fendering. Because fendering on a barge would be very costly, would decrease structure accessibility under the fendering system, and may increase the rate of local structural deterioration surrounding the fendering system, the Coast Guard is proposing that the owner or operator of a tank barge would be responsible for ensuring the primary towing vessel and any other assist or fleeting towing vessels have adequate fendering systems. This proposal would require vessel owners and operators to ensure towing vessel fendering systems are assessed through management policy, on-site inspection or oversight, contractual arrangements, or hiring practices as an important protective measure for their barge's structural integrity. Fleeting and assist towing vessels are included in this proposal because during docking operations, the forces they exert on the barge hull also contribute to the fracture problem. Although there are no international or domestic guidelines for appropriate fender technical specifications, § 157.460(b) proposes a performance guidelines for preventing metal to metal contact of the towing vessel and the tank barge.

7. Other Operational Measures

Many of the comments proposed improvements through other operational measures, including planning improvements. Two comments recommended cargo loading and casualty planning. The comments stated that the risk of pollution could be reduced significantly through a strategic cargo loading plan which included criteria for loading a partial cargo or discharging at several ports. For example, if cargo is retained after discharging at the first port of call, cargo can be retained in center tanks instead of wing tanks. One comment stated that effective casualty planning would reduce the likelihood of a pollution incident; these plans are not currently required.

Hydrostatic balanced loading minimizes the accidental oil outflow by strategically loading cargo tanks to take advantage of the hydrostatic balance between the cargo and sea water. This concept is presently being studied and will be considered in the Existing Vessel Structural Measures rulemaking. Casualty planning requirements are addressed in ''Shipboard Oil Pollution Emergency Plans'' (59 FR 51332; October 7, 1994).

Three comments were received regarding emergency transfer systems (ETS). Two of these comments supported the implementation of ETS while one comment stated that ETS was unproven and not likely to prevent pollution. These systems generally require additional cargo piping and pump refit or installation. It should also be noted that the Coast Guard has completed a report to Congress entitled, ''The Feasibility of Using Segregated Ballast Tanks (SBT) for Emergency

Transfer of Cargo and Storage of Recovered Oil,'' 1995. In this study, it was found that in the event of a vessel casualty, such as a collision or grounding, there are often fundamental changes in the vessel's stability condition which make it potentially unsafe and inadvisable to use SBT for emergency transfer of cargo. The regulatory assessment study for the third portion of this project will address these systems and any special considerations in their use.

Three comments recommended that wing tanks be kept empty. One stated that empty wing tanks would reduce the likelihood of oil outflow in collisions by 100 percent and in groundings by at least 50 percent, compared to estimates of 30 percent and 15 percent provided in the Existing Tank Vessels NPRM. This comment specifically suggested that the wing tanks remain empty rather than ballasted with water or other non-petroleum cargo. Significant structural refit to reinforce bulkheads between empty wing tanks and cargo tanks, possible piping refit, and substantial stability reassessment may be required. The Coast Guard is soliciting comments on the economic and technical feasibility of this proposal.

One comment recommended emergency retrieval equipment or emergency towing pendants similar to those provided for in Washington State regulations. Four comments stated that tow wire maintenance and inspection should be required. An interim final rule (IFR) requiring emergency towing equipment was published in the Federal Register on December 22, 1993, entitled, ''Discharge Removal Equipment for Vessels Carrying Oil'' (58 FR 67988). This required the majority of existing tank vessels to have an emergency towing wire meeting an IMO standard. This IMO standard has been revised to incorporate a requirement that the equipment can be deployed automatically and by a limited number of crew. The Coast Guard supported these changes at IMO and intends to implement these new requirements in a future rulemaking. In addition, an NPRM entitled, ''Navigation Safety Equipment for Towing Vessels'' published elsewhere in this issue of the Federal Register proposes minimum tow wire standards and inspection requirements.

Amendments to 46 CFR Part 31

To ensure cross reference to the proposed enhanced survey requirements, tables (a) and (b) in 46 CFR 31.10–21 would be revised to direct individuals using 46 CFR part 31 to § 157.430(a); however, it does not change existing drydock requirements.

Amendment to 46 CFR Part 35

To ensure cross reference to part 157, § 35.01–40(c) of title 46 of the CFR is revised to refer individuals using 46 CFR part 35 to the applicable pollution prevention requirements.

Incorporation by Reference

The following material, in part, would be incorporated by reference in § 157.02: IMO Assembly Resolution A.601(15) with Appendices 1–3, ''Provision and Display of Manoeuvring Information on Board Ships''; IMO Assembly Resolution A.744(18) Annex B, ''Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers''; IMO Assembly Resolution A.751(18) with Explanatory Notices in MSC/Circ.644, ''Interim Standards for Ship Manoeuvrability''; and Oil Companies International Marine Forum (OCIMF) ''International Safety Guide for Oil Tankers and Terminals'' (Second Edition). Copies of the materials are available for inspection where indicated under **ADDRESSES.** Copies of the material are available for the sources listed in § 157.02.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Assessment is summarized as follows.

This rulemaking would apply to all existing vessels of 5,000 GT or more that do not have double hulls and that carry oil, including non-petroleum oil, in bulk as cargo. An estimated 1359 existing tank vessels (190 U.S. tankships, 1080 foreign tankships, 86 U.S. tank barges and 3 foreign tank barges) currently operating on the U.S. navigable waters would be affected by this proposed rulemaking.

Industry Cost

Some of the proposed operational measures require actions prior to each port transit or cargo transfer. As a result, vessels on coastwise or frequent transit schedules would incur higher expenses than vessels with a lower frequency of port calls. In contrast, the decrease in fleet size as vessels arrive at their phaseout date results in a downward trend in estimated annual costs from 1996 through 2014.

First year compliance cost of this SNPRM would total about $183.8 million. Annual costs of the proposal would trend downward, leveling out at $5.8 million during 2012–2014, the final years that the proposal would be in effect. The present value of this proposal is discounted at 7 percent throughout this assessment in accordance with current Office of Management and Budget guidance to reflect the costs or benefits as they would have been in the year OPA 90 was enacted. The present value of this proposal, discounted at 7 percent, would total $443.6 million. U.S. tankships and tank barges would together account for an estimated one-third of total costs, and foreign tank vessels and barges would account for the remainder. A discussion of costs for each proposed requirement follows.

The costs associated with the operational measures proposed in this SNPRM were developed based on vessel type, vessel use, and average vessel size. The cost analysis was applied to tankships and tank barges. Cost analysis calculations were based upon the following assumptions:

(1) The proposed rulemaking would come into effect in 1996;

(2) The recurring cost of this rulemaking would reflect the future vessel population decrease as required by the phaseout schedule in section 4115(a) of OPA 90 and shown in NVIC 10–94;

(3) Both costs and benefits developed for this rulemaking are discounted at 7 percent back to 1990; and

(4) All recurring costs are calculated for the year 2001.

Emergency Lightering Equipment. Lightering equipment costs were based on the costs used in the Emergency Lightering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls Final Rule (59 FR 40186). This SNPRM proposes to expand the applicability of these emergency lightering requirements from oil tankers to all tank vessels. No U.S. tank vessels with exclusive non-petroleum oil cargo carriage authority are in operation.

There would be no costs to U.S. tankships or tank barges. An estimated 114 foreign tankships and 2 foreign tank barges carry non-petroleum cargo and may be affected by this change. The onetime costs for this proposed requirement for foreign tankships is estimated to be $456,000–$1.1 million and for foreign tank barges would be $8,000–$19,000. Based on the average onetime cost for foreign tankships and tank barges, the present value of point-estimate costs for emergency lightering discounted at 7 percent to 1990 would be $530,000.

Bridge Resource Management Training. The cost of proposed § 157.415 would vary based on crew complement, crew salary, and estimated existing training programs. Based on typical crew compliments and accounting for personnel turnovers, seven tankship officers were assumed to require this training per tankship while six officers were used to estimate the cost to each tank barge. Crew daily wages were estimated based on American Institute of Merchant Shipping (AIMS) data, Tanker Advisory Report statistics, and American Waterways Operators (AWO) information. Although simulator training is not proposed as a required element of the BRM training course, past completion of an existing Coast Guard approved bridge resource management course would meet the proposed requirements. An estimated 60 percent of U.S. tankships and tank barge companies have already met this training requirement for their deck officers through commercial bridge management courses. An estimated 30 percent of the foreign vessels operating on routes within U.S. waters have trained their officers in management-type curriculum. The commercial bridge management course fees, approximately $5,000 per person (for a 5-day course), were used to estimate the cost of this proposal. The refresher training course offered by commercial vendors was estimated to be $500 per person.

Total cost of the proposed BRM training requirement to industry for U.S. tankships would be $3.7 million. Foreign tankship total initial estimated cost would be $33.0 million. The U.S. tank barge total initial estimated cost would be $2.0 million. The total cost to the foreign tank barge industry would be $79,000. The present value of the costs of BRM training discounted at 7 percent to 1990 would total $35.1 million.

Vessel Specific Watch Training. The Coast Guard estimates the additional cost incurred by proposed § 157.420 would be negligible. The cost attributed to time loss due to this training is negligible because this type of training falls within the scope of a master's present responsibility to ensure the crew is ''fit for duty.'' Recordkeeping requirements are addressed in the ''Collection of Information'' section.

Minimum Rest Hour Requirement. To meet proposed § 157.425, shoreside augmentation of the vessel crew to allow the vessel officers and crew members time to rest, is estimated to include one officer (assume average second mate salary) and two tankerman (assume average third mate salary) for each port visit on a tankship and one tankerman (assume average mate salary) for a tank barge. On U.S. vessels, one officer was not included because under 46 U.S.C. 8104(a), the master is presently required to meet this rest hour minimum. Shoreside augmentation requirements would vary based on the number of port visits per vessel correlated with an estimate on average visit length. Careful crew scheduling and time management could reduce the amount of augmentation required prior to departing port. It is estimated that U.S. tankships would require shoreside augmentation prior to 60 percent of their port departures, foreign tankships would require augmentation prior to 40 percent of their port departures, and tank barges (both foreign and U.S.) would require 80 percent augmentation to meet this proposal. If shoreside augmentation would be required prior to a port departure, a full day's wage for the estimated number of personnel required for augmentation was used. The cost for posting a notice to crew members on the rest hour minimums was not calculated because it is minimal.

The 1-year cost for augmented shoreside manning on U.S. tankships would be $2.2 million and for foreign tankships would be $1.5 million. The 1-year cost for augmented shoreside manning on U.S. tank barges would be $991,000. The 1-year cost for augmented manning for foreign tank barges would be $6,500. By 2001, the total cost of this proposed requirement to the U.S. tankship industry would be $1.55 million, and to foreign tankships, $1.03 million. For the tank barge industry, this recurring augmentation cost would be $714,000 for the U.S. industry and slightly less than $4,000 for the foreign industry. The present value of the costs of rest hour minimums discounted at 7 percent to 1990 would total $19.7 million.

Enhanced Survey and Alternate for Enhanced Survey. Those tankships regulated by flag administrations signatory to MARPOL 73/78 and having adopted Regulation 13G of Annex I are presently required to complete the proposed enhanced survey of § 157.430(a) starting in 1995. For this proposed rulemaking, no cost is associated to this group of vessels for the enhanced survey requirement. U.S. tankships presently are not required to meet Regulation 13G of Annex I of MARPOL 73/78. Under this proposal, they would be required to conduct enhanced surveys and incur the cost associated with these surveys.

The cost of an enhanced survey for a vessel classed by a recognized classification society is estimated to be 25 percent higher than the cost of the special survey currently performed by the class societies. This cost includes the fee for the surveyor's time and required documentation. For a 21,000 GT tankship, the increased cost for a surveyor and a final report is estimated to be $11,000. Additional costs to the industry for this proposed requirement would include making approximately two tank interiors accessible to the surveyor through the use of scaffolding, ladders, lines, or other arrangements and additional gauging requirements (approximately 30 percent more than present classification society requirements). Some additional repair costs could also be incurred after a review of the survey is completed. Cost estimates do not include the cost to drydock the vessel, gas free it for inspection, or keep it in the drydock. These costs are already incurred with present drydocking requirements.

It is estimated that 64 tankships are either not classed or are classed by classification societies not recognized by the Coast Guard. These vessels would incur additional costs associated with a design review and a condition survey for reclassification by a recognized society. Classification costs or enhanced survey costs for vessels already required to drydock, but never classed or not classed by a recognized classification society, would be $514,000.

Tank barges are not required to meet Regulation 13G of Annex I of MARPOL 73/78. Proposed § 157.430(b) allows tank barges and vessels smaller than the MARPOL cutoff to substitute comparable company programs for the enhanced survey requirements. Because the company program clause assumes the owner has an established survey program and would not need to conduct extensive additional repairs, the cost of these company programs would be less than the cost of a classification survey.

The cost estimates associated with proposed § 157.430 (a) and (b) were amortized to reflect a 12-month period. First year cost averages would be $14.9

million for U.S. tankships; $23.0 million for foreign tankships; $2.3 million for U.S. tank barges; and $80,000 for foreign tank barges. Because the cost estimates have been averaged and it has been assumed that the vessels affected by this rulemaking would be in service for at least two drydock enhanced surveys prior to their phaseout, recurring cost would be the same as the first year costs listed above. The Coast Guard recognizes this recurring cost estimate is conservative; however, as the fleet population diminishes the average cost of an enhanced survey may increase due to the age and possible repair requirements of the remaining tank vessels subjected to the survey. The present value of the costs of the enhanced survey discounted at 7 percent to 1990 would total $67.38 million.

Vital Systems Surveys. The cost of proposed § 157.435 would vary based on port departure frequency, crew salary, and the estimated time required for each survey. A survey would be required before a tank vessel begins cargo transfer operations or prior to a vessel departing port. An estimate of port departures was calculated based on 1993 Coast Guard data and reflects an average departure frequency of 28 for U.S. tankships, 32 for U.S. tank barges, 6 for foreign tankships, and 7 for foreign tank barges. Three surveys were estimated for each port departure.

Crew members affected by this proposed requirement would be senior personnel. For tank barge surveys, an average towing vessel master's wage was used for cost evaluation. For tankship surveys, an average chief mate's wage and a chief engineer's wage were used for cost evaluation. Survey time was estimated at 1 hour on a tankship (½ hour each for both the chief mate and the chief engineer) and approximately 48 minutes for the master of a primary towing vessel or a senior tank barge representative.

The vital systems survey cost for U.S. tankships would be $660,000 with a recurring cost (for year 2001) of $472,000. The cost to foreign tankships would be $465,000 with a recurring cost (for year 2001) of $322,000. The survey cost to U.S. tank barges would be $289,000 with a recurring cost (for year 2001) of $208,000. The survey cost to foreign tank barges would be $2,500 with a recurring cost (for year 2001) of $1,500. The present value of the costs of vital systems discounted at 7 percent to 1990 would total $6.0 million.

Autopilot Alarm or Indicator. The cost for the alarm or indicator proposed in § 157.440 was calculated based on the assumption that 10 percent of the U.S. tankships presently meet this requirement, none of the foreign tankships presently have this capability, and 3 towing vessels would require an indicator for every 2 tank barges affected by this rulemaking. It was also assumed that the tank barge company owned the towing vessel and would incur the cost of this requirement. The estimated installation cost of a visual and audible autopilot alarm is $5,000 on electronic tankship steering systems and the estimated autopilot indicator cost is $100. The cost attributed to the testing of this alarm would be negligible based on the short amount of time required to test the device and the preexisting requirement to do so under 33 CFR 164.25. This proposal would have a onetime estimated cost to U.S. tankships of $855,000; to foreign tankships, $5,400,000; to U.S. tank barges, $12,900; and to foreign tank barges, $500. The present value of autopilot alarm costs discounted at 7 percent to 1990 would total $4.2 million.

Maneuvering Performance Capability. To meet proposed § 157.445, tankships would require additional maneuvering tests and also recalculation or confirmation of previous maneuvering characteristics presently required by 33 CFR 164.35(g). Additional tests are proposed primarily to evaluate overshoot angles and time to check yaw. Computer simulations of these performance tests would not be accepted. A cost of $18,500 was based on an independent subcontractor coming on board a tankship to conduct the tests and provide the documentation required. This estimate reflects industry cost for test preparation, equipment, personnel, transportation, vessel operational delay, data processing, and final report collation. It was assumed that the tests required to meet this performance standard proposal have not been completed by any of the tankships affected by this SNPRM. The total onetime cost to the U.S. tankship industry would be $3.5 million and the cost to the foreign tankship industry would be $20.0 million. The present value of maneuvering performance capability costs discounted at 7 percent to 1990 would total $15.7 million.

Maneuvering and Vessel Status Information. No additional maneuvering tests would be required for proposed § 157.450, however, some recalculation of data from the original tests used to develop the wheelhouse poster of 33 CFR 164.35(g) may be required. To compile a maneuvering booklet, additional calculations and documentation also may be required. A cost estimate of $1,080 was developed for this proposal and reflects an average U.S. licensed naval architect fee for 4 hours spent to recalculate wheelhouse poster data and 16 hours spent to assemble the maneuvering booklet. Vessel population estimates indicated that 75 percent of both foreign and U.S. tankships presently meet the wheelhouse poster requirement and 20 percent presently meet the maneuvering booklet requirement. The cost attributed to the pilot card requirement would be negligible because the cost of the pilot cards themselves would be minimal while the time spent to complete them would be incorporated into the scope of an officer in charge of a navigational watch's normal duties.

Proposed § 157.450 has a onetime cost attributed to the wheelhouse poster and the maneuvering booklet. The estimated onetime cost of this proposal would be $142,000 for the 190 U.S. tankships and $805,000 for the 1,080 foreign tankships. The present value of maneuvering and vessel status information costs discounted at 7 percent to 1990 would total $631,000.

Minimum Under-keel Clearance. The cost estimate for proposed § 157.455 assumed that tankships presently entering or departing U.S. navigable waters operate with an under-keel clearance range of 0.15 meters to 2.00 meters and an average anticipated under-keel clearance of 0.6 meters (2 feet). Present tank barge under-keel clearances were estimated to be much less than tankship averages. An estimate of the number of port entries and departures was made for each vessel type. Tank barges were estimated to be affected by this proposal during each port entry and each port departure. U.S. tankships were estimated to be affected by this proposal during each port entry and during 35 percent of the port departures. Foreign tankships were estimated to be affected by this proposal during each port entry and during 20 percent of the port departures.

The cost of the proposal was estimated to be a 3 percent loss of cargo carrying capacity for each .3 meters needed to decrease the tank vessel's draft. An estimate of required draft decrease or cargo loss due to this proposal was made for each vessel type. It was estimated that 30 percent of the affected tank barge (10,000 GT average size) population would not lose cargo carrying capacity due to this proposal, 50 percent of the population would lose 3 percent of their cargo carrying capacity, and 20 percent would lose 6 percent of their cargo carrying capacity. It was estimated that 75 percent of the affected U.S. tankship (33,300 GT average size) and foreign tankship (50,000 GT average size) population

would not lose cargo carrying capacity due to this proposal, 20 percent of the tankship population would lose 3 percent of their cargo carrying capacity, and 5 percent of the tankship population would lose 6 percent of their cargo carrying capacity. The cost attributed to the proposed recording requirement would be negligible because the time spent completing the vessel log entry or other similar documentation would be incorporated into the scope of the officer of a navigational watch's normal duties.

As a result of the reduced cargo capacity, the first year cost of proposed § 157.455 for a U.S. tankship would be $18 million. Foreign tankship costs would be $35.1 million. U.S. tank barge costs would be $12.4 million and foreign tank barge costs would be $142,000. By 2001, the total cost of proposed § 157.455 to the U.S. tankship industry would decrease to $13 million, and the cost to foreign tankships would decrease to $27.3 million. For the tank barge industry, the recurring cost of under-keel clearance would be $13.3 million for the U.S. industry and $142,000 for the foreign industry. The present value of the costs of under-keel clearance discounted at 7 percent to 1990 would total $292.6 million.

Emergency Steering Capability. Proposed § 157.460(a) applies to the primary towing vessels engaged in towing tank barges of 5,000 GT or more without a double hull. An estimated total of 134 towing vessels would be affected by this proposal. Of these vessels, research indicates 80 percent presently meet this proposed requirement. It was assumed that the towing vessels that do not meet this proposed requirement are owned by the tank barge company. The cost to reconfigure the towing vessel's steering gear would be $25,000 based on an independent subcontractor installing additional piping and tankage on an existing hydraulic steering system.

The onetime emergency steering requirement cost would be $645,000 for U.S. tank barge companies; and $25,000 for foreign tank barge owners or operators. The present value of emergency steering capability costs discounted at 7 percent to 1990 would total $446,000.

Fendering System. Proposed § 157.460(b) applies to the primary towing vessels and the fleeting or assist towing vessels engaged in maneuvering tank barges of 5,000 GT or more without double hulls. A total of 312 towing vessels would be affected by this proposal. Of these vessels, research indicates 80 percent presently have adequate fendering systems. It was assumed that those towing vessels that do not meet this proposed requirement are owned by the tank barge company or the tank barge company would realize a cost increase in the leasing of an adequately fendered towing vessel. The cost to add or reconfigure the towing vessel's fendering system would be $1,320 based on a towing vessel's personnel installing an additional 8 linear feet of commercial fenders during a routine maintenance period.

Proposed § 157.460(b) would have an estimated initial cost to U.S. tank barges of $79,500; and to foreign tank barges of $3,000. Recurring costs, reflecting the diminishment of the tank barge fleet by 2001, would be $57,000 for U.S. tank barges and $2,000 for foreign tank barges. The present value of the cost of fendering systems discounted at 7 percent of 1990 would total $329,000.

Government Cost

Federal Government cost would include Coast Guard personnel time and resources to review survey records and documentation required by this proposed SNPRM during annual tank vessel examinations (foreign vessels) or annual inspections (U.S. vessels). The length of time added to a typical examination or inspection would vary based on the type of service in which the vessel engages. The Coast Guard is estimating that these requirements would increase the time of examination or inspection by an average of 0.5 hours for any given requirement. The various requirements range from 0.25 hours to inspect log entries or records to 8 hours to review documentation of an enhanced survey on a U.S. tankship or tank barge.

Government costs attributable to implementation of this rule are based on twelve proposed requirements. The Coast Guard examination or inspection would evaluate relevant documentation on BRM training, vessel specific training, minimum rest hours, enhanced surveys, vital systems surveys, maneuvering performance capability information, maneuvering information, and minimum under-keel clearance. During an annual examination or inspection the Coast Guard inspector would also ensure the emergency lightening equipment, the autopilot alarm or indicator, the emergency steering gear and the fendering systems on the towing vessels meet the proposed requirements.

The proposed maneuvering performance test requirement, specified in § 157.445(b), instructs tankships that do not meet the IMO criteria to report their maneuvering capability to the COTP 24 hours prior to port entry. Requests of this nature are not anticipated to be frequent. For this cost estimate, 10 percent of the existing tankship population was assumed to require some deviation from the IMO criteria. To review a vessel request for port entry and determine appropriate operational restrictions would take Coast Guard personnel an average of 4 hours.

Therefore, the government cost analysis assumes the increased annual inspection time would average 6.95 hours for U.S. tank vessels and 4.75 hours for foreign tank vessels. In addition, deviation requests from U.S. tankships for the proposed maneuvering performance standard would be 76 hours while requests from foreign tankships would average 432 hours. Based on a $35.00 per hour wage estimate for a Coast Guard inspector, the Coast Guard expects the 1,188 additional man-hours of inspection and deviation request evaluation time would cost $39,801 annually.

Cost-Benefit Evaluation

Costs. Cost estimates were based on the forecast 19-year life for this proposed rulemaking. For all proposed requirements, the undiscounted costs of compliance are projected to be $897.6 million. The present value of the costs of this proposed regulation discounted at 7 percent to 1990 would total $443.6 million.

Benefits. Pollution mitigation benefits from the proposed operational measures would accrue mainly in areas around loading terminals, narrow channels, and in open waters during lightering operations.

A review of casualty and spill data was conducted in an attempt to pinpoint past accident frequency as related to each proposed operational measures. However, the complex cumulative effect of human error and equipment failure made it difficult to quantify the benefits of each measure. For example, the grounding of the foreign tankship WORLD PRODIGY off Brenton Reef in Rhode Island Sound was caused by a combination of fatigue, poor bridge resource management, and insufficient passage planning (especially under-keel clearance) which lead to this 1989 oil spill. The major explosion aboard the U.S. tankship MT SURF CITY was caused by poor tank entry precautions and undetected bulkhead deterioration between a cargo tank and a ballast tank. Because of the interrelationship between the proposed requirements that focus on a reduction in human error along with the proposed requirements for improved equipment inspections and capabilities, the Coast

Guard chose to quantify the benefits using a gross estimate of benefits for this SNPRM regulatory assessment.

A preliminary estimate of the anticipated benefits and resultant cost-benefit for each measure was conducted and is described in detail within the regulatory assessment. This preliminary estimate included a review of certain tank vessel casualties from 1989 through 1994, the resultant oil spill or potential for an oil spill, vessel damage, and loss of life. Benefits were estimated for each proposed measure by reviewing the casualty report, analyzing each casualty's root causes, and estimating a percentage of the recorded or estimated spillage associated with each root cause. The actual and potential amounts of oil spilled were then broken down from these estimated root cause percentages and accredited to each of the proposed measures, if applicable.

Using Figures 3 through 6 of this SNPRM, a risk effectiveness factor was developed that estimated the percentage of causal factors leading to an accident that would be eliminated if each proposed measure was established. A range of total anticipated benefits over the 19-year span of this rulemaking was estimated for each proposed measure by annualizing the per-vessel benefits resulting from the actual and potential spill data, extrapolating this into a cumulative present value of oil spills avoided based on the number of vessels remaining in service each year, and multiplying this cumulation by the measure's effectiveness factor. The Coast Guard intends to include an estimate or qualitative discussion of the benefits of each proposed measure in the final rule. Relevant comments are requested on the methodology used for the preliminary benefit analysis as well as each measure's anticipated benefits and its economic feasibility.

The gross estimate of benefits for this rulemaking was conducted and involved an assessment of casualty data over the past 20 years. The Coast Guard estimates that the proposed measures would avert at least one major spill of about 300,000 barrels over the next 19 years. This is equivalent to a spill resulting from a collision between two 70,000 GT tankships, with cargo loss from at least two tanks on each tank vessel. Alternatively, this would be equivalent to a grounding that results in a complete loss of cargo from a small (21,000 GT) tankship.

The monetary benefits of the proposed regulation would include the avoided costs of spill cleanup, third-party compensation (lost earnings to fishermen, etc.), and natural resource damages. Historically, casualty reports have either not addressed these avoided costs, or their results have been widely disputed. There are many reasons for this. For example, there are numerous factors affecting the possible impact associated with an oil spill, such as type of product, environment, time of year, location, and weather conditions. Therefore, the assessment of damage and associated costs were subjective and in some cases, even in large spills, they were never confirmed. Accordingly, the Coast Guard uses the unspilled oil quantity in barrels as the benefit value, discounted at 7 percent back to 1990. If the averted 300,000-barrel spill were to occur in 1996, when the final rule is scheduled to take effect, the discounted benefit would be the value of avoiding a 213,896 barrel spill in 1990. If the averted 300,000-barrel spill were to occur in 2014, the discounted benefit would be the value of avoiding a 77,526 barrel spill in 1990.

Cost-Benefit. The benefit of this proposed rule would range from the value of avoiding a 77,526 barrel spill in 1990 to the value of avoiding a 213,896 barrel spill in 1990, depending on when the averted spill is assumed to occur. The net present value of the cost of this proposed rulemaking would range from $2,075 to $5,700 per barrel of unspilled oil, when a mean present value of $3,900 per barrel of unspilled oil. This compares with, for example, $13,000 per barrel of unspilled oil for the ''Discharge Removal Equipment for Vessels Carrying Oil'' IFR (58 FR 67988); $12,500 per barrel of unspilled oil for the ''Vessel Response Plans'' IFR (58 FR 7376); $7,000 per barrel of unspilled oil for the ''Overfill Devices'' IFR (59 FR 53286); and $1,300 per barrel of unspilled oil for the ''Response Plans for Marine Transportation-Related Facilities'' IFR (58 FR 7330).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities,'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rulemaking considered small business impact for vessels privately held by independent companies with an estimated capital investment value of less than $500 million or companies that have less than 500 employees. State and local governments, which altogether own less than a dozen tank vessels, will not be significantly affected. Not-for-profit organizations do not engage in the transportation of oil in bulk by water.

There are a number of companies meeting the definition of small business operating in each segment of industry (tankship, tank barge, and towing vessel). Of the 190 U.S. tankships affected by this proposed rulemaking, 16 are owned by 6 small businesses. Many of these company's tankships are over 30 years old, have less cargo carrying capacity than their competition, and are laid up due to market or company financial conditions. Six small businesses own or operate 32 of the affected U.S. tank barge population. No foreign small businesses own or operate foreign tank vessels that would be affected by this proposed rulemaking. Tank barge companies are required under this proposal to enlist towing vessels with certain capabilities and trained personnel. Indirectly, some towing vessel companies may also be affected by these proposed requirements; however, the Coast Guard has determined that most tank barge owners also own their towing vessels or regularly contract with a limited number of towing companies.

An economic impact is unavoidable, as the statute clearly targets existing vessels of 5,000 GT or more than carry oil in bulk as cargo and that do not have double hulls. The present value of the total cost to the industry of this proposal discounted at 7 percent to 1990 would total $443.6 million. However, the Coast Guard has proposed several measures within this rulemaking to accommodate small business needs and provide flexibility to small entities affected by this rulemaking.

The proposed training requirements include allowances for comparable company training courses and a 1-year compliance delay. In-house training by smaller businesses would be accepted as long as the curriculum and demonstration of skill provisions could be met. Company programs are anticipated to cost a fraction of commercial training and should provide smaller businesses with a means to train personnel at a lower cost than the present commercial courses.

Additionally, the proposed rulemaking acknowledges past course completion; thus, personnel would be given a longer time to meet this requirement if they have completed similar courses, either company-sponsored or commercial, within 3 years of the effective date of the rule. Maritime schools and many commercial courses have been offering this type of curriculum since 1991. Allowing for the

delayed compliance date and past course completion, the training course phase-in period would be 4 years. This longer phase-in period should assist smaller companies in setting up a suitable in-house or commercial course program. It also recognizes that a substantial number of merchant mariners in the industry are already trained. The 4-year phase-in is also intended to ease the competitive burden of obtaining commercial course slots, should entities choose to use commercial training facilities.

Small business needs are accommodated in the proposed enhanced survey requirement by allowing companies owning tank barges or tank vessels less than 30,000 dwts to conduct their own surveys and to choose among various organizations for program oversight.

To accommodate small businesses in the tank barge industry, the cost of reconfiguring a towing vessel owned by the tank barge company was minimized by requiring the proposed autopilot alarm to be an indicator; a simple sign placed on the wheel would suffice. This gives a comparable warning in the small confines of the one-man towing vessel wheelhouse as would an alarm for the larger, multiple-person, complex bridge of a tankship. The proposed emergency steering capability requirement accommodates a range of designs by allowing for either a secondary steering system or twin propulsion capability. This allows the majority of tank barge companies to continue using their vessels or the vessels they typically lease; however, it also ensures that the master or operator would have some maneuvering capability in an electrical, hydraulic or engine failure, which would be a benefit to all operators.

Smaller tankship companies should have the capability to conduct the maneuvering performance standard tests of IMO Resolution A.751(18). While the assessment cost of this item is for a commercial company to conduct the maneuvering tests, this proposed rulemaking in no way prohibits a company from conducting the tests in-house. The guidelines and technical details of the tests are well documented and are within the capabilities of a licensed master or pilot. The equipment needed for these types of maneuvering tests, such as a DGPS, is available on the commercial market at low cost.

The proposed operational measures would affect several small businesses within the maritime industry until 2015, a period of about 19 years. Through the design of this proposal's measures as described in the preceding paragraphs, the Coast Guard believes that the flexibility in this proposed rulemaking balances the requirements on tank barges and tankships and provides equitable treatment of U.S. and foreign flag vessels.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Unfunded Mandate

Under the Unfunded Mandates Reform Act (Pub. L. 104–4), the Coast Guard must consider whether this proposal, if adopted, will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million (adjusted annually for inflation). That Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule.

The cost analysis completed for this SNPRM estimates first year compliance costs to be 183.8 million. Annual costs of the proposal would trend downward, leveling out at $5.8 million during 2012–2014, the final years that the proposal would be in effect. The only time this proposal would result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector would be in its first year of implementation. State, local, and tribal governments, which altogether own less than a dozen tank vessels, would account for less than 2 percent of the estimated first-year costs. Therefore, the private sector would be most impacted by first-year costs. The preliminary cost-benefit analysis done for this SNPRM addresses expected cost-effectiveness for each proposed measure. For those measures that were estimated to be the most costly, alternative requirements, extended implementation periods, or provisions for a COTP to determine appropriate implementation on a case-by-case basis were proposed in this SNPRM.

If you think that your business or organization falls under the provisions of the Act and this proposal will have an annual impact on your business or organization that meets the parameters, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: §§ 157.415, 157.420, 157.425, 157.430, 157.435, 157.445, 157.450, and 157.455. The following particulars apply:

Dot No: 2115.

Administration: U.S. Coast Guard.

Title: Operational Measures to Reduce Oil Spills From Existing Tank Vessels Without Double Hulls.

Need for Information: Without adequate operational measures on tank vessels, the potential for spills as a result of human error is greatly increased. This proposal requires the mariner to record, post, keep documentation or provide notification that is necessary for the safe operation of the vessel including: (1) Documentation for company management and the Coast Guard to ensure personnel are trained and systems are being surveyed both frequently and thoroughly; (2) information to ensure the crew is informed of rest hour requirements; (3) certain vessel specific maneuvering characteristics so that personnel navigating the vessel have a quick reference to critical information; (4) documentation of a vessel's command and control status to ensure a pilot receives accurate information prior to maneuvering evolutions. These requirements are consistent with good commercial practice and the dictates of good seamanship for safe navigation and maintenance of vital equipment. Additionally, a vessel owners, master, or operator would be required to notify the COTP if the vessel did not have certain maneuvering capabilities so that safe port entry provisions can be made.

Proposed Use of Information: The primary use of this information would be for Coast Guard inspectors to determine if a vessel is in compliance or, in the case of a casualty, whether

failure to meet these proposed regulations contributed to the casualty. The Coast Guard has no specific plan to collect this data for statistical analysis.

Frequency of Response: Owners, masters, or operators of tank vessels subject to this proposed regulation would be required to record, post, keep documentation, or provide notification of the following: (1) Under § 157.415(d), annual completion of bridge resource management training for each officer of the navigational watch; (2) under § 157.420(d), completion of annual training by letter or vessel log entry, by each crew member assigned to a navigational or engineering watch; (3) under § 157.425(b), permanent posting of the minimum rest hour requirement in crew lounge areas and work spaces; (4) under § 157.430 (a) and (b), completion of an enhanced survey during each drydock examination (this information must also be provided to the Coast Guard upon its request); (5) under § 157.435, by vessel log entry or similar means on board the vessel, completion of each required vital systems survey; (6) under § 157.445(b), notification of a maneuvering capability that is less than the IMO criteria; (7) under § 157.445(c), permanent posting of test results for maneuvering performance capability; (8) under § 157.450, permanent posting of standardized IMO maneuvering information in the wheelhouse, completion of a pilot card before entering the port or place of destination and prior to departing port, and maintenance of an onboard maneuvering booklet; (9) under § 157.455(a)(3), by vessel log entry or similar means on board the vessel, calculations of under-keel clearance before entering the port or place of destination and prior to departing port.

Burden Estimate: 76,913 hours.

Respondents: 1404.

Average Burden Hours per Respondent: 55.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both the OMB and to the Coast Guard as indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.** The additional training, survey, and operational considerations required by this rule would enhance navigation safety and thereby reduce the likelihood of an oil spill or other environmental damage.

List of Subjects

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seaman.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 157, 46 CFR part 31, and 46 CFR part 35 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subpart G also is issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520.

2. In § 157.01, paragraph (a)(2) is revised to read as follows:

§ 157.01 Applicability.

(a) * * *

(2) Any other vessel that enters or operates in the navigable waters of the United States, or that operates, conducts lightering under 46 U.S.C. 3715, or receives cargo from or transfers cargo to a deepwater port under 33 U.S.C. 1501 *et seq.*, in the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8).

* * * * *

3. Section 157.02 is added to read as follows:

§ 157.02 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR, England.

IMO Assembly Resolution A.601(15), Provision and Display of Manoeuvring Information on Board Ships, Annex sections 1, 2.3, and 3 with appendices 157.440

IMO Assembly Resolution A.744(18), Guidelines on the Enhanced Programme of Inspections During Surveys of Bulk Carriers and Oil Tankers, Annex B sections 1.1.3–1.1.4, 1.2–1.3, 2.1, 2.3–2.6, 3–8, and Annexes 1–10 with appendices 157.430

IMO Assembly Resolution A.751(18), Interim Standards for Ship Manoeuvrability, Annex sections 1.2.2, 2.2–2.4, 3–5 with Explanatory Notes in MSC/Circ.644 .....157.440

Oil Companies International Marine Forum (OCIMF)

6th Floor, Portland House, Stag Place, London SWIE 5BH, England.

International Safety Guide for Oil Tankers and Terminals, Second Edition, Chapters 6, 7, and 9.....157.430

4. In § 157.03, paragraphs (pp) through (tt) are added to read as follows:

§ 157.03 Definitions.

* * * * *

(pp) *Departing port* means departing from an anchorage or facility for a transit beyond the navigable waters of the United States as established in 33 CFR 2.05–25(b) or, for a vessel on the Great Lakes, a transit beyond the breakwater of harbor entrance.

(qq) *Fleeting or assist towing vessel* means any commercial vessel engaged in towing astern, alongside, or pushing ahead, used solely within a limited

geographic area, such as a particular barge fleeting area or commercial facility, and used solely for restricted service, such as making up or breaking up larger tows.

(rr) *Officer in charge of a navigational watch* means any officer employed or engaged to be responsible for navigating or maneuvering the vessel and for maintaining a continuous vigilant watch during his or her periods of duty and following guidance set out by the master, international or national regulations, and company policies.

(ss) *Primary towing vessel* means any vessel engaged in towing astern, alongside, or pushing ahead and includes the tug in an integrated tug barge. It does not include fleeting or assist towing vessels.

(tt) *Rest hour* means an off-duty period of 1 hour during which no tasks are assigned to the crew member and the crew member is not scheduled to perform any duty. A rest hour may include response to drills or emergencies.

SUBPART G—STRUCTURAL AND OPERATIONAL MEASURES FOR CERTAIN TANK VESSELS WITHOUT DOUBLE HULLS

5. Section 157.400 is revised to read as follows:

§ 157.400 Applicability.

This subpart applies to each tank vessel of 5,000 gross tons or more that—

(a) Carries oil in bulk as cargo or cargo residue;

(b) Enters or operates in the navigable waters of the United States or that operates, conducts lightering under 46 U.S.C. 3715, or receives cargo from or transfers cargo to a deepwater port under 33 U.S.C. 1501 *et seq.*, in the United States Exclusive Economic Zone (EEZ), as defined in 33 U.S.C. 2701(8); and

(c) Is not currently equipped with a double hull meeting § 157.10d of this part, or an equivalent to the requirements of § 157.10d, but required to be equipped with a double hull at a date set forth in 46 U.S.C. 3703a(b)(3) and (c)(3).

6. In § 157.410, paragraph (c) is revised to read as follows:

§ 157.410 Emergency lightering requirements for tank vessels.

* * * * *

(c) Reducers, bolts, and gaskets must meet the requirements of 46 CFR subpart 56.25. Cast iron and malleable iron shall not be used for valves or fittings in lines carrying flammable or combustible fluids which are directly connected to, or in the proximity of, equipment or other lines having open flames, or any parts operating at temperatures above 260°C (500°F).

7. Section 157.415 is added to read as follows:

§ 157.415 Bridge resource management training.

(a) After [12 months after the effective date of the final rule.], a tank vessel owner, master, or operator shall not assign a person to duties as an officer in charge of a navigational watch unless that person has satisfactorily completed a course that includes the following:

(1) Instruction in the following areas:

(i) Communications: effective management of the flow of information, including but not limited to, the exchange of information between the master and the pilot, the master and the crew members, and the officer in charge of a navigational watch and crew members.

(ii) Voyage planning: the planning of both ocean and pilotage water transits to account for navigational hazards, weather, vessel traffic, operational restrictions, facility and port requirements, and compliance with local and international regulations.

(iii) Error trapping: identifying and verifying elements in a sequence of events that could lead to an accident.

(iv) Situational awareness: accurate perception of any factors and conditions that affect a vessel over time.

(v) Pilot and bridge team integration: the effective flow of knowledge between the vessel's crew and the pilot to incorporate knowledge of the local port area and ensure cooperation in the development of the vessel's navigation plan.

(vi) Watch team training: method for training watchstanding personnel to efficiently and effectively stand a watch.

(vii) Emergency situation procedures: development and use of procedures, including communications between crew and shoreside personnel and use of onboard safety equipment, for successful emergency response.

(2) Practical demonstration of the following skills:

(i) Ability to recognize potential hazards to navigation, incorporate these considerations into a voyage plan, and communicate these hazards to subordinates, senior watchstanding personnel, and a pilot during a voyage.

(ii) Ability to recognize subordinate limitations and take appropriate action to ensure the subordinates are attentive and provide accurate feedback on their assigned tasks during a voyage.

(iii) Ability to recognize and initiate communications with other vessels, subordinates, and senior watchstanding personnel to prevent miscommunication or an inappropriate action.

(iv) Ability to work with and, at the same time, monitor a pilot to ensure consistency with vessel operating characteristics and the voyage passage plan.

(v) Ability to use all available bridge equipment to perform their assigned duties, and to display knowledge of the appropriate action(s) to take in the event of an equipment malfunction.

(b) Tank vessel owner, master, or operator shall not assign a person to duties as an officer in charge of a navigational watch unless that person has demonstrated knowledge of company and vessel standard operating procedures including allowed variations, watch augmentation provisions, relationship of the officer in charge of a navigational watch to the master or pilot when both are on the bridge, and emergency navigation procedures.

(c) The training identified in paragraph (a) of this section must be completed at least once every 5 years.

(d) Satisfactory completion of a commercial or company course approved by the Coast Guard or, for an individual holding a foreign license, the appropriate flag administration, that contains elements comparable to those required in paragraphs (a)(1) and (a)(2) of this section meets the initial training requirement if completed after [36 months prior to the effective date of the final rule.].

(e) Course completion must be documented by a certificate, license endorsement, or a letter confirming that each officer in charge of a navigational watch has satisfactorily completed the training requirements. Copies of each officer's certificate, endorsement, or letter confirming their completion must be retained on board the vessel or otherwise be made readily available to the Coast Guard for examination upon request.

(f) A tank barge owner or operator shall ensure that those individuals assigned to duties on the primary towing vessel that are similar to the duties of the officer in charge of a navigational watch also complete bridge resource management training as specified in paragraphs (a) through (e) of this section.

8. Section 157.420 is added to read as follows:

§ 157.420 Vessel specific watch training.

(a) The owner, master, or operator of a tank vessel shall not assign duties to an individual assigned lookout, helmsman, or engineering watch duties unless that person has successfully

completed a course that includes academic instruction in the following areas, as applicable to the individual's job responsibilities:

(1) Communications: effective flow of information between personnel, including the importance of feedback and timeliness.

(2) Error trapping: identifying and verifying elements in a sequence of events that could lead to an accident.

(3) Equipment: employing correct use and monitoring requirements of the equipment necessary to perform assigned duties, including the appropriate action(s) to take in the event of an equipment malfunction.

(4) Watch team integration: the effective flow of information among the vessel's crew to ensure the person in charge of vessel navigation is kept aware of events pertaining to equipment operation and personnel effectiveness.

(b) Each individual must complete initial training that meets the requirements of paragraph (a) of this section prior to assignment of watchkeeping duties.

(c) Each individual must complete annual training that meets the requirements of paragraph (a) of this section.

(d) Completion of training must be documented by a certificate, vessel log entry, or a letter confirming that each individual has satisfactorily completed the training requirements. Copies of the certificate or letter confirming completion must be retained on board the vessel or otherwise made readily available to the Coast Guard for examination upon request.

(e) A tank barge owner or operator shall ensure that those individuals assigned to duties on the primary towing vessel that are similar to lookout, helmsman, or engineering watch duties also complete vessel specific watch training as specified in paragraphs (a) through (d) of this section.

9. Section 157.425 is added to read as follows:

§ 157.425 Minimum rest hour requirement.

(a) A tankship owner, master, or operator shall ensure each person is provided a minimum of 6 continuous rest hours within the 12 hours prior to departing port or prior to cargo transfer operations before assuming the following duties:

(1) Officer in charge of a navigational watch, lookout, helmsman, engineer officer in charge of a manned engine room on a tankship, member of an engineering watch on a tankship, and the operator or master of the vessel, if scheduled as a member of the duty rotation for officer in charge of a navigational watch.

(2) Person in charge of cargo transfer operations.

(b) A tank barge owner or operator shall ensure that the individuals on the primary towing vessel having duties similar to those listed in paragraphs (a)(1) and (a)(2) of this section are provided a minimum of 6 continuous rest hours within the 12 hours before assuming his or her duties prior to departing port or prior to cargo transfer operations.

(c) If a crew member's rest hours have been interrupted by drills or emergencies, the operator or master shall assess the crew member's fitness for duty before assigning him or her to any of the duties described in this section.

(d) Minimum rest hour requirements must be posted on tank vessels in crew lounge areas and work spaces.

10. Section 157.430 is added to read as follows:

§ 157.430 Enhanced survey requirements.

(a) *Enhanced survey.* The tank vessel owner, master, or operator shall ensure an enhanced survey is conducted during each regularly scheduled drydock examination required under 46 CFR part 31 or at a frequency specified by the vessel's flag administration. Survey scope and recordkeeping requirements must comply with the standards of IMO Resolution A.744(18), Annex B sections 1.1.3–1.1.4, 1.2–1.3, 2.1, 2.3–2.6, 3–8, and Annexes 1–10 with appendices.

(b) *Alternate enhanced survey.* For a tankship of less than 20,000 deadweight tons (dwt) carrying crude oil, a tankship of less than 30,000 dwt carrying product, or a tank barge, one of the following may be substituted for the enhanced survey requirements in paragraph (a) of this section:

(1) An enhanced survey performed by a recognized classification society.

(2) An enhanced survey performed by the company with oversight by the Coast Guard or the vessel's flag administration, a recognized classification society, or an independent auditing authority approved by the Coast Guard if—

(i) The frequency of survey is no less than that required by 46 CFR part 31 or as specified by the vessel's flag administration;

(ii) Program plans establishing comparable standards with the requirements in paragraph (a) of this section are approved by the Commandant (G–MVI) and contain the following information:

(A) The scope of the inspection program.

(B) Permanent recordkeeping requirements.

(C) An implementation plan outlining a continuous survey program and identifying by job title those individuals whom the company will assign to conduct the surveys.

(D) Confirmation from the administration, a recognized classification society, or an independent auditing authority approved by the Coast Guard that the oversight implementation plan is feasible.

(c) A copy of the most recent survey must be retained onboard the vessel or, upon request by the Coast Guard, made available within 24 hours for examination.

11. Section 157.435 is added to read as follows:

§ 157.435 Vital systems surveys.

(a) A tank vessel owner, master, or operator shall survey the following systems:

(1) *Cargo systems.* The survey must include the examination and testing of the items listed in Chapters 6, 7, and 9 of the International Safety Guide for Oil Tankers and Terminals, if applicable, prior to cargo transfer operations.

(2) *Mooring systems.* The survey must include a visual examination of the emergency towline, the anchor releasing mechanism, and mooring lines prior to departing port.

(b) Surveys must be conducted by company management personnel, company designated individuals, or vessel senior officers knowledgeable about the equipment operating parameters and having the authority, capability, and responsibility to initiate corrective action when the equipment is not functioning properly.

(c) The material condition of each system identified in paragraph (a) of this section must be recorded in the vessel's Oil Record Book, Part I or Part II, as applicable, the vessel's log, or other onboard documentation.

12. Section 157.440 is added to read as follows:

§ 157.440 Autopilot alarm or indicator.

(a) A tankship owner, master, or operator shall ensure that each installed autopilot unit without automatic manual override has an audible and visual alarm, which is distinct from other required bridge alarms, that will activate if the helm is manually moved while the autopilot is engaged.

(b) A tank barge owner or operator shall ensure that each autopilot unit without automatic manual override installed on the primary towing vessel has a means to clearly indicate the autopilot status and warns personnel of

the requirement to disengage the autopilot if positive rudder control is needed.

13. Section 157.445 is added to read as follows:

§ 157.445 Maneuvering performance capability.

(a) A tankship owner, master, or operator shall ensure that maneuvering tests in accordance with IMO Resolution A.751(18), sections 1.2.2, 2.3–2.4, and 3–5 (with Explanatory Notes in MSC/Circ.644) have been conducted by [*12 months after the effective date of the final rule*]. Satisfactory completion of maneuvering performance tests must be shown by—

(1) For a foreign flag tankship, a letter from the flag administration or a recognized classification society stating the requirements in paragraph (a) of this section have been met; or

(2) For a U.S. flag tankship, test results from the vessel owner confirming the completion of sea trial maneuvers or a letter from a recognized classification society stating the requirements in paragraph (a) of this section have been met.

(b) If a vessel undergoes a major conversion or alteration affecting the control systems, control surfaces, propulsion system, or other areas which may be expected to alter maneuvering performance, the tankship owner, master, or operator shall ensure that maneuvering tests are conducted as required by paragraph (a) of this section.

(c) If a vessel does not meet the performance standards of IMO Resolution A.751(18), the owner, master, or operator must inform the Captain of the Port (COTP) by message, letter, or radio contact, at least 24 hours before entering the port of place of destination. Upon notification, the COTP will determine if additional operational restrictions for port entry should be imposed on the vessel. These may include, but are not limited to—

(1) Requiring a tug escort or augmentation of existing escorts;

(2) Restricting transit times;

(3) Restricting vessel speed;

(4) Requiring the vessel to follow a specified route and make specified reports;

(5) Barring entry into port; or

(6) Imposing other measure(s) appropriate for local conditions.

(d) Performance test results, recorded in the format of Appendix 6 of the Explanatory Notes in MSC/Circ.644, must be prominently displayed in the wheelhouse.

14. Section 157.450 is added to read as follows:

§ 157.450 Maneuvering and vessel status information.

A tankship owner, master or operator shall comply with IMO Resolution A.601(15), Annex sections 1, 2.3, and 3 with appendices.

15. Section 157.455 is added to read as follows:

§ 157.455 Minimum under-keel clearance.

(a) For a tank vessel that is not fitted with a double bottom that covers the entire cargo tank length, a vessel owner, master, or operator shall meet the following requirements prior to entering the port or place of destination and prior to departing port:

(1) The tank vessel's deepest navigational draft must be calculated including the following factors—

(i) The mean draft;

(ii) The trim and list characteristics; and

(iii) The intended transit speed and the corresponding squat characteristics, if known.

(2) The anticipated controlling depth must be calculated including the following factors—

(i) Tide and current conditions;

(ii) Present sea state conditions;

(iii) Past weather impact on water depth;

(iv) The depth at the facility or anchorage; and

(v) The depth of the transit area found in the publication and chart materials required to be on board the vessel by 33 CFR part 164.

(3) The anticipated under-keel clearance must be calculated by subtracting the tank vessel's deepest navigational draft from the anticipated controlling depth. The vessel's calculated deepest navigational draft, anticipated controlling depth, and the calculated anticipated under-keel clearance must be recorded in the vessel's log or in other onboard documentation.

(4) The vessel shall not proceed without the approval of the local COTP if the anticipated under-keel clearance is less than .5 meter (2 feet).

(b) For a tank barge that is not fitted with a double bottom that covers the entire cargo tank length, the tank barge owner or operator shall ensure that the primary towing vessel owner, master, or operator meets the requirements specified in paragraphs (a) (1) through (4) of this section.

16. Section 157.460 is added to read as follows:

§ 157.460 Additional operational requirements for tank barges.

(a) *Emergency steering capability.* The owner or operator of each tank barge shall ensure that by *[12 months after effective date of the final rule*] the primary towing vessel has—

(1) A steering gear system with a main power unit, an alternative power unit, and two remote steering gear control systems, except that separate steering wheels or steering levers are not required. The steering gear control systems shall be arranged so that if the system in operation fails, the other system can be brought into immediate operation from a position on the navigating bridge; or

(2) Twin screw propulsion with separate control systems for each propeller.

(b) *Fendering system.* An owner or operator of a tank barge shall ensure the primary towing vessel and any fleeting or assist towing vessels have a fendering system that is of substantial size and composition to prevent metal to metal contact between the towing vessel and the barge during maneuvering operations.

PART 31—INSPECTION AND CERTIFICATION

17. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

18. In § 31.10–21, Table (a) is revised to read as follows:

TABLE 31.10.—21 (a) SALT WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Ship and single hull barge [9]	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3 9]	Wood hull ship and barge	Ship and single hull barge grade D and E cargoes only [4 9]	Double hull barge grade D and E cargoes only [5]	Single hull asphalt barge [6 9]	Double hull asphalt barge [7]
Drydock	2.5	5.0	5.0	5.0	2.5	2.5	5.0	2.5	5.0
Internal structural	2.5	2.5	2.5	2.5	5.0	5.0	2.5	10.0	2.5
Cargo tank internal	[8] 2.5	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Notes:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tankships and tank barges certificated for the carriage of grade D and E cargoes only.
[5] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of grade D and E cargoes only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends, and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in part 38 or 151 as applicable.
[9] Enhanced survey requirements apply as specified in 33 CFR part 157.

19. In § 31.10–21, Table (b) is revised to read as follows:

TABLE 31.10.—21(B) FRESH WATER SERVICE VESSELS EXAMINATION INTERVALS IN YEARS

	Ship and single hull barge [9]	Double hull barge with internal framing [1]	Double hull barge with external framing [2]	Single hull barge with independent tanks [3, 9]	Wood hull ship and barge	Ship and single hull barge grade D and E cargoes only [4, 9]	Double hull barge grade D an E cargoes only [5]	Single hull asphalt barge [6, 9]	Double hull asphalt barge [7]
Drydock	5.0	10.0	10.0	10.0	2.5	5.0	10.0	5.0	10.0
Internal structural	5.0	5.0	5.0	5.0	5.0	5.0	5.0	10.0	5.0
Cargo tank internal	[8] 5.0	[8] 5.0	[8] 10.0	[8] 10.0	[8] 2.5	5.0	10.0	10.0	15.0

Notes:
[1] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the internal tank surface.
[2] Applicable to double hull tank barges (double sides, ends, and bottoms) when the structural framing is on the external tank surface accessible for examination from voids, double bottoms, and other similar spaces.
[3] Applicable to single hull tank barges with independent cargo tanks where the cargo tanks are not a contiguous part of the hull structure and which has adequate clearance between the tanks and between the tanks and the vessel's hull to provide access for examination of all tank surfaces and the hull structure.
[4] Applicable to single hull tank ships and tank barges certificated for the carriage of grade D and E cargoes only.
[5] Applicable to double hull tank barges (double sides, ends and bottoms) certificated for the carriage of grade D and E cargoes only.
[6] Applicable to single hull tank barges certificated for the carriage of asphalt only.
[7] Applicable to double hull tank barges (double sides, ends and bottoms) certificated for the carriage of asphalt only.
[8] Or as specified in part 38 or 151 as applicable.
[9] Enhanced survey requirements apply as specified in 33 CFR part 157.

PART 35—OPERATIONS

20. The Authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. In § 35.01–40, paragraph (c) is revised to read as follows:

§ 35.01–40 Prevention of oil pollution–TB/ALL.

* * * * *

(c) 33 CFR parts 151, 155, 156, 157 and 164.

Dated: October 27, 1995.

A.E. Henn,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 95–27185 Filed 10–31–95; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3952–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised contract rent annual adjustment factors.

SUMMARY: The United States Housing Act of 1937 requires that the assistance contracts signed by owners participating in the Department's Section 8 Housing Assistance Payments programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This document announces revised Annual Adjustment Factors (AAFs) for assistance contract anniversaries from October 1, 1995. The factors are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) and the HUD Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing [(202) 708–0477 (TDD) or (202) 708–0850 (voice)], for questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Barbara Hunter, Program Management Division, Office of Multifamily Asset Management and Disposition [(202) 708–3944 (TDD) or (202) 708–4594 (voice)], for questions relating to all other Section 8 programs; for technical information regarding the development of the schedules for specific areas or the method used for calculating the AAFs, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research [(202) 708–0577 (TDD) or (202) 708–0770 (voice)]. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (The above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The fiscal year 1995 Department of Housing and Urban Development Appropriations Act (Pub. L. 103–327, approved September 28, 1994) contained special requirements for adjustment of Section 8 contract rents. Congress stipulated that,

> For any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0.

Under the terms of the fiscal year 1995 appropriation, these amendments modified requirements for adjustment of Section 8 contract rents (under Section 8(c)(2)(A) of the United States Housing Act of 1937, 42 U.S.C. 1437f(c)(2)(A)) in fiscal year 1995 (i.e., until September 30, 1995). Thus these amendments sunset at the end of fiscal year 1995. At this time, the Congress has not yet enacted the regular HUD appropriation for fiscal year 1996. However, the Congress has enacted a continuing resolution to provide temporary funding for continuation of government activities carried out during fiscal year 1996 (until November 13 or enactment of a regular appropriation).

During the period of the continuing resolution, funds must be used in accordance with the same ''authority and conditions'' provided in the HUD appropriation act for fiscal year 1995.

Since the special rent adjustment requirements were contained in HUD's fiscal year 1995 appropriation act, and affect the use of available funds under the continuing resolution, the adjustment requirements are extended during the period of the continuing resolution. The legislative history of the fiscal year 1996 continuing resolution specifically confirms that the fiscal year 1995 adjustment requirements apply during the period of the fiscal year 1996 continuing resolution. (Colloquy of Senators Feinstein and Hatfield at Congressional Record, p. S 14638, September 29, 1995.)

For all Section 8 programs other than the Section 8 certificate program, HUD expects that the fiscal year 1996 appropriation, when enacted, will probably include the same Section 8 rent adjustment requirements in fiscal year 1996 that applied in fiscal year 1995 (and which were extended during the period of the fiscal year 1996 continuing resolution). For the Section 8 certificate program (both the tenant-based certificate program (24 CFR Part 982) and the project-based certificate program (24 CFR Part 983)), adjustment requirements may be amended to provide that:

> In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor may not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the same market area.

(Section 204(b) of H.R. 2099 as passed by the Senate, September 27, 1995.)

During the continuing resolution period, rents will be adjusted by applying the fiscal year 1996 AAFs published in this notice. However, contract rents will be adjusted under the same procedures that were used in fiscal year 1995 under the terms of the fiscal year 1995 appropriation act. These procedures will be used for HAP contract anniversaries that fall during the period of the fiscal year 1996 continuing resolution—the period of fiscal year 1996 before enactment of the regular appropriation. For contract anniversaries that fall after enactment of the regular HUD appropriation for fiscal year 1996, contract rents will be adjusted in accordance with requirements of the appropriation as enacted.

In fiscal year 1995 HUD published two separate AAF tables. In this AAF notice for fiscal year 1996, HUD is again publishing two separate AAF tables. The AAFs for fiscal year 1996 are contained in Schedule C, tables 1 and 2 of this notice. Each AAF in table 2 is computed by subtracting 0.01 from the amount of the annual adjustment factors in table 1.

Applicability of AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for Section 8 Housing Assistance Payments Program units. However, the specific application of the AAFs should be determined by reference to the HAP contract and to appropriate program regulations or requirements.

AAFs are not used for the Section 8 voucher program. Contract rents for some projects receiving Section 8 subsidies under the loan management provisions of 24 CFR part 886, subpart A, and for projects receiving Section 8 subsidies under the property disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19(e).

Under the Section 8 moderate rehabilitation program, the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

Adjustment Procedures Under Fiscal Year 1996 Appropriation

This section briefly summarizes procedures for contract rent adjustment:

(1) During the period of the fiscal year 1996 continuing resolution, and

(2) Under the appropriation for fiscal year 1996, when enacted.

The discussion of adjustment under the fiscal year 1996 appropriation assumes that:

—Except for the certificate program, the fiscal year 1996 appropriation will extend to fiscal year 1996 the same adjustment requirements that were contained in the fiscal year 95 appropriations (108 Stat. 2315).

—For the Section 8 certificate program, the fiscal year 96 appropriation will enact the special certificate program adjustment requirements as quoted above (from the Senate-passed appropriation bill).

If the enacted appropriation differs from these assumptions, contract rent adjustments will be made in accordance with requirements of the law as enacted.

The discussion in this Federal Register notice is intended to provide a broad orientation on procedures for adjustment under the fiscal year 1996 appropriations. Technical details and requirements will be described in HUD notices (by the HUD office of housing and the HUD office of public and Indian housing).

Because of statutory and structural distinctions between the various Section 8 programs, there are separate procedures for three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

For category 1 programs, comparability applies if the pre-adjustment gross rent is above the published FMR. The Table 1 AAF factor is applied before determining comparability (rent reasonableness). If the comparable rent level (plus any initial difference) is lower than the adjusted contract rent amount (by application of the table 1 AAF), the comparable rent level (plus any initial difference) will be applied. (However, the pre-adjustment contract rent will not be decreased by application of comparability.)

In all other cases (i.e., unless contract rent is reduced by comparability):

—The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The table 2 AAF is used for a unit occupied by the same family since the last annual anniversary.

Category 2: The Loan Management Program (Part 886, Subpart A) or Property Disposition Program (Part 886 Subpart C), Where Rents Are Adjusted by Applying the AAF

At this time, rent adjustment in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The table 2 AAF is used for a unit occupied by the same family since the last annual anniversary.

Category 3: Section 8 Certificate Program

3.A Adjustment During Period of Continuing Resolution: Tenant-Based Certificate Program (Part 982)

In the tenant-based certificate program:

—Comparability always applies, and

—The unit is always occupied by the same family since the last annual anniversary of the HAP contract (since a separate HAP contract is executed for each family).

In the tenant-based certificate program, the following procedures are used for adjustment of contract rents for anniversaries that fall during the period of the continuing resolution:

—The table 1 AAF factor is applied before determining comparability (rent reasonableness). If the comparable rent level is lower than the adjusted amount (by application of the table 1 AAF), the comparable rent level will be applied.

—The table 2 AAF is used in all other cases (i.e., unless contract rent is reduced by comparability).

3.B Adjustment During Period of Continuing Resolution: Project-Based Certificate Program

During the period of the continuing resolution, use same adjustment procedures as Category 2.

3.C Adjustment After Enactment of Regular Appropriation Tenant-Based and Project-Based Certificate Programs

After the enactment of the regular appropriation, the same adjustment procedure is used for rent adjustment in the tenant-based and project-based certificate programs. The following procedures are used:

—The table 2 AAF factor is *always* applied before determining comparability (rent reasonableness).

—Comparability *always* applies.

If the comparable rent level is lower than the adjusted amount (by application of the table 2 AAF), the comparable rent level will be applied.

AAF Tables

The AAFs for fiscal year 1996 are contained in Schedule C, tables 1 and 2 of this notice.

AAF Areas

Each AAF applies to a specified geographical area and to units of all bedroom sizes. AAFs are provided:

(1) for the metropolitan parts of the ten HUD regions exclusive of CPI areas;

(2) for the nonmetropolitan parts of these regions, and

(3) for 102 separate metropolitan AAF areas for which local CPI survey data are available.

With the several exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for large metropolitan areas, where HUD considers the area covered by the OMB definitions to be larger than appropriate for use as a housing market area definition. HUD therefore modified the definitions for these areas by deleting some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan Area—Deleted Counties

Atlanta, GA—Carroll, Pickens, and Walton Counties.

Chicago, IL—DeKalb, Grundy and Kendall Counties.

Cincinnati–Hamilton, OH–KY–IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.

Dallas, TX—Henderson County.

Flagstaff, AZ–UT—Kane County, UT.

New Orleans, LA—St. James Parish.

Washington, DC–VA–MD–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk

(*) next to the area name. The asterisk denotes that there is a difference between the OMB metropolitan area and the HUD AAF area definitions for these areas.

Program participants should refer to the area definitions section at the end of Schedule C to make certain that they are using the correct AAFs. Units located in metropolitan areas with a local CPI survey must use the corresponding AAFs listed separately for those metropolitan areas. Units that are located in areas without a local CPI survey must use the appropriate HUD regional Metropolitan or Nonmetropolitan AAFs.

The AAF area definitions shown in Schedule C are listed in alphabetical order by State. The associated HUD region is shown next to each State name. Areas whose AAFs are determined by local CPI surveys are listed first. All CPI defined areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the CPI defined areas (in those states that have such areas) are the metropolitan and nonmetropolitan counties of each State. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the table as STATE: Hawaii, which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii Nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey. All other areas in Alaska use the Northwest/Alaska Nonmetropolitan AAFs.

Section 8 Certificate Program AAFs for Manufactured Home Spaces

The AAFs in this publication identified as ''Highest Cost Utility Excluded'' are to be used to adjust manufactured home space contract rents. The applicable AAF is determined by reference to the geographic listings contained in Schedule C, as described in the preceding section.

How Factors Are Calculated

AAF Formula

AAFs for each area were calculated as follows:

For Areas With CPI Surveys:

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data;

(2) The shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the units included in the CPI surveys; and

(3) The gross rent factors were calculated by weighing the rent and utility components with the 1990 Census corresponding components.

For Areas Without CPI Surveys:

(1) HUD used RDD regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) the change in gross rent was calculated using the most recent RDD survey median gross rent for the respective metropolitan or nonmetropolitan parts of the HUD region; and

(3) the change in shelter rent was calculated by subtracting median value of utilities costs from the median gross rent. The median cost of utilities was determined from the units in the RDD sample reporting that all utilities were paid by the tenant.

Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.200(l).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance programs (Section 8) is 14.156.

Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the following tables:

Dated: September 21, 1995.

Henry Cisneros,

Secretary.

BILLING CODE 4210–32–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.007	1.004	New England Nonmetropolitan	1.010	1.008
New York/New Jersey Metropolitan	1.030	1.034	New York/New Jersey Nonmetropolitan	1.014	1.014
Mid-Atlantic Metropolitan	1.031	1.033	Mid-Atlantic Nonmetropolitan	1.028	1.023
Southeast Metropolitan	1.033	1.040	Southeast Nonmetropolitan	1.015	1.020
Midwest Metropolitan	1.023	1.033	Midwest Nonmetropolitan	1.008	1.014
Southwest Metropolitan	1.021	1.026	Southwest Nonmetropolitan	1.029	1.042
Great Plains Metropolitan	1.027	1.040	Great Plains Nonmetropolitan	1.009	1.022
Rocky Mountain Metropolitan	1.071	1.080	Rocky Mountain Nonmetropolitan	1.019	1.020
Pacific/Hawaii Metropolitan	1.022	1.024	Pacific/Hawaii Nonmetropolitan	1.028	1.034
Northwest/Alaska Metropolitan	1.045	1.046	Northwest/Alaska Nonmetropolitan	1.028	1.030
STATE Hawaii	1.025	1.025	PMSA Akron, OH	1.018	1.017
MSA Anchorage, AK	1.027	1.035	PMSA Ann Arbor, MI	1.017	1.020
*Atlanta, GA	1.028	1.031	PMSA Atlantic-Cape May, NJ	1.014	1.013
PMSA Baltimore, MD	1.013	1.013	PMSA Bergen-Passaic, NJ	1.024	1.026
*COUNTY Berkeley, WV	1.017	1.018	PMSA Boston, MA-NH	1.008	1.006
PMSA Boulder-Longmont, CO	1.053	1.055	PMSA Brazoria, TX	1.025	1.030
PMSA Bremerton, WA	1.027	1.021	PMSA Bridgeport, CT	1.024	1.027
PMSA Brockton, MA	1.009	1.006	*COUNTY Brown, OH	1.028	1.023
PMSA Buffalo-Niagara Falls, NY	1.020	1.014	*COUNTY Carroll, GA	1.025	1.031
*Chicago, IL	1.024	1.039	*Cincinnati, OH-KY-IN	1.026	1.024
*COUNTY Clarke, VA	1.017	1.018	PMSA Cleveland-Lorain-Elyria, OH	1.018	1.017

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.017	1.018
PMSA Danbury, CT	1.024	1.026
PMSA Denver, CO	1.053	1.055
PMSA Dutchess County, NY	1.024	1.026
PMSA Flint, MI	1.016	1.020
PMSA Fort Worth-Arlington, TX	1.037	1.038
PMSA Galveston-Texas City, TX	1.025	1.030
*COUNTY Grant, KY	1.028	1.023
*COUNTY Grundy, IL	1.018	1.045
PMSA Hamilton-Middletown, OH	1.026	1.024
PMSA Houston, TX	1.026	1.030
PMSA Jersey City, NJ	1.024	1.026
MSA Kansas City, MO-KS	1.018	1.015
PMSA Kenosha, WI	1.021	1.042
PMSA Lawrence, MA-NH	1.009	1.006
PMSA Lowell, MA-NH	1.008	1.006
PMSA Miami, FL	1.046	1.054
PMSA Milwaukee-Waukesha, WI	1.028	1.038
PMSA Monmouth-Ocean, NJ	1.024	1.026
PMSA Nassau-Suffolk, NY	1.024	1.026
PMSA New Haven-Meriden, CT	1.024	1.026

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*Dallas, TX	1.038	1.038
*COUNTY De Kalb, IL	1.021	1.042
PMSA Detroit, MI	1.016	1.020
PMSA Fitchburg-Leominster, MA	1.009	1.006
PMSA Fort Lauderdale, FL	1.046	1.054
*COUNTY Gallatin, KY	1.028	1.023
PMSA Gary, IN	1.017	1.046
PMSA Greeley, CO	1.053	1.055
PMSA Hagerstown, MD	1.017	1.018
*COUNTY Henderson, TX	1.037	1.038
*COUNTY Jefferson, WV	1.017	1.018
PMSA Kankakee, IL	1.016	1.047
*COUNTY Kendall, Il	1.022	1.041
*COUNTY King George, VA	1.017	1.018
PMSA Los Angeles-Long Beach, CA	1.003	1.002
PMSA Manchester, NH	1.009	1.006
PMSA Middlesex-Somerset-Hunterdon, NJ	1.024	1.026
MSA Minneapolis-St. Paul, MN-WI	1.015	1.018
PMSA Nashua, NH	1.008	1.006
PMSA New Bedford, MA	1.009	1.006
*New Orleans, LA	1.010	1.015

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS FOR UNITS WITH TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.024	1.026
PMSA Newark, NJ	1.024	1.026
PMSA Oakland, CA	1.018	1.019
PMSA Olympia, WA	1.028	1.021
*COUNTY Pendleton, KY	1.028	1.023
*COUNTY Pickens, GA	1.025	1.031
PMSA Portland-Vancouver, OR-WA	1.047	1.047
PMSA Racine, WI	1.028	1.038
*COUNTY St. James Parish, LA	1.008	1.015
PMSA Salem, OR	1.047	1.047
PMSA San Francisco, CA	1.018	1.019
PMSA Santa Cruz-Watsonville, CA	1.018	1.019
PMSA Seattle-Bellevue-Everett, WA	1.025	1.021
PMSA Tacoma, WA	1.027	1.021
PMSA Trenton, NJ	1.024	1.026
PMSA Ventura, CA	1.003	1.002
*COUNTY Walton, GA	1.025	1.031
*Washington, DC-MD-VA	1.017	1.018
PMSA Wilmington-Newark, DE-MD	1.014	1.013
*COUNTY Westchester, NY	1.024	1.025
PMSA Newburgh, NY-PA	1.024	1.026
*COUNTY Ohio, IN	1.027	1.023
PMSA Orange County, CA	1.003	1.002
PMSA Philadelphia, PA-NJ	1.014	1.013
PMSA Pittsburgh, PA	1.027	1.027
PMSA Portsmouth-Rochester, NH-ME	1.009	1.006
PMSA Riverside-San Bernardino, CA	1.003	1.002
MSA St. Louis, MO-IL	1.030	1.035
MSA San Diego, CA	1.000	1.000
PMSA San Jose, CA	1.018	1.019
PMSA Santa Rosa, CA	1.018	1.019
PMSA Stamford-Norwalk, CT	1.024	1.026
MSA Tampa-St. Petersburg-Clearwater, FL	1.034	1.035
PMSA Vallejo-Fairfield-Napa, CA	1.018	1.019
PMSA Vineland-Millville-Bridgeton, NJ	1.014	1.013
*COUNTY Warren, VA	1.017	1.018
PMSA Waterbury, CT	1.024	1.026
PMSA Worcester, MA-CT	1.009	1.006

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.000	1.000	New England Nonmetropolitan	1.000	1.000
New York/New Jersey Metropolitan	1.020	1.024	New York/New Jersey Nonmetropolitan	1.004	1.004
Mid-Atlantic Metropolitan	1.022	1.023	Mid-Atlantic Nonmetropolitan	1.018	1.013
Southeast Metropolitan	1.023	1.030	Southeast Nonmetropolitan	1.005	1.010
Midwest Metropolitan	1.013	1.023	Midwest Nonmetropolitan	1.000	1.005
Southwest Metropolitan	1.011	1.016	Southwest Nonmetropolitan	1.019	1.032
Great Plains Metropolitan	1.017	1.030	Great Plains Nonmetropolitan	1.000	1.012
Rocky Mountain Metropolitan	1.061	1.070	Rocky Mountain Nonmetropolitan	1.009	1.010
Pacific/Hawaii Metropolitan	1.012	1.014	Pacific/Hawaii Nonmetropolitan	1.018	1.024
Northwest/Alaska Metropolitan	1.035	1.036	Northwest/Alaska Nonmetropolitan	1.018	1.020
STATE Hawaii	1.015	1.015	PMSA Akron, OH	1.008	1.007
MSA Anchorage, AK	1.017	1.025	PMSA Ann Arbor, MI	1.007	1.010
*Atlanta, GA	1.018	1.021	PMSA Atlantic-Cape May, NJ	1.004	1.003
PMSA Baltimore, MD	1.003	1.003	PMSA Bergen-Passaic, NJ	1.014	1.016
*COUNTY Berkeley, WV	1.007	1.008	PMSA Boston, MA-NH	1.000	1.000
PMSA Boulder-Longmont, CO	1.043	1.045	PMSA Brazoria, TX	1.015	1.020
PMSA Bremerton, WA	1.017	1.011	PMSA Bridgeport, CT	1.014	1.017
PMSA Brockton, MA	1.000	1.000	*COUNTY Brown, OH	1.018	1.013
PMSA Buffalo-Niagara Falls, NY	1.010	1.004	*COUNTY Carroll, GA	1.016	1.021
*Chicago, IL	1.014	1.029	*Cincinnati, OH-KY-IN	1.016	1.014
*COUNTY Clarke, VA	1.007	1.008	PMSA Cleveland-Lorain-Elyria, OH	1.008	1.007

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
*COUNTY Culpeper, VA	1.007	1.008	*Dallas, TX	1.028	1.028
PMSA Danbury, CT	1.014	1.016	*COUNTY De Kalb, IL	1.011	1.032
PMSA Denver, CO	1.043	1.045	PMSA Detroit, MI	1.006	1.010
PMSA Dutchess County, NY	1.014	1.016	PMSA Fitchburg-Leominster, MA	1.000	1.000
PMSA Flint, MI	1.006	1.010	PMSA Fort Lauderdale, FL	1.036	1.044
PMSA Fort Worth-Arlington, TX	1.028	1.028	*COUNTY Gallatin, KY	1.018	1.013
PMSA Galveston-Texas City, TX	1.015	1.020	PMSA Gary, IN	1.007	1.036
*COUNTY Grant, KY	1.018	1.013	PMSA Greeley, CO	1.043	1.045
*COUNTY Grundy, IL	1.008	1.035	PMSA Hagerstown, MD	1.007	1.008
PMSA Hamilton-Middletown, OH	1.016	1.014	*COUNTY Henderson, TX	1.027	1.028
PMSA Houston, TX	1.016	1.020	*COUNTY Jefferson, WV	1.007	1.008
PMSA Jersey City, NJ	1.014	1.016	PMSA Kankakee, IL	1.006	1.037
MSA Kansas City, MO-KS	1.008	1.005	*COUNTY Kendall, Il	1.012	1.031
PMSA Kenosha, WI	1.011	1.032	*COUNTY King George, VA	1.007	1.008
PMSA Lawrence, MA-NH	1.000	1.000	PMSA Los Angeles-Long Beach, CA	1.000	1.000
PMSA Lowell, MA-NH	1.000	1.000	PMSA Manchester, NH	1.000	1.000
PMSA Miami, FL	1.036	1.044	PMSA Middlesex-Somerset-Hunterdon, NJ	1.014	1.016
PMSA Milwaukee-Waukesha, WI	1.018	1.028	MSA Minneapolis-St. Paul, MN-WI	1.005	1.008
PMSA Monmouth-Ocean, NJ	1.014	1.016	PMSA Nashua, NH	1.000	1.000
PMSA Nassau-Suffolk, NY	1.014	1.016	PMSA New Bedford, MA	1.000	1.000
PMSA New Haven-Meriden, CT	1.014	1.016	*New Orleans, LA	1.000	1.005

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS FOR UNITS WITH NO TURNOVER, SECTION 8 HAP PROGRAMS

PREPARED ON 072195

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA New York, NY	1.014	1.016	*COUNTY Westchester, NY	1.014	1.016
PMSA Newark, NJ	1.014	1.016	PMSA Newburgh, NY-PA	1.014	1.016
PMSA Oakland, CA	1.008	1.009	*COUNTY Ohio, IN	1.017	1.013
PMSA Olympia, WA	1.018	1.011	PMSA Orange County, CA	1.000	1.000
*COUNTY Pendleton, KY	1.018	1.013	PMSA Philadelphia, PA-NJ	1.004	1.003
*COUNTY Pickens, GA	1.015	1.021	PMSA Pittsburgh, PA	1.017	1.017
PMSA Portland-Vancouver, OR-WA	1.037	1.037	PMSA Portsmouth-Rochester, NH-ME	1.000	1.000
PMSA Racine, WI	1.018	1.028	PMSA Riverside-San Bernardino, CA	1.000	1.000
*COUNTY St. James Parish, LA	1.000	1.005	MSA St. Louis, MO-IL	1.020	1.025
PMSA Salem, OR	1.037	1.037	MSA San Diego, CA	1.000	1.000
PMSA San Francisco, CA	1.008	1.009	PMSA San Jose, CA	1.008	1.009
PMSA Santa Cruz-Watsonville, CA	1.008	1.009	PMSA Santa Rosa, CA	1.008	1.009
PMSA Seattle-Bellevue-Everett, WA	1.016	1.011	PMSA Stamford-Norwalk, CT	1.014	1.016
PMSA Tacoma, WA	1.017	1.011	MSA Tampa-St. Petersburg-Clearwater, FL	1.024	1.025
PMSA Trenton, NJ	1.014	1.016	PMSA Vallejo-Fairfield-Napa, CA	1.008	1.009
PMSA Ventura, CA	1.000	1.000	PMSA Vineland-Millville-Bridgeton, NJ	1.004	1.003
*COUNTY Walton, GA	1.015	1.021	*COUNTY Warren, VA	1.007	1.008
*Washington, DC-MD-VA	1.007	1.008	PMSA Waterbury, CT	1.014	1.016
PMSA Wilmington-Newark, DE-MD	1.004	1.003	PMSA Worcester, MA-CT	1.000	1.000

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lee, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
MSA Anchorage, AK: Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Dillingham, Lake & Peninsula, Northwest Arctic, Nome, Pr.Wales-Outer Ketchikan, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk, Bristol Bay, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Matanuska-Susitna, North Slope, Sitka

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
PMSA Los Angeles-Long Beach, CA: Los Angeles
PMSA Oakland, CA: Alameda, Contra Costa
PMSA Orange County, CA: Orange
PMSA Riverside-San Bernardino, CA: Riverside, San Bernardino
MSA San Diego, CA: San Diego
PMSA San Francisco, CA: Marin, San Francisco, San Mateo
PMSA San Jose, CA: Santa Clara
PMSA Santa Cruz-Watsonville, CA: Santa Cruz
PMSA Santa Rosa, CA: Sonoma
PMSA Vallejo-Fairfield-Napa, CA: Napa, Solano
PMSA Ventura, CA: Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

COLORADO (ROCKY MOUNTAIN)

CPI AREAS: COUNTIES
PMSA Boulder-Longmont, CO: Boulder

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

PMSA Denver, CO: Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO: Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Bridgeport, CT
Fairfield County part: Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
New Haven County part: Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
PMSA Danbury, CT
Fairfield County part: Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part: Bridgewater town, New Milford town, Roxbury town, Washington town

PMSA New Haven-Meriden, CT
Middlesex County part: Clinton town, Killingworth town
New Haven County part: Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town

PMSA Stamford-Norwalk, CT
Fairfield County part: Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town

PMSA Waterbury, CT
Litchfield County part: Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part: Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town

PMSA Worcester, MA-CT
Windham County part: Thompson town

METROPOLITAN COUNTIES
Hartford County part: Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

Litchfield County part: Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part: Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town, Old Saybrook town
New London County part: Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town Salem town, Sprague town, Stonington town, Waterford town Colchester town, Lebanon town
Tolland County part: Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part: Ashford town, Chaplin town, Windham town, Canterbury town, Plainfield town

NONMETROPOLITAN COUNTIES
Hartford County part: Hartland town
Litchfield County part: Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town,

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part: Chester town, Deep River town, Essex town, Westbrook town
New London County part: Lyme town, Voluntown town, Tolland County part: Union town
Windham County part: Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Wilmington-Newark, DE-MD: New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS: COUNTIES
PMSA Fort Lauderdale, FL: Broward
PMSA Miami, FL: Dade
MSA Tampa-St. Petersburg-Clearwater, FL: Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor
Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS: COUNTIES
*Atlanta, GA: Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding
*COUNTY Carroll County, GA
*COUNTY Pickens County, GA
*COUNTY Walton County, GA

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early
Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock
Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

HAWAII (PACIFIC/HAWAII)

CPI AREAS: COUNTIES
STATE Hawaii: Hawaii, Honolulu, Kauai, Maui

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS: COUNTIES
*Chicago, IL: Cook, Dupage, Kane, Lake, Mchenry, Will
*COUNTY De Kalb, IL: Dekalb
*COUNTY Grundy, IL: Grundy
PMSA Kankakee, IL: Kankakee
*COUNTY Kendall, Il: Kendall
MSA St. Louis, MO-IL: Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson
Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White
Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Dearborn
PMSA Gary, IN: Lake, Porter
*COUNTY Ohio, IN: Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida
Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Johnson, Leavenworth, Miami, Wyandotte

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa
Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee
Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS: COUNTIES
*Cincinnati, OH-KY-IN: Boone, Campbell, Kenton
*COUNTY Gallatin, KY: Gallatin
*COUNTY Grant, KY: Grant
*COUNTY Pendleton, KY: Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue
Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg
Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

CPI AREAS: COUNTIES
*New Orleans, LA: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
*COUNTY St. James Parish, LA: St. James

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St. Landry, St. Martin, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon
Washington, West Carroll, West Feliciana, Winn

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Portsmouth-Rochester, NH-ME
York County part: Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NONMETROPOLITAN COUNTIES
Aroostook
Franklin
Hancock
Kennebec
Knox
Lincoln
Oxford
Piscataquis
Sagadahoc
Somerset
Washington
Androscoggin County part: Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part: Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part: Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation Whitney unorg., Winn town, Woodville town
Waldo County part: Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part: Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Baltimore, MD: Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD: Washington
*Washington, DC-MD-VA: Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD: Cecil

METROPOLITAN COUNTIES
Allegany

NONMETROPOLITAN COUNTIES
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Boston, MA-NH
Bristol County part: Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part: Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part: Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
PMSA Brockton, MA	
Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town
PMSA Fitchburg-Leominster, MA	
Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
PMSA Lawrence, MA-NH	
Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town
PMSA Lowell, MA-NH	
Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
PMSA New Bedford, MA	
Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town
PMSA Worcester, MA-CT	
Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westboroughtown, West Boylston town, West Brookfield town, Worcester city
METROPOLITAN COUNTIES	
Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow to, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town
NONMETROPOLITAN COUNTIES	
Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

town, New Salem town, Northfield town, Orange town, Rowe town Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town

Hampden County part: Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town

Hampshire County part: Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town

Worcester County part: Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Ann Arbor, MI: Lenawee, Livingston, Washtenaw
PMSA Detroit, MI: Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI: Genesee

METROPOLITAN COUNTIES
Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES
Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella
Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Mjssaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS: COUNTIES
MSA Minneapolis-St. Paul, MN-WI: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES
Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS: COUNTIES
MSA Kansas City, MO-KS: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL: Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard,

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES
PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
PMSA Lowell, MA-NH
Hillsborough county part: Pelham town
PMSA Manchester, NH
Hillsborough county part: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town
PMSA Nashua, NH
Hillsborough county part: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES

PMSA Atlantic-Cape May, NJ: Atlantic, Cape May
PMSA Bergen-Passaic, NJ: Bergen, Passaic
PMSA Jersey City, NJ: Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ: Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ: Monmouth, Ocean
PMSA Newark, NJ: Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ: Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ: Mercer
PMSA Vineland-Millville-Bridgeton, NJ: Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero
Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS: COUNTIES
PMSA Buffalo-Niagara Falls, NY: Erie, Niagara
PMSA Dutchess County, NY : Dutchess
PMSA Nassau-Suffolk, NY: Nassau, Suffolk
PMSA New York, NY: Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY: Westchester
PMSA Newburgh, NY-PA: Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Oneida, Onondaga, Ontario
Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender
Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill
Walsh, Ward, Wells, Williams

OHIO (MIDWEST)

CPI AREAS: COUNTIES
PMSA Akron, OH: Portage, Summit
*COUNTY Brown, OH: Brown
*Cincinnati, OH-KY-IN: Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH: Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne
Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata
Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Portland-Vancouver, OR-WA: Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR: Marion, Polk

METROPOLITAN COUNTIES
Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Benton, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
PMSA Newburgh, NY-PA: Pike
PMSA Philadelphia, PA-NJ: Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA: Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part: Barrington town, Bristol town, Warren town
Kent County part: Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Providence County part: Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Newport County part: Jamestown town, Little Compton town, Tiverton town
Washington County part: Charlestown town, Exeter town, Narragansett town, North Kingstown to, Richmond town, South Kingstown town
Washington County part: Hopkinton town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part: Middletown town, Newport city, Portsmouth town
Washington County part: New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Chester, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX: Brazoria
*Dallas, TX: Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX: Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX: Galveston
*COUNTY Henderson, TX: Henderson
PMSA Houston, TX: Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part: Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part: Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part: Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor
Chittenden County part: Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part: Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part: Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES

*COUNTY Clarke, VA: Clarke
*COUNTY Culpeper, VA: Culpeper
*COUNTY King George, VA: King George
*COUNTY Warren, VA: Warren

CPI AREAS: COUNTIES

*Washington, DC-MD-VA: Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS: COUNTIES
PMSA Bremerton, WA: Kitsap
PMSA Olympia, WA: Thurston
PMSA Portland-Vancouver, OR-WA: Clark
PMSA Seattle-Bellevue-Everett, WA: Island, King, Snohomish
PMSA Tacoma, WA: Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
*COUNTY Berkeley, WV: Berkeley
*COUNTY Jefferson, WV: Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS: COUNTIES
PMSA Kenosha, WI: Kenosha
PMSA Milwaukee-Waukesha, WI: Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI: Pierce, St. Croix
PMSA Racine, WI: Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

Schedule C -- Contract Rent Automatic Adjustment Factors -- Area Definitions

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
Pacific Islands

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grand, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 95–27262 Filed 11–2–95; 8:45 am]
BILLING CODE 4210–32–C

federal register

Friday
November 3, 1995

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9

Federal Acquisition Regulation (FAR); Responsibility Determinations; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 95–007]

RIN 9000–AG66

Federal Acquisition Regulation; Responsibility Determinations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to emphasize the use of commercial sources of information in determining the responsibility of prospective contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before January 2, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405. Please cite FAR case 95–007 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 95–007.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule revises FAR Subpart 9.1, Responsible Prospective Contractors, to state that contracting officers should use commercial sources of supplier information in making determinations of responsibility, and to clarify that preaward surveys should be requested only if sufficient relevant information from other sources, including commercial sources, is unavailable.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule merely clarifies that commercial sources of information should be used in determining the responsibility of prospective contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 95–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 30, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 9 be amended as set forth below:

1. The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.105–1 is amended in the introductory text of paragraph (c) by removing the parenthetical ''(See 48 CFR Part 42, Subpart 42.15)''; by redesignating paragraphs (c)(4) through (c)(6) as (c)(5) through (c)(7), and adding a new paragraph (c)(4).

9.105–1 Obtaining information.

* * * * *

(c) * * *

(4) Commercial sources of supplier information of a type offered to buyers in the private sector (for example, supplier performance and evaluation reports by Dun & Bradstreet Information Services, Standard & Poors, Moody Industrials, or similar sources).

* * * * *

3. Section 9.106–1 is amended by revising paragraph (a) to read as follows:

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products (see 11.001) only, the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

[FR Doc. 95–27294 Filed 11–2–95; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Friday
November 3, 1995

Part VI

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 318, et al.

Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318, 319, and 381

[Docket No. 93–008F]

RIN 0583–AB68

Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to prescribe: a definition and standard of identity and composition for the poultry product that results from the mechanical separation and removal of most of the bone from skeletal muscle and other tissues of poultry carcasses and parts of carcasses (''Mechanically Separated (Kind of Poultry)''—hereafter referred to generically as ''Mechanically Separated Poultry'' (''MSP'')), including requirements for bone solids content (measured as calcium content) and bone particle size; certain limitations for the use of MSP; and labeling requirements for MSP, and for poultry products and meat food products containing MSP as an ingredient. This action establishes the requirement that products containing MSP as an ingredient disclose that fact by identifying it in the ingredients declaration as, in the case of MSP derived from chicken carcasses, ''mechanically separated chicken,'' rather than ''chicken.'' This action will help ensure that meat and poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Purpose of the Final Rule

This final rule amends the regulatory requirements for the poultry product with a paste-like form and batter-like consistency that results from the mechanical separation and removal of most of the bone from attached skeletal muscle and other edible tissues of poultry carcasses and parts of carcasses, and for the finished poultry products and meat food products in which this product is used as an ingredient. FSIS first conducted a rulemaking regarding this product in 1969. Over the years, the amount of such product being manufactured, and the number and range of poultry products and meat food products in which it is used as an ingredient, has increased significantly.

FSIS has gained a great deal of knowledge from its rulemakings regarding the livestock product resulting from a similar mechanical separation and removal process which is called ''mechanically separated beef'' or ''mechanically separated pork'' (or any other species derived from livestock, such as beef, and lamb), which will be referred to generically in this document as mechanically separated meat (MSM). MSM is a livestock product with a paste-like form and batter-like consistency that results from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5. MSM is subject to regulatory requirements which include a standard of identity and composition that defines this product, limits for bone solids content and bone particle size, and a name that differentiates it from meat. It is also required to be separately identified in the ingredients statement of products in which it is used, and is subject to certain restrictions in its use.

More recently, in a lawsuit, *Bob Evans Farms, Inc. et al., v. Mike Espy, Secretary of Agriculture (D.D.C. Civil Action No. 93–0104)*, several red meat sausage manufacturers alleged that, without a regulatory definition and standard for poultry products produced by mechanical separation, a disparate situation exists between labeling MSP, and MSM for which a regulatory definition and standard exist. The red meat sausage manufacturers have alleged that the disparate labeling situation poses an unfair advantage for the manufacturers of mechanically separated poultry products.

In view of these developments, and taking into account the information and experience acquired since 1969 and current regulatory policies, the Agency has reviewed and reevaluated the existing regulations for MSP, particularly in regard to labeling issues about this product. As a result of its review and reevaluation, the Agency has concluded that regulatory action to more clearly identify MSP on product labels, is necessary to prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged. See sections 4(h) and 8 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) and sections 1(n) and 7 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*); 21 U.S.C. 453(h), 457 and 601(n), 607. The primary reasons for this action are as follows:

(1) The method of deriving poultry products by the mechanical separation process results in a product whose physical form and texture differ materially from those of other boneless poultry products produced by hand deboning techniques, i.e., hand-held knives.

The process of manufacturing MSP begins with starting materials that include backs, and whole and half carcasses and parts of carcasses from which most of the muscle and other tissues have been removed by hand, leaving bits and pieces of tissue adhering to skeletal frames and carcass ''shells.'' These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin (with or without attached fat), and may contain kidneys, except when product is made from mature chickens or turkeys. (Kidneys of mature chickens or turkeys may not be used as human food according to 9 CFR 381.65(d)). The nature of these starting materials is such that the muscle and other tissue that remains on the bones cannot be efficiently or effectively removed using hand-deboning techniques. This is because (1) the bony structure of the materials limits the accessibility of knives and obstructs precise hand removal of edible tissue, (2) hand-removal of the tissues is too time consuming to make it practical, and (3) the physical movements necessary to remove the bits and pieces of tissues adhering to bones have been associated with cumulative trauma disorders (also referred to as repetitive motion disorders), e.g., Carpal Tunnel Syndrome. Mechanical separation of the bits and pieces of muscle and other tissues from the bones to which they are adhering is, however, easily accomplished using mechanical deboning machines.

Typically, the starting materials have undergone an initial bone breaking process to enable the machines to operate efficiently. The starting materials are fed into a mechanical deboning (i.e., separation) machine which operates on the differing resistance of bone and tissue to passage through small holes (i.e., apertures), whether it employs sieves, screens, or other devices. The starting materials are pushed under high pressure through the part of the equipment with apertures. Most of the bone is separated and

removed. However, the apertures allow a small amount of powdered bone to pass through with the edible tissues, which, under the high pressure applied by the machine, become a homogeneous soft tissue mass. The minute amount of powdered bone (particles much smaller than the size of pepper and limited to no more than one percent) is also dispersed throughout the soft tissue mass. The remaining bony residue that has been separated from the paste-like muscle and other tissues exits from a separate place on the equipment. Thus, such machines mechanically separate and remove most of the bone from the starting materials, resulting in a product with a paste-like form which is comparable in consistency to a cake batter. The process of manufacturing mechanically separated poultry results in a product whose form and texture differ materially from those of other boneless poultry products produced by traditional hand-deboning. Despite these differences, current FSIS regulations do not distinguish between poultry products produced by mechanical separation and poultry products produced by traditional deboning techniques, i.e., hand-deboning, in terms of product identity and composition or use. Both are declared on product labels as ''chicken,'' ''turkey,'' or the names of other kinds of poultry.

(2) Mechanically separated poultry is produced by essentially the same technology and has characteristics (i.e., physical form and textural consistency) similar to those of the livestock product, MSM, which is required to be declared on labels as mechanically separated beef (or pork or other species of livestock).

(3) The mechanical process from which mechanically separated poultry is derived makes its form and consistency materially different from that of poultry derived by traditional hand-deboning methods, yet it is not currently identified in the ingredients statement of a product in which it is used by a name that distinguishes it from traditionally deboned poultry. Mechanically separated poultry should be declared in the ingredients statements of the products in which it is used by the distinctive term ''mechanically separated (kind of poultry),'' e.g., ''mechanically separated turkey,'' ''mechanically separated chicken.''

The product resulting from mechanical separation has certain textural attributes that are different than hand-deboned poultry, even if the hand-deboned poultry is further processed through a grinder to result in ground poultry. The product that directly results from the mechanical process is paste-like in form and similar to a cake batter in consistency, and is not the same as chicken or turkey removed from carcasses or parts of carcasses by hand. Chicken or turkey that results from hand-deboning is easily recognized as muscle, skin, and other edible tissues and parts because it retains its natural physical form and consistency; it has not been subjected to the rigors of crushing bones and separating bone from muscle and other tissue under high pressure in separation machinery. The rigors of the mechanical separation process alter the structure of the muscle fibers, skin, fat, and other tissues that adhere to the skeletal frames, shells, and other starting materials so that they become blended and amorphous, and are no longer recognizable as ''chicken'' and ''turkey.'' These machines are not available to consumers and, therefore, consumers are not likely to have the expectation of the resulting batter-like material as ''chicken'' or ''turkey.'' Thus, a separate identity is necessary for the product that results.

The term ''mechanically separated'' is recognized internationally by the Codex Alimentarius Commission [1] of the United Nations and by individual countries that trade with the United States, has been upheld in Court decisions as being appropriate to distinguish the livestock product derived by mechanical separation machinery [2], and appropriately distinguishes the product from hand-deboned poultry as one that is derived by a strictly mechanical means. As such, similar terminology should be applied to poultry products resulting from the process of mechanical separation and recovery of crushed bone from muscle and other edible tissues that results in a product with a paste-like form and cake batter-like consistency.

Therefore, FSIS is amending the poultry products inspection regulations (9 CFR Part 381) to revise and supplement the requirements for the manufacture, characteristics, and labeling of poultry products produced by mechanical separation and the labeling of products in which they are used as ingredients that result in a product with a paste-like form and cake batter-like consistency. Under this final rule, mechanically separated product derived from chicken or turkey would be labeled as ''mechanically separated chicken,'' or ''mechanically separated turkey,'' as the case may be, and would be separately identified by this name in the ingredients statement of products in which it is used.

The Purpose of An Extended Effective Date

Various commenters suggested that industry should be given a sufficient amount of time to use most of their already printed labels, before the final rule's new labeling requirements must be carried out. FSIS agrees that such a time period should be granted in regard to all of the new requirements of the final rule. Therefore, an effective date of one year from the date of publication has been provided for in this final rule. This time period is intended to allow ample time for an orderly transition to the new requirements, including the labeling requirements, and to assure that manufacturers of poultry products produced by mechanical separation, and of poultry and meat food products in which the product is used as an ingredient, have ample time to exhaust current label stock. In this regard, manufacturers will not be required to dispose of label inventories that were printed or ordered for printing prior to publication of the rule if they have made a good faith effort to exhaust current stocks before the effective date. Requests for use of current labels beyond the effective date will be considered on a case-by-case basis.

Background

I. Introduction

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The technology is grounded in the desire of poultry manufacturers to salvage edible, wholesome muscle and other tissue from carcasses and parts of carcasses (such as skeletal frames and carcass shells) that cannot be efficiently or effectively removed by hand in order to provide a source of low-cost protein that is safe and essentially nutritionally the same as the muscle and other tissue removed from poultry carcasses and parts of carcasses by hand deboning methods. In terms of functionality, mechanically separated poultry has the same functions as hand-deboned chicken or turkey with the added

[1] Food and Agriculture Organization of the United Nations, World Health Organization, Codex Alimentarius Commission, Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Volume 10, Code of Practice for Mechanically Separated Meat and Poultry, pp. 71–72 (1994) is available for review in the FSIS Docket Clerk's office.

[2] A copy of the Courts' decisions in *Community Nutrition Institute (CNI) et al. v. Block*, No. 82–2009 (D.D.C. Dec. 1, 1982), aff'd 749 F.2nd 50 (D.C. Cir 1984) is available at the FSIS Docket Clerk's office for review.

benefit of being able to easily form emulsions and bind to other proteins readily. This is because the muscle and other edible tissues no longer possess their original tissue structure and the cake-batter consistency eases blending with other ingredients.

The Agency's initial reaction was to consider the resulting product adulterated because of the amount of powdered bone present and the physical size of the bone particles. By the mid-1960's, the industry had modified and improved the equipment used to produce poultry product by mechanical separation such that the product contained 1 percent or less bone solids with an extremely small bone particle size. This prompted the Agency to reevaluate its position. Widespread commercial production of products containing mechanically separated poultry began in the early 1970's. By 1975, poultry product produced by mechanical separation was being used as an ingredient in poultry and meat food products such as franks, bologna, salami, and poultry rolls.

Today, the technology for producing poultry products by mechanical deboning is accepted as a valuable and practical means for salvaging edible tissue from poultry parts and carcasses from which most of the muscle and other tissues have been removed by hand. In the current market, poultry products made with mechanically deboned poultry include cooked poultry sausages (such as chicken frankfurters, turkey salami, and turkey bologna), poultry patties and nuggets (such as chicken patties and nuggets), formed and whole poultry roasts (e.g., oven-cooked turkey breast), and poultry baby foods. The level at which it is used has depended in part on technological capabilities. For example, the level of use has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products (such as chicken franks) and greater than 15 percent of the poultry product portion of whole muscle products, e.g., cooked turkey breast, where it serves the purpose of binding whole muscle pieces together to make the product. Poultry product produced by mechanical means is also used at up to 49 percent of the formulations of certain meat food products, e.g., beef and turkey chili, provided that it is identified in the product name as ''turkey'' or ''chicken,'' and used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180) without being identified in the product name.

Over the years, the poultry and meat food industries have also referred to poultry products produced by mechanical means as ''comminuted (i.e., ground) poultry.'' Terminology such as ''finely comminuted,'' ''finely ground,'' ''mechanically deboned,'' and ''mechanically separated'' have also been used to describe the product according to 9 CFR 381.117(d). The terms ''finely ground,'' ''ground,'' ''finely comminuted,'' and ''comminuted'' have been applied to poultry produced by mechanical deboning as well as to poultry products produced using hand-deboning methods as a means of being in accord with 9 CFR 381.117(d).

Poultry products produced by mechanical means are currently subject to 9 CFR 381.117(d) which relates generically to boneless poultry products. This regulation requires boneless poultry products to be labeled in a manner that accurately describes their actual form and composition. The product name must indicate the form of the product, e.g., emulsified or finely chopped, and the kind name of the poultry from which it is derived, e.g., chicken, turkey, etc.. If the product does not consist of natural proportions of skin and fat, as they occur in the whole poultry carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to 1 percent.

Existing regulations do not distinguish between boneless poultry products produced by mechanical separation and poultry products produced by traditional methods, e.g., hand-deboning. As a matter of practice, poultry product produced by mechanical separation is currently declared in the ingredients statement of a product in which it is used, along with any other boneless poultry product used, as ''chicken'' or ''turkey'' where skin and fat are included but not in excess of their natural proportions, or as ''chicken meat'' or ''turkey meat'' when skin with attached fat is not included.

II. Report on Health and Safety of Mechanically Deboned Poultry

In 1976, FSIS initiated an analytical program to obtain data on a number of nutrients and substances of potential health concern in poultry products produced by mechanical separation. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled ''Health and Safety Aspects of the Use of Mechanically Deboned Poultry'' (hereafter referred to as the 1979 Report). An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The 1979 Report and the errata supplement are available for public inspection in the FSIS Docket Clerk's office.) On June 29, 1979, the Agency announced the availability of this report and encouraged interested members of the public to comment on its content.

The 1979 Report evaluated the effects on health and safety of use of mechanically separated poultry and, in particular, examined the heavy metal, trace element, bone particle, chlorinated hydrocarbon, cholesterol, fat, essential amino acid, total protein, and purine contents of MSP, as well its microbiology. The 1979 Report recommended that (1) potential health risks associated with cadmium in kidneys from mature chickens would be avoided by not allowing kidneys from mature chickens in MSP, (2) potential risks to children associated with fluoride in MSP from fowl could be avoided by not allowing MSP from fowl in baby foods, (3) MSP should be labeled to show the presence of cholesterol and calcium for the benefit of people who needed to restrict their intake of these substances, and (4) mandatory handling and storage of starting materials used for making MSP should be considered.

In the same June 29, 1979, announcement on the availability of the 1979 Report, FSIS also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical separation and what means, if any, should be taken to implement the labeling recommendations with regard to calcium and cholesterol in the report (44 FR 37965).

FSIS received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. The majority of the commenters expressed a general opinion on the adequacy of regulations concerning mechanically separated poultry products and were supportive of the rules at that time. Some commenters stated that the regulations have effectively controlled the use of mechanically separated poultry products over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand-

deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically separated poultry should be regulated the same as mechanically separated meat (then named mechanically processed (species) product).

III. GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry products produced by mechanical separation, and labeling requirements on products made with such poultry products, as had been done for MSM and products made with MSM.

IV. Improvements in Machinery for Poultry Products Produced by Mechanical Separation

The Agency has monitored the advances in the technology for mechanically separating poultry over the last decade. There have been improvements in the efficiency of the mechanical separation and removal of most of the bone from attached skeletal muscle and tissue of poultry carcasses and parts of poultry carcasses. Today, industry figures estimate that roughly 1 billion pounds of raw poultry materials are used to manufacture 700 million pounds of mechanically separated poultry, which is used, in turn, to formulate approximately 400 million pounds of poultry sausages (including franks, bologna, and salami), and 300 million pounds of poultry nuggets and poultry patties.[3] There have been major advances in mechanical separation machinery in terms of the effectiveness of removing the bone which is incorporated by the process of separation into the skeletal muscle and other tissues of poultry carcasses and parts of carcasses. This has been accomplished through enhancements and modifications of the bone-removal devices that are part of the mechanical deboning machines. There have been continued refinements of certain operational parameters of the machinery, e.g., the ability for operators to adjust the pressure needed to force crushed poultry bones with adhering muscle and other tissues through screens to separate muscle and other tissues from bone, and the size of the apertures in the screens and sieves through which the crushed bones, muscle, and other tissues are pushed under high pressure. These improvements have resulted in the ability to easily achieve bone content limits or decrease the bone solids that are a result of the mechanical separation process to less than the one percent reflected in the current poultry products regulations (9 CFR 381.117(d)).

In 1969, the Agency amended the regulations for poultry and poultry products inspection to, among other things, provide labeling requirements for boneless poultry products, as well as a prescribed bone solids content of not more than 1 percent (34 FR 13991). This limit was based on an evaluation conducted by FSIS of the operating results in a series of poultry establishments that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned product from nine commercial operations that used the three types of machines most often used in the process. The analyses showed that the equipment, at that time, could be operated under commercial conditions to produce boneless poultry that contained no more than 1 percent bone solids, on a raw weight basis, and FSIS concluded that it was demonstrated that it was practical to limit the bone content in deboned poultry to 1 percent. Moreover, it was deemed that the one percent maximum bone solids content represents good manufacturing practices and reflects mechanical separation processes that are in control.

In light of the improvements that have occurred with regard to the machinery used to mechanically separate and remove most of the bone from the muscle and other tissues of poultry carcasses and parts of carcasses, FSIS recently conducted a study of the bone solids content of MSP.[4] The percentage of bone solids content (determined by calcium analysis) in boneless poultry products produced by mechanical separation processes was collected from approximately 50 establishments during August 1993, and represented a sampling of over 2000 products. The data indicate that the mean bone solids content of the samples of these products was approximately 0.6 percent; generally, half of the samples were above 0.6 percent (but below 1 percent) and half were below 0.6 percent.

V. RTI Study

In response to complaints from industry, some of them longstanding, that the Agency is ''not regulating meat and poultry equitably,'' FSIS contracted out to the Research Triangle Institute (RTI) a comparison of the meat and poultry inspection regulations. RTI found many differences in the two sets of regulations and narrowed down to 12 the areas of the regulations where significant differences exist.[5] FSIS has studied these areas to determine whether, in the actual conduct of inspection, they result in an inequitable application of the inspection laws, and, if so, what might be done to mitigate the inequities.

Among the areas identified in the RTI study is mechanically separated product. It notes that regulations exist on the use of MSM, but not on the use of mechanically separated poultry. The RTI study concluded that, in general, ''the regulations covering meat and poultry have been designed with the same intent—to protect 'the health and welfare of consumers by assuring that meat and meat food products [or poultry products] are wholesome, not adulterated, and properly marked, labeled, and packaged' (21 U.S.C. 602 and 451). Although the intent of the regulations remains the same, the actual requirements are quite different.'' The study further concludes that the bases for no comparable regulation for mechanically separated poultry are ''unfavorable consumer perceptions and court decisions resulting in label and use restrictions for MSM; poultry has no definitional requirements (e.g., it can be defined as 'chicken' or 'turkey').''

Mechanically separated meat (i.e., beef or pork) product became the subject of consumer criticism in the mid-l970's after USDA proposed to allow its use as ingredients in meat products and to allow it to be labeled as meat (i.e., ''beef'' or ''pork''). USDA also issued an interim rule that included standards for the use of mechanically separated red meat product. A lawsuit soon followed in which the Court found that this product is not ''meat'' as traditionally defined in the Federal Meat Inspection Act regulations. The Court further found that USDA had not considered adequately the health and safety effects of the mechanically separated red meat product.

To respond to questions on health and safety raised by the Court, a panel of government scientists was convened to examine the questions. The panel found that scientific studies established no unique health risks associated with mechanically separated red meat product, but that the product is

[3] Information provided by industry is available for public inspection at the FSIS Docket Clerk's Office.

[4] Data available for public inspection at the FSIS Docket Clerk's Office.

[5] A copy of the RTI study is available for public inspection in the FSIS Docket Clerk's office.

sufficiently different from muscle tissue meat in composition to require separate labeling. The panel recommended, among other things, that usage limitations be placed on this product.[6]

The panel reports, among other things, led FSIS to issue final regulations on June 20, 1978, that established preparation, composition, usage, and labeling requirements for mechanically separated red meat product, which was named mechanically processed species product (MP(S)P) and required that it be produced only under a quality control program approved by the Agency (43 FR 26416). This rule established a definition and standard of identity for this product that necessitated it being listed separately from meat in the ingredients statement of a product in which it was used. In 1981, the Agency proposed that this product be distinctly identified as ''mechanically separated (species) (MS(S))'' (where ''species'' refers to beef, pork, or other species of livestock) based on data, information, and arguments accumulated by and submitted to FSIS since the regulations for the product were originally promulgated on June 20, 1978 (46 FR 39274). FSIS proposed to amend the definition and standard for MP(S)P by deleting the term ''product'' from the product name and by considering terminology such as ''mechanically separated,'' ''mechanically deboned,'' and ''mechanically recovered'' as an alternative to ''mechanically processed'' to continue distinguishing the product from ''meat.'' Comments on the proposal indicated that the term ''mechanically separated'' was more descriptive of the product than the other terms listed in the proposal, that it was favored because of its use in other countries and adoption by the Codex Alimentarius Committee on Processed Meat and Poultry Products (1978), and that it did not have negative connotations associated with the other terms. Some commenters on the proposal stated that the term was truthful and understandable. Additional rulemaking on June 29, 1982 (47 FR 28214), reaffirmed the Agency's position that the product is not ''meat'' as traditionally defined, and that ''mechanically separated (species) (MS(S))'' is the name that will provide a more meaningful and concise description of the product's characteristics than ''mechanically processed (species) product.''

During this same period, mechanically separated poultry underwent product development separately from mechanically separated red meat product without similar FSIS regulations. Early distinctions in regulatory treatment were largely due to historical differences in how the two industries used these products and the way in which they came to public attention. One significant difference is that mechanically separated red meat product was being considered for use in products that had previously contained muscle meat. The use of mechanically separated poultry in poultry hot-dogs created less controversy because poultry hot-dogs, bologna, and similar products did not exist before they were made with mechanically separated poultry. Thus, consumers had no prior expectations about the formulation.

Differences in regulatory treatment of MSM and mechanically separated poultry have continued since that time. The meat industry claims that the effect of those differences has been a reluctance on the part of processors to use MSM, while MSP use has expanded. In response to the early rulemakings on MSM, the meat industry claimed that consumers would not buy products if ''mechanically separated beef (or pork, or other livestock species)'' is listed on the label. Similarly, in responding to the March 1994 advance notice of proposed rulemaking (ANPR) on MSP (discussed later in this document), the poultry industry claimed that, if they had to label MSP as a poultry ingredient, consumers would be misled into thinking that they are purchasing products inferior to what they have historically purchased or that the product has changed.

The Agency's regulation on the use of MSM and the absence of regulation on the use of mechanically separated poultry have raised two major policy issues. The first is whether current regulations are adequately protecting consumers. The second is whether different regulatory treatment for these similar products is justified. FSIS is not promulgating this regulation merely because of the current differences in the regulatory treatment of mechanically separated poultry and MSM, but rather because one of the basic statutory missions of the Federal Meat Inspection Act, under which MSM, such as ''mechanically separated beef (or pork),'' is regulated, and of the Poultry Products Inspection Act (PPIA), under which MSP is regulated, is to assure that products bear labeling that is truthful and not misleading. Here, for MSP, as FSIS did for MSM, FSIS has determined that a standard of identity and composition is needed for this product, along with an ingredient labeling requirement, and other requirements in order to carry out one of the statutory missions of the PPIA, as has been done in regard to the FMIA for MSM, by assuring that consumers are accurately informed about the ingredients of products they purchase, which in this case is an ingredient whose form and consistency materially differ from those of other boneless poultry products produced by hand-deboning.

VI. Advance Notices of Proposed Rulemaking

On June 15, 1993, FSIS published an advance notice of proposed rulemaking (ANPR) (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding the need for labeling of poultry product produced by mechanical separation and products in which such poultry product is used. FSIS received 2744 comments in response to the ANPR, most of which were general reactions to labeling issues. The majority of commenters responded to whether there was a need to identify mechanically separated poultry in the ingredients statement on the labels of meat and poultry products in which it is used as an ingredient. Roughly half the commenters supported identifying mechanically separated poultry in the ingredients statement because, the commenters stated that, among other things, consumers have ''a right to know'' it is an ingredient. The majority of the other commenters did not support identifying mechanically separated poultry in the ingredients statement, citing, in part, their belief that current policies are satisfactory and that labeling MSP would mislead consumers into thinking that they are purchasing products that are inferior or different than the product they have historically purchased. FSIS concluded that there is a ''truth-in-labeling'' issue that is founded in the mandate under which the Agency operates, viz., protecting consumers from misbranded poultry and meat products.

Subsequently, on March 3, 1994, FSIS published another ANPR (59 FR 10230), which solicited comments and information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties. FSIS sought comments on its tentative positions regarding defining and standardizing, or establishing other

[6] The panel's conclusions and recommendations were published in reports titled ''Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I—Final Report and Recommendations, Select Panel'' and ''Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II—Background Materials and Details of Data.'' These reports are available for public review in the FSIS Docket Clerk's office.

requirements for poultry products produced by mechanical separation, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. In the March 1994 ANPR, FSIS considered, among other things, that certain poultry products produced by mechanical separation, i.e., those with greater than 0.6 percent bone solids content, but no more than 1 percent bone solids content, be separately identified on the labels of products in which they are used as ingredients by a distinct name. However, because of the improvements that were previously discussed in separating and removing the bone from skeletal muscle and other edible tissues of poultry carcasses and parts of carcasses, FSIS considered that some poultry products derived from mechanical separation machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., ''chicken'' and ''turkey meat.''

FSIS received 106 comments in response to the March 1994 ANPR. The majority of the comments did not support the ANPR. The commenters strongly disagreed with the tentative position that only product with 0.6 percent or less bone solids content could be labeled ''(Kind)'' or ''(Kind) meat,'' without the reference to ''mechanically separated.'' The commenters also disagreed with the need for handling requirements, protein quality requirements, and quality control for boneless poultry products produced by mechanical separation. Further, commenters disagreed with establishing a minimum protein content and a maximum fat content requirement for poultry product produced by mechanical separation with greater than 0.6 percent bone solids content. They also disagreed with restricting the bone particle size to a maximum of less than 1.5 millimeter (mm) in the greatest dimension and limiting the use of mechanically separated poultry when used as an ingredient in other products. Many commenters stated that FSIS should continue allowing the declaration of mechanically separated poultry on product labeling as ''(Kind)'' or ''(Kind) meat'' (i.e., ''chicken,'' ''chicken meat,'' ''turkey,'' and ''turkey meat'') when it is used as an ingredient in poultry or meat food products.

FSIS generally agreed with the commenters with regard to protein quality, and protein and fat contents, and concluded that the tentative positions on protein quality, and minimum protein and maximum fat contents were unnecessary. Protein quality is not a health issue today, and information regarding protein and fat contents is generally available on the Nutrition Facts panel on most processed foods where mechanically separated poultry might be used as an ingredient. Furthermore, it was decided that the positions on quality control and handling requirements would be better addressed as part of larger regulatory efforts that were planned to consider ways of reducing the potential for situations that would render any poultry or meat food product adulterated, unwholesome, and/or misbranded. Therefore, the Agency concluded that it was premature to address the need for mandatory quality control or handling requirements for this one distinct category of poultry product. However, the Agency was not in agreement with the commenters on the other issues raised in the ANPR.

The Agency maintained that a bone solids content requirement is necessary because one of the characteristics that distinguishes mechanically separated poultry from hand-deboned poultry is the method of mechanical processing that results in a product which is safe in terms of composition, but one in which there is greater potential for the incorporation of powdered bone. The bone solids content of MSP is a direct result of the manufacturing process which involves the crushing of starting materials which consist of skeletal frames and carcass shells on which bits and pieces of muscle and other edible tissue remain after most of the muscle and other tissues have been removed by hand. Thus, there is the need for controlling the process of incorporating powdered bone into MSP so that it does not exceed the level of one percent which is considered a ''good manufacturing practice.'' The other distinguishing features that make mechanically separated poultry different than hand-deboned poultry are physical form and consistency. Informing consumers of such differences by a distinct and separate labeling of the presence of mechanically separated poultry in products in which it is used, is supported by the statutory responsibility of FSIS to assure that all labels on poultry and meat food products are accurate and not false or misleading.

The Agency did agree that its tentative labeling approach to identifying two types of mechanically separated poultry, based on the level of bone solids, i.e., above or below 0.6 percent, which was suggested in its March 1994 ANPR, appear to be in conflict. The mechanical separation process results in a product that is materially different than hand-deboned poultry in terms of its paste-like form and batter-like consistency, regardless of the level of bone solids present. The Agency tentatively concluded, after further review of the approach presented in the March 1994 ANPR and the comments received in response to it (and the prior June 15, 1993, ANPR), that continuation of the present labeling policy, even for those finished products with mechanically separated poultry that has a bone solids content of less than 0.6 percent, does not inform the consumer that these products contain the distinct ingredient mechanically separated poultry and that this may result in misleading labeling. The Agency also maintained that there is a need for bone particle size restrictions to augment the measurement of bone solids content as an assurance that mechanical separation processes are operating under good manufacturing practices that prevent the inclusion of unacceptable large fragments in mechanically separated poultry. The Agency also believed that in order to show that the process of manufacturing MSP was in control, i.e., operating under good manufacturing practices, records should be kept.

The Agency disagreed with commenters' objections to the tentative positions taken in the March 1994 ANPR on restricting the uses of mechanically separated poultry as an ingredient in certain products, e.g., in baby foods where there was a potential health effect associated with fluoride in mechanically separated poultry made from fowl, and where the textural characteristics of mechanically separated poultry altered the basic nature of the product to which it may be added, such as products represented as being composed of whole muscle. FSIS maintained the position that such restrictions were necessary for health reasons (in the case of the fluoride issue) or to protect the consumer from misleading labeling.

The Agency's positions on these major issues led to the publication of the December 6, 1994 proposed rule.

VII. Proposed Rule

On December 6, 1994, FSIS published a proposed rule to amend the Federal meat and poultry products inspection regulations to define and standardize, and establish other requirements for poultry products produced by mechanical separation, including provisions for the composition and use of such products, and requirements for manufacturing and labeling such

products (59 FR 62629). The proposal prescribed a definition and standard of identity for poultry products produced by mechanical separation with 1 percent or less bone solids content, that required compliance with certain criteria, e.g., bone solids content (measured as calcium content) and bone particle size. The proposal also provided recordkeeping and labeling requirements, and limitations on use of poultry products produced by mechanical separation.

A. Product Definition and Standard

FSIS proposed to prescribe a definition and standard of identity and composition for the poultry product with a paste-like form and batter-like consistency that results from the mechanical separation of and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses which has a bone solids content of 1 percent or less. This product is commonly known in the poultry industry as mechanically separated or deboned poultry.

FSIS proposed that the boneless poultry products regulations described in 9 CFR 381.117(d) no longer apply to MSP. FSIS indicated that the current restriction on bone solids content in this regulation, as enforced by limiting calcium content, would be included with other compositional requirements in an MSP standard. Moreover, as a standardized product, MSP would be differentiated from other poultry product ingredients and it would be designated in the ingredients statements on finished product labels by the name specified in its definition and standard, in accordance with 9 CFR 317.2(c)(2) and (f)(1) and 381.118(a). Product failing to meet the bone solids content or bone particle size restrictions of the standard must be labeled as ''Mechanically Separated (Kind) For Further Processing'' and may only be used in producing poultry extractives, including fats, stocks, and broths because the manufacturing process completely removes the bone solids and bone particles.

1. *Product name.* FSIS proposed to define the standardized product that results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses by a distinctive name. FSIS proposed that such product be called ''mechanically separated chicken'' or ''mechanically separated turkey,'' for example. FSIS indicated that this product differs significantly from boneless poultry products produced by traditional hand-deboning techniques in its spread-like form and consistency such that it should be regulated as a separate, standardized ingredient. FSIS indicated that it would welcome comments on other names that accurately reflected the process from which this product was derived, as well as its form and consistency.

2. *Bone solids content.* FSIS proposed that the definition and standard for MSP incorporate the existing restriction on the bone solids content of mechanically separated poultry products of not more than 1 percent (9 CFR 381.117(d)). FSIS also proposed that the definition and standard include maximum calcium content levels of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content based on the weight of product that has not been heat treated.

3. *Bone particle size.* FSIS proposed that at least 98 percent of the bone particles present in MSP be restricted to a maximum size no greater than 1.5 millimeters (mm) in their greatest dimension and that no bone particles could be larger than 2.0 millimeters in their greatest dimension.

4. *Recordkeeping.* FSIS also proposed that establishments that manufactured MSP maintain records of bone solids content and bone particle size as a measure of process control. These records had to be made available to the inspector and any other duly authorized representative of the Secretary upon request.

B. Limitations on Use

FSIS proposed certain limitations with respect to the use of MSP in the formulation of poultry and meat food products. FSIS proposed such restrictions based on the potential fluoride contribution of MSP made from fowl (i.e., mature female chickens) and the characteristics of MSP, including the kind of poultry from which it is made and its form and consistency. FSIS also proposed that MSP may be used, except in certain cases, in any product defined by regulatory standards or Agency policies whereby ''(Kind)'' or ''(Kind) Meat'' (e.g., ''turkey,'' ''turkey meat'') are being used, provided that it is identified as ''Mechanically Separated (Kind)'' and conforms to requirements regarding the presence of skin within natural proportions (9 CFR 381.117(d)).

1. *Kind of product limitation.* FSIS proposed that when a poultry product is required to be prepared from a particular kind or kinds of poultry, (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey), would not be permitted. This provision assures that the kind of MSP used in a poultry product, such as mechanically separated chicken, is the same kind as is represented in the product name or other labeling. For example, product named ''chicken bologna'' could not be composed of mechanically separated turkey because such action could, among other things, result in false or misleading labeling by implying that the bologna was made with a chicken ingredient, when, in fact, it contained a turkey ingredient.

2. *Limitations on product made from fowl.* FSIS proposed that the use of mechanically separated chicken made, in whole or in part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) not be permitted in baby, junior, or toddler foods. The Agency based these restrictions on the potential fluoride contribution of product made from fowl to dietary intakes of young children.

The Agency noted that this position was supported by the 1979 Report, which was the best data available. FSIS recognized, however, that views on fluoride consumption have changed in the last few years, and in particular, recent views on the benefits of fluoride in the diet, including the diets of children. Comments were invited on this issue that would have an impact on the current validity of the proposed restriction on use of MSP from fowl .

3. *Poultry product limitations.* FSIS proposed that MSP not be allowed in poultry products that are composed of whole poultry muscle, and expected to be as such by consumers, except that it may be used for binding purposes at a level that is sufficient for purpose. However, FSIS would allow MSP in the sauce portion or any dressing of poultry products.

FSIS also proposed that MSP not be permitted in poultry products that have been processed only to the extent of cutting or grinding because it considers its use to be inconsistent with the basic whole-muscle character associated with such products. The Agency also would not permit MSP to be used in poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat for the reason stated above.

FSIS proposed no restrictions on the amount of MSP that can be used in poultry products, or meat food products, in which it is a permitted ingredient. However, prevailing standards of identity and composition for particular products may contain quantitative limits (e.g., a limit on the amount of poultry product ingredients permitted in cooked sausages such as frankfurters

and bologna (9 CFR 319.180)) or other restrictions on the quantity of various poultry product ingredients.

C. Labeling

FSIS proposed special provisions for the labels of MSP. If adopted, these provisions would supplement other, more general requirements for such labels (see 9 CFR parts 317 and 381, subpart N). The provisions are discussed below.

1. *The product.* FSIS proposed the following labeling provisions for MSP: (1) the name of the product (e.g., ''Mechanically Separated (Kind)'' (where ''kind'' refers to chicken, turkey, or other poultry) must be followed immediately by the phrase(s) ''made from fowl'' unless it is not made, in whole or part, from mature female chickens, and ''with excess skin'' unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass; and (2) there must be appropriate descriptive terminology in the labeling of MSP if heat treatment has been used in the preparation of such product, e.g., ''cooked.'' Because the characteristics described in (1) and (2) above are ones which would affect the use of MSP, FSIS proposed that, in order to assure compliance with regulatory requirements and thereby prevent the adulteration and misbranding of finished poultry products and meat food products, such characteristics had to be clearly identified on the label of MSP when MSP left the establishment at which it was manufactured.

2. *Finished poultry products and meat food products.* FSIS proposed that the standardized paste-like product that results from the mechanical separation and removal of most of the bone from the skeletal muscle and other edible tissue of poultry carcasses and parts of carcasses be defined by its own name, e.g., ''Mechanically Separated (Kind),'' which would be declared in the ingredients statements on finished product labels by the name specified in its definition and standard.

VIII. Discussion of Comments

FSIS received 2420 comments in response to its December 6, 1994, proposed rule. The majority of the comments (over 95 percent) were submitted by individuals and food manufacturers and distributors; a few (less than 5 percent) were submitted by trade associations, consumer advocate organizations, academia, developers of machinery, food retailers, food consultants, law firms, an agency of the Federal government, and a foreign government. The majority of the comments related to product name. The comments are summarized below.

A. Product Definition and Standard Product Name

Nearly all of the comments were in response to the proposed requirement regarding the product name for MSP which established a distinct name for this product, mechanically separated (kind), where ''kind'' represents the kind of poultry, such as chicken or turkey, from which the product was made. Of these, roughly one-quarter agreed with defining the product by the distinctive name of ''Mechanically Separated (Kind) (MS(K)).'' Most of the commenters supporting the proposal stated that MSP is different from hand-deboned poultry and the product label should inform consumers of which type product they are getting. Further, the commenters asserted that ''they have a right to know'' if mechanically separated poultry is being used because mechanically separated poultry ''has more bone particles, calcium, and cholesterol'' (than hand-deboned poultry) because of the way it is processed. The commenters said that if the name is not changed to MSP, i.e., mechanically separated (kind), consumers might think that they are getting a product that has no bone particles and is identical to hand-deboned poultry. Several commenters also suggested that it is unfair for FSIS to treat mechanically separated poultry differently than mechanically separated meat with regard to its labeling and that this proposed rule will create parity between the poultry and red meat industries.

The majority of the other commenters disagreed with the proposed position to define the product by the name MSP. The commenters stated that: (1) Poultry that is mechanically deboned is the same as any other poultry and should be treated and labeled like any other poultry, i.e., hand-deboned; (2) current labeling is truthful and accurate, unlike the term ''mechanically separated,'' which suggests it is different because mechanical equipment is used; (3) labeling MSP differently than it is currently labeled will confuse and mislead consumers into believing that the product has undergone a change and is somehow different; (4) the proposed labeling terminology will force manufacturers to undertake numerous unnecessary product reformulations and promote new labeling nomenclature that is both unappealing and unnatural in context; (5) the common or usual name of finely ground turkey or chicken is ''turkey or chicken,'' by virtue of consistent, widespread and long-term usage of the term by the industry; (6) the addition of the words ''mechanically separated'' to the ingredients statement unnecessarily contributes to the general cluttering of limited label space; (7) ingredient labeling should be based upon product characteristics not on the manufacturing method, because most, if not all, ingredients in all food products are mechanically processed at some point, e.g., ''pitted cherries are mechanically pitted but do not require mechanically pitted on the label'' or ''orange juice squeezed by a machine is not required to be labeled as mechanically squeezed orange juice;'' and (8) the term will frustrate technological innovation by establishing a false dichotomy between mechanical and ''natural'' processes.

Commenters also suggested that any further regulation or change of ingredient declaration for this product is unnecessary and not based on consumer expectations or scientific determination. Commenters stated that there is no adequate justification for setting a new standard of identity for this product. They stated that FSIS has not provided any research, consumer studies, or marketing data to support the need for this labeling change and that no new evidence has been presented by FSIS to refute that mechanically separated poultry is materially the same as poultry derived from hand-deboning. Commenters also questioned placing additional requirements on a product that is already accepted by consumers. Another commenter stated that the only reason FSIS was initiating a change to the name for MSP was because of the lawsuit by the red meat sausage manufacturers (i.e., *Bob Evans Farm, Inc. et al.,* v. *Espy*).

Further, one commenter alleged that the reason given by FSIS for proposing this rule, which is to prevent mislabeling of products and misleading consumers, is invalid. This commenter was the only one to offer consumer data[7] regarding consumer reactions to labeling MSP. The commenter contracted out a consumer study to measure consumers' preferences for the terms ''chicken,'' ''turkey,'' ''mechanically separated chicken or turkey,'' and ''finely ground chicken or turkey.'' The commenter concluded that the consumer research shows that ''the majority of consumers consistently report no preference to change from current labeling practices.'' According to the commenter, ''less than 2 in 10

[7] Comment submitted by the National Turkey Federation is available for public review at the FSIS Docket Clerk's office.

consumers in their study expressed the opinion that 'mechanically separated' is an appropriate labeling term for comminuted poultry,'' and that, if a change is made to current policies, ''finely ground'' would be a more preferred term. The commenter concluded that the results of the research were applicable to consumers in general. Several other commenters cited the consumer research presented by this commenter and also asserted that, if any change is made with respect to the product name, ''finely ground (Kind)'' is much more informative than ''MSP.'' Other commenters suggested other names such as ''ground,'' ''finely textured,'' and ''finely comminuted'' poultry.

FSIS has concluded that the name mechanically separated poultry, i.e., ''mechanically separated (kind of poultry) (MSP)'' (e.g., mechanically separated chicken) should be adopted as the product name and that a separate standard of identity should be established for this product to reflect its name and set forth appropriate parameters for the product. FSIS has determined that the name ''mechanically separated (kind of poultry)'' is an appropriate, nonmisleading name for this product based on comments received in this rulemaking, an examination of the process by which MSP is made, the distinct paste-like form and batter-like consistency of MSP, the need to distinguish MSP's differences from hand-deboned poultry on labeling to comply with FSIS' statutory consumer protection responsibilities to assure that labels of meat and poultry products are accurate, and a review of product name issues raised in the rulemaking for mechanically separated meat, a red meat product produced in a mechanical manner similar to MSP.

As will be discussed more fully below, FSIS does not agree with various assertions of some commenters that establishing the name MSP for this product is unnecessary and unjustified. The name mechanically separated (kind of poultry)'' clearly and precisely describes the manner by which the product is made. The process by which MSP is made along with the type of starting materials used to make it, which contain only bits and pieces of muscle tissue and other edible tissues, such as skin and fat, are what causes this product to be different from hand-deboned poultry. Consumers will be misled if they are not informed that this product is materially different from hand-deboned poultry, and the appropriate way to inform them of this difference is to establish a name for MSP that distinguishes it from hand-deboned poultry. As FSIS recognized in its rulemaking on MSM, the ability of any name to convey in only a few words the nature of a product is limited. However, FSIS has determined that the term MSP will appropriately notify consumers that the product they are purchasing contains a distinct ingredient that results from the mechanical separation process.

FSIS received various comments that suggested alternative names for the product, if it was concluded that more descriptive labeling was necessary, such as ''ground (kind of poultry),'' ''finely ground (kind of poultry),'' ''comminuted (kind of poultry),'' and ''finely textured (kind of poultry).'' FSIS has concluded that these names do not provide a concise and accurate description of the product because the usage of the terms is not unique to MSP, and these terms convey the impression that the product has the same form and consistency as product with defined particles of meat, skin, and fat, rather than, as here, one that has a paste and batter-like consistency. FSIS has concluded here, as it did for its previous rulemaking on MSM (47 FR 28214, 28224), a similar product produced by a mechanical separation process that has a paste and batter-like consistency, that the name of the product should include the term ''mechanically'' to indicate the nature of the process used in making the product. When FSIS adopted the name ''mechanically separated'' in its 1982 rulemaking on MSM to describe mechanically separated livestock product such as ''beef'' or ''pork,'' the adoption of this name was challenged in a lawsuit. The name was upheld by the Courts in *Community Nutrition Institute (CNI)* v. *Block*, No. 82–2009 (D.D.C. Dec. 1, 1982), aff'd 749 F.2nd 50 (D.C. Cir. 1984). As also has been previously noted, the term ''mechanically separated'' is recognized internationally by the Codex Alimentarius Commission of the United Nations and by individual countries that trade with the United States.

In its proposed rule, FSIS proposed the term ''Mechanically Separated'' (Kind) for MSP. As a point of clarification, FSIS would like to make it clear that ''kind'' refers to the ''kind of poultry,'' such as chicken, turkey, etc., used in a product. FSIS feels that the name for this ingredient should be clear about this fact, and, therefore, has clarified its regulations to reflect this fact.

FSIS also wishes to clarify the scope of its definition and standard for MSP. As with FSIS' definition and standard for MSM, the standard and definition for MSP are intended to only cover the product with a paste-like form and batter-like consistency manufactured by machinery that operates on the differing resistance of hard bone and soft tissue to pass through small openings, whether it employs sieves, screens, or other devices or whether or not bones are pre-broken before being fed into such equipment. This regulation, however, is not intended to cover whole pieces of muscles that are mechanically separated from poultry carcasses or parts of carcasses. FSIS has clarified its regulation in this regard by indicating that the product that FSIS is regulating is the one that results from the mechanical separation process that has a paste-like form.

In response to the commenters who suggested that there is no difference between MSP and hand-deboned poultry and, that therefore, they should be labeled the same, FSIS disagrees with this comment. The method of obtaining poultry products by the mechanical separation process results in a product whose form and consistency materially differ from that of poultry derived by traditional hand-deboning methods.

MSP is a poultry product that results from the mechanical separation and removal of most of the bone from the skeletal muscle and other edible tissues, such as skin with attached fat, of poultry carcasses and parts of carcasses. The process of manufacturing MSP begins with starting materials from which most of the muscle and other tissue has already been removed by hand, on which only bits and pieces of tissue remain. The process involves the crushing of the bones (i.e., the starting material) with adhering tissue and the removal of the bone using high pressure which forces the mass of tissue through holes in the equipment, allowing a small amount of powdered bone to pass along with the edible tissue. This results in a product with a paste-like form and cake batter-like consistency, that no longer resembles ''chicken'' or ''turkey.'' The rigors of the mechanical separation process alter the structure of the muscle fibers, skin, fat, and other tissues of the starting materials so that they become a blended and amorphous paste-like mass that is no longer recognizable as ''chicken'' or ''turkey.'' On the other hand, ''hand-deboned poultry'' is a boneless poultry product that is a result of removing whole muscle and other edible tissue (e.g., skin with attached fat) from poultry carcasses and parts of carcasses, using hand-deboning methods, e.g., hand-held knives. Such product is easily recognized as the kind of boneless muscle and tissue that would be gotten by a person who used

a knife in their own kitchen to cut off pieces from a poultry carcass or parts of poultry, such as drumsticks, thighs, and breasts, because there is not a substantial disruption of the physical form of the product by hand-deboning. With hand-deboning, the muscle fibers are visible and maintain much of their original configuration. Understandably, hand-deboned muscle and other tissue may be subsequently processed through a grinder, flaking machine, or dicer to yield poultry in ground, flaked, or diced form, but such product still exhibits a physical character associated with ''chicken'' and ''turkey,'' rather than a cake batter. This is because the rigors of these processes which occur after hand-removal of muscle and other tissue do not alter the physical nature of the tissues to the degree that mechanical separation does.

In response to the comments regarding consumers being confused or misled by labeling MSP differently than is currently labeled, i.e., as ''chicken'' or ''turkey,'' the Agency is not aware of reliable or conclusive data that support the assertion that consumers will be confused or will believe that the products in which MSP has been used are different from the products they purchase after the final rule is effective. The Agency does not agree with one commenter's assertion, the American Meat Institute, that a report of a study it submitted [8] on an evaluation of mechanically separated red meat issues support its view that the required labeling for MSP has ''a great affirmative potential to mislead.'' The report cannot be relied upon as support for this conclusion for a number of reasons, including the following discussed here. The report indicates it used focus group sessions to, among other things, explore consumer reaction to and understanding of the term ''mechanically separated meat.'' As noted previously, MSM is a red meat product produced by a mechanical separation process similar to that by which MSP is made. However, very little of this product has been made and used in products with which consumers are familiar, and it is not surprising that consumers might not be aware of the product the term ''mechanically separated meat'' represented. Therefore, reactions to labels for products containing mechanically separated meat would not necessarily be applicable to the labels for mechanically separated poultry. Furthermore, as the study itself states, the focus group method used does not ''produce precise, absolute measures,'' ''its findings must be seen as hypotheses,'' and ''findings from focus group sessions are not projectable to a larger population.'' Moreover, the study also sought consumers' reactions to other labeling issues and the multiplicity of issues raised could bias the responses made to the mechanically separated meat labeling issue and, in turn, the validity of applying the finding to labeling of mechanically separated poultry.

In the Agency's opinion, the declaration of MSP as ''chicken'' or ''turkey,'' rather than by a distinctive name in the ingredients statement of a product in which it used, is misleading. ''Chicken'' and ''turkey'' are terms associated with boneless poultry products derived by hand from starting materials that consist of whole and half carcasses, and parts of carcasses, on which whole muscle and other edible tissues substantially exist. FSIS believes that MSP differs significantly from boneless poultry produced by hand-deboning techniques because of its paste-like form and batter-like consistency. The form and consistency of MSP is a direct result of the mechanical machinery (i.e., process) from which it is derived which involves the removal of bits and pieces of muscle tissue and other edible tissues from boned-out materials, i.e., skeletal frames and carcass shells. Therefore, FSIS has concluded that MSP should be regulated as a separate, standardized ingredient, and that the characteristics of this ingredient are sufficiently different from the characteristics of hand-deboned poultry that it should be identified on product labels in a way that distinguishes it from hand-deboned ingredients. Such labeling will help further inform consumers about the content of the products they are purchasing. FSIS believes that such a labeling requirement is necessary in order to fulfill its statutory responsibility under the FMIA and PPIA to protect consumers by assuring that the labels of poultry and meat food products are accurate and not false or misleading.

If the commenters believe that consumers will be misled into thinking that they are purchasing products that are different from what they have historically purchased or that the product has changed, the industry would have a full year before the rule becomes effective, to educate consumers that the products they will be purchasing that reflect the name MSP in the ingredients statement are what they have historically purchased. FSIS, itself, also believes it is important to inform consumers about this product. Therefore, it intends to review its public information program and incorporate into it appropriate explanatory material on the process used to make MSP, its characteristics, its wholesomeness, its safety, and its nutritional qualities. The Agency believes that consumers will be misled if mechanically separated poultry is not separately and distinctly listed as an ingredient, because of the differences previously discussed between it and hand-deboned poultry. The Agency's responsibility under its consumer protection mission is to assure that labeling information is accurate and helps consumers make informed food purchasing decisions.

In response to the comments that asserted that the requirement for labeling ''MSP'' will result in a need for manufacturers to reformulate products that currently contain MSP, and ''promote new labeling nomenclature that is both unappealing and unnatural in context,'' the Agency is not certain as to why such changes will be necessary. There were no reliable or conclusive data submitted in support of these comments that show a potential negative impact on poultry or meat food product formulations. It is the Agency's belief that MSP continues to be a wholesome and safe, low-cost source of protein, with nutritional attributes comparable to ''chicken'' and ''turkey.'' The paste-like form and batter-like consistency of MSP that results from the mechanical separation process provide unique functional characteristics that are a key benefit for its use in the variety of poultry and meat food products (especially emulsion-type products like hot dogs) in which it is currently used. This benefit seems likely to ensure continued use of the ingredient in products that are meeting the demands of consumers who purchase the products.

Further, in response to comments about a negative impact labeling will have on consumers' acceptance of products labeled with ''MSP,'' there were no persuasive arguments made that support this as an outcome. The majority of the comments that disagreed with the proposed identity of the products as ''MSP'' did not provide data, but offered opinions on the consumers' view of the proposed name. The data that were presented by the one commenter that pursued consumer research were not compelling because of shortcomings in the study design.

The report of consumer research submitted by the commenter tested consumer preferences for the terms ''mechanically separated,'' ''finely ground,'' and ''chicken'' and ''turkey,''

[8] A copy of the comment and the report are available for review in the FSIS Docket Clerk's office.

as names for MSP. The report concluded that the majority of consumers, if given the choice between names such as ''mechanically separated chicken or turkey,'' and ''turkey'' or ''chicken,'' preferred labeling to stay as it is, ''turkey'' or ''chicken.'' If, however, a change in the name is made, the report concluded that ''finely ground'' is overwhelmingly preferred to ''mechanically separated.'' The commenter concluded that the data show that a labeling change to ''mechanically separated'' is unjustified and that consumers gain no salient information from the use of such a term. They indicated that the data were gathered from consumers who were informed as to the Agency's concerns regarding the presence of ''powdered bone'' and a change in texture of finely comminuted poultry.

The survey data's conclusions were based upon 300 interviews of people in five states, who were given a questionnaire, after reading an informational handout. The commenter indicated that the survey participants had used cold cuts, luncheon meats, hot dogs, or smoked sausage, in the past three months, and were heads of households and primary or co-primary food purchasers between the ages of 21–69, 80% who were female and 20% who were men.

The Agency has reviewed the survey conducted by the commenter and has determined that the survey's findings are not reliable. The informational handout given to survey participants to read before they answered the survey questions did not tell those interviewed the following information which they needed to have in order to make informed responses to the questions posed to them: (1) a description of the difference between the form and consistency of MSP and hand deboned poultry; (2) descriptions of how the mechanical separation process works and what the product is like that comes from it; (3) a description of the difference in the nature of the starting materials for hand-deboned poultry and MSP, and (4) a clear idea of the types of products in which MSP is used. Further, the interviewees were not shown any samples of MSP and hand-deboned poultry and, thus, did not view these products and see the differences in form and consistency between the products.

Moreover, the content of the handout was slanted in the sense that it described only certain aspects of MSP and used confusing names for MSP which obscured the difference between MSP and hand deboned poultry, thus making any considered labeling change appear to be unnecessary. For example, the informational handout indicates that the way MSP is made is that ''new machinery was invented that could separate poultry meat from bone without the need of hand deboning.'' This, however, is only a partial description and is, thus, misleading. As has been previously stated in this docket, the new machinery does not completely separate meat from bone. Rather a small amount of powdered bone that results from the fact that the machines crush the bone of the starting materials from which the MSP is made, becomes mixed together with the other material, such as muscle tissue and skin removed from the starting materials. Another example is that the handout states that ''in either case,'' referring to MSP and hand deboned poultry, ''the original form of the poultry is changed when it is used as an ingredient in making hot dogs, bologna, and other processed meat.'' This is misleading because, as has been previously noted, MSP is an amorphous and paste-like mass that is not recognizable as bits and pieces of chicken and turkey, and even if hand-deboned chicken or turkey was further processed by grinding, it would still exhibit a physical character associated with chicken or turkey.

Moreover, the handout indicated that both mechanically separated and hand deboned poultry may contain up to 1% bone, and that the powdered bone in MSP ''provides nutritionally available calcium.'' However, whether the powdered bone in MSP provides a nutrient that consumers want has nothing to do with the issue of what the name should be of this product. Many types of products provide calcium but they are appropriately described by different names because they are distinct types of products. The handout also stated that ''in its raw, fresh form, consumers are familiar with ground turkey which may be made using the same equipment.'' This statement is misleading because the important aspect of the way the machinery operates to produce a product with a paste-like form and batter-like consistency is not presented.

Moreover, it is misleading to conclude that switching to the term ''mechanically separated'' would likely result in substantial decrease in consumption of this products, when the interviewees were not told that it was the distinct character of this product, rather than a question of the wholesomeness of the product, that was a basis for FSIS' proposed labeling change. Further, the interviewees also were not told that product made without MSP could possibly cost more to purchase than one made with MSP.

The conclusions reached by the commenter from the research are also not valid because the study design did not account for possible errors that may make the information gathered unreliable. The study used a mall intercept survey approach and involved soliciting reactions on the terms from 300 shoppers in shopping malls. The sample is not statistically representative of a national population because of the way the participants were selected. Although the commenter claimed that they have data from ''true consumers,'' the participants represent a population who happened to be able to shop in the mall, and on the day of the survey. A concern with the usefulness of the results stems from the non-probability, quota sampling approach. Non-probability samples do not permit an estimate of sampling error. With smaller samples, the range any reported percentage can take can be relatively large. Since a sample of 300 respondents is smaller than most national level consumer surveys, comparisons which look different may not be statistically different when inferred to the population of primary food buyers. For example, the difference between the 10 percent of respondents reporting they will probably buy more product labeled as ''finely ground'' versus the 6 percent that reported they will probably buy less could be due to sampling error. Additionally, the approach to sampling tends to under-represent persons who are difficult to contact or reluctant to participate. In this case, under representation of certain persons with different views is likely to yield underestimates of respondents who report that the issue is of no importance to them.

In response to the comments that stated that the term ''mechanically separated'' is misleading because it suggests the product is different because mechanical equipment is used, FSIS believes that the use of mechanical equipment is, in fact, the very reason MSP differs from hand-deboned poultry. The process of removing bits and pieces of edible muscle and other tissues from starting materials consisting of skeletal frames and shells is far different than the process of removing muscle and other tissue from bone by hand. The process of manufacturing MSP results in a paste-like product which no longer resembles the consumer's expectation of ''chicken'' or ''turkey.'' The examples provided by the commenter of other products that are ''mechanically'' processed, and which do not reflect this in their names, are not comparable

because the form and consistency of the products mentioned would not differ significantly whether the products were processed by hand or machine.

Therefore, the Agency believes that MSP accurately and concisely describes the poultry product produced by mechanical deboning, indicating the nature of the process by which and the kind of poultry from which it is made, and distinguishing it from poultry product ingredients produced by traditional hand-deboning techniques. The name includes ''(Kind of poultry)'' rather than ''poultry'' to make it clear that the kind of poultry (9 CFR 381.1(b)(40)) from which the product is made must be specified (e.g., ''Mechanically Separated Chicken'').

In response to comments that suggested the term ''mechanically separated'' will frustrate technological innovation by creating a false dichotomy between mechanical and ''natural'' processes, the Agency stresses that the mere application of the mechanical means of separating bone from muscle and other tissues does result in a materially different product than that which is derived by hand. The action of mechanical separation of bone from poultry tissue involves crushing bones on which bits and pieces of meat, skin, and fat remain after hand removal of the majority of edible tissue. The bones with adhering tissue are forced under high pressure through screens or sieves in the machinery to result in a paste-like and batter-like composite of tissues that had been adhering to the bones, that also contains a minute amount of powdered bone. The physical action of the mechanical process cannot be duplicated by hand-deboning methods to result in a similar product.

MSP has been referred to as ''Mechanically Separated'' Poultry within the meat and poultry industries to specify the form and derivation of the product. FSIS is aware that other descriptions have been associated with poultry product produced by mechanical separation, such as ''mechanically deboned'' poultry, ''finely ground'' poultry, and ''finely comminuted'' poultry. There are reasons why these other terms do not appropriately convey the identity of MSP.

FSIS believes that where a primary distinguishing characteristic of a standardized product is its bone content, it would be inappropriate to define it by a name that includes the term ''deboned'' and use of this term in labeling might mislead consumers by implying that such product contains no bone. This was also concluded in the final rule that defined and standardized MSM (47 FR 28214). Although consumer focus group research reported in the MSM proposed rule (46 FR 39274) suggested that consumers thought that ''mechanically deboned'' is a term that is more acceptable than ''mechanically processed,'' ''mechanically separated,'' and ''mechanically recovered,'' the Agency in its final rule for MSM rejected the term ''mechanically deboned'' in lieu of ''mechanically separated.'' The basis was that it was believed that ''mechanically deboned'' would incorrectly represent to consumers that the product does not contain bone.

With regard to other terms that refer to the form or consistency of poultry products, e.g., ''finely comminuted,'' ''comminuted,'' ''finely ground,'' ''ground,'' and ''finely textured,'' the Agency does not view such terms as truly reflective of the form and consistency of MSP. MSP is paste-like in form and like a cake-batter in consistency. When it emerges from the mechanical separation machinery, it is an amorphous blend of the tissues removed from the skeletal frames and shells that were the starting materials. The process uses high pressure and incorporates a minute amount of powdered bone into the product in the operation of removing bone from the tissue. Terms such as those mentioned are used to reflect products with a more defined particulate size and would be perceived that way by consumers, e.g., as products with a form and consistency comparable to ground beef. Additionally, terms such as ''comminuted'' are not readily understood by many consumers and only have a common usage and understanding among those involved in the meat and poultry industry. Terms such as ''finely ground'' and ''comminuted'' have also been used by industry interchangeably to describe ground poultry, i.e., poultry with defined muscle particles. Moreover, the terms cited above have been used indiscriminately to refer to MSP, and although they relate to form and consistency, do not sufficiently inform consumers that MSP is an ingredient in the products they purchase. Therefore, these terms are limited in their ability to effectively meet the Agency's communication objective of conveying distinctly the presence of MSP on the labels of products. Furthermore, there were not any comments received that offered other, novel terms that could be applied to MSP.

Regarding the comments that cited the long-term use of the terms ''chicken,'' ''turkey,'' etc., to refer to mechanically separated poultry, as the reason for not changing the name of MSP, the Agency has taken into account the information and experience acquired since the first regulatory action on MSP in 1969 and current regulatory policies, and has reviewed and reevaluated the existing regulations, particularly in light of the labeling issues. As a result of its review and reevaluation, the Agency has concluded that the distinct declaration of ''MSP'' is necessary after a careful review of (1) the process of manufacturing MSP which results in a product with a paste-like form and cake-batter-like consistency, (2) the characteristics (i.e., form and consistency) of MSP which are significantly different from those expected of ''chicken,'' ''turkey,'' etc., which are derived by hand-deboning, (3) the issues raised in rulemakings and court decisions that resulted in the distinct identity of the livestock product similar to MSP as ''MS(S),'' because (in part) of the form and consistency of that product, and (4) the statutory responsibilities to protect the public and prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged.

Bone Solids Content

FSIS stated in the proposed rule that the definition and standard for MSP would incorporate the existing restriction on the bone solids content of mechanically separated poultry products of not more than 1 percent. All of the 26 commenters responding to this issue expressed strong support for restricting the bone solids content to no greater than 1 percent. After evaluating data on substances of potential concern that may tend to concentrate in bone, the 1979 report on health and safety aspects of the use of mechanically separated poultry did not recommend any change in the existing bone solids limit. FSIS continues to believe that the requirement of no more than one percent bone solids content is reflective of good manufacturing practices that result in wholesome and safe boneless poultry products.

Therefore, this final rule will restrict the bone solids content to no greater than 1 percent, as represented by calcium content to a maximum level of not more than 0.235 percent in product made from turkeys or mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content based on the weight of uncooked product (i.e., product that has not been heat treated). The differences in the calcium value between turkeys and mature chickens, and the value for

other poultry, are attributable to the higher level of calcium found in turkey bones which are typically larger than other poultry bones, and due to more calcium being deposited over the lifetime of older chickens.

Bone Particle Size

Twenty-six commenters responded to the proposed bone particle size requirement which restricts at least 98 percent of bone particles to a maximum size no greater than 1.5 millimeters (mm) in their greatest dimension and allows no bone particles to be larger than 2.0 millimeters in their greatest dimension. About half of the 26 commenters supported the restriction of bone particle size. One of the commenters stated that the bone particle requirement provides consumers with sufficient protection from any hard bone particles and also, from any constituents which might not normally be found in items manufactured from muscle tissue using the traditional hand-deboning process.

The other half of the commenters opposed setting limits on bone particle size stating that for more than 20 years of use of MSP, bone particles have not been a significant problem. The commenters believe that the nature of the separation process itself, with the comminution of product which is pushed through screens under pressure, minimizes the likelihood of large bone particles. Furthermore, the relative softness of poultry bones due to their age and size make them unlikely to present a physical hazard. One commenter stated that the American Dental Association Health Foundation found no health problems associated with poultry bone particles and that the Michigan State University has reported no digestibility problems of issue. Other commenters cited the 1979 Report's conclusion that ''bone particles in MSP will not present any health hazard because of size or hardness, provided that bone particle size is controlled.'' Commenters also suggested that requiring standardized bone particle limitations will result in increased analytical costs to the processor without improving or otherwise positively effecting food safety. Other commenters pointed out that the proposed rule did not suggest a method by which bone particle testing can be conducted.

FSIS believes that a bone particle size limitation augments the bone solids content restriction and is a meaningful indicator of a mechanical separation operation that effectively removes bone from muscle and other tissue. The mechanical separation process involves bone crushing and screening out bone from soft tissue, thereby providing a mechanism for limiting the amount of bone in the product. The mechanism of separating bone from tissue does not necessarily make the remaining bone particles uniform in size. Bone is an unexpected ingredient and the process of mechanical separation should be operated to avoid the likelihood of large bone particles occurring. If bone were present in such a particle size as to be readily apparent to the taste or touch, it would be identifiable as bone and might be reason to consider the product adulterated. The 1979 Report recommended that bone particle size be controlled to ensure that equipment type or processing does not result in unacceptably large bone fragments in mechanically separated poultry. There were no new data submitted by commenters that refute the data in the 1979 Report and, thus, they appear to indicate the reasonable limits, i.e., good manufacturing practices, by which manufacturers are operating. FSIS agrees with the recommendation in the 1979 Report and is, therefore, requiring that at least 98 percent of the bone particles present in mechanically separated poultry have a maximum size no greater than 1.5 mm in their greatest dimension and that no bone particles be greater than 2.0 mm in their greatest dimension.

Recordkeeping of Calcium and Bone Particle Size

The proposed recordkeeping requirements required that manufacturers of MSP maintain records to support the fact that the MSP met the proposed bone solids content requirement for MSP and the proposed bone particle size requirement for this product. The majority of the comments received in response to this requirement supported the requirement. The commenters believed that establishments should maintain records of bone solids content and bone particle size because it assists in compliance and provides an incentive for good process control. A number of commenters argued that mandatory recordkeeping for bone particles would have operational costs associated with it, which are proven to be unnecessary, particularly in light of the fact that there is no food safety issue of concern.

FSIS has reconsidered the need for establishments' keeping records on bone solids content (measured as calcium) and bone particle size in light of the comments that stated that a recordkeeping requirement was unnecessary. The Agency wishes to be cooperative to ease burdens on industry, in appropriate situations, and allow flexibility in the manner in which requirements can be carried out, where it can do so and still carry out its statutory missions to prevent the distribution of adulterated and misbranded meat and poultry products. Consistent with this effort, the Agency in its proposal for MSP did not require the industry to either carry out any prescribed tests for bone solids content or bone particle size of the MSP produced, or to carry out any type or amount of sampling of the MSP produced. The agency has now concluded that removal of the recordkeeping requirement for bone solids content and bone particle size will appropriately allow producers even more flexibility in meeting these requirements. FSIS, of course, expects producers of MSP to comply with the bone solids content and bone particle size requirements, and it will implement spot checks in order to verify that such compliance is occurring by producers of MSP. If during these spot checks, or during any other inspection or compliance review, FSIS finds a problem, it believes, however, that any records producers have maintained in regard to compliance with these requirements, will be helpful to FSIS and, in turn, to the industry, in evaluating the company's control of bone solids content and bone particle size.

B. Use Limitations and Restrictions

Most of the commenters responding to the issue regarding limitations on the use of MSP disagreed with the Agency's position that limitations of use in products composed of whole muscle or of MSP made from fowl are needed. The commenters believe that there should be no limitations on use because there are no safety or health concerns regarding MSP. They also believe that use levels of MSP should not be restricted because the marketplace is a better judge of the quality of poultry products that are composed of MSP than FSIS. However, two commenters agreed in part with the proposed limitations. The two commenters agreed that where a poultry product is required to be prepared from a particular Kind or Kinds of poultry (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey) should not be permitted.

FSIS also received 11 comments regarding the fluoride content of MSP made from fowl and the use of MSP made from fowl in baby food. All of the commenters disagreed with the proposed limitation on the use of product made from fowl in baby foods because of potential health implications associated with over-consumption of

fluoride in infants' diets. One commenter stated that based on discussions with baby food companies, a local children's dentist, experts from Duke University Medical Center, the University of North Carolina School of Dentistry, and the American Academy of Pediatrics, there is not one known documented or suspected case of fluoride problems related to chicken in baby food. Furthermore, the commenter stated that these people had very encouraging remarks for the positive effects that fluoride from all food sources has had on the overall dental health of the children in our country.

FSIS continues to believe that the use of MSP should be limited in certain poultry products. In response to the commenters that said where a poultry product is required to be prepared from a particular kind or kinds of poultry (e.g., chicken), use of MSP of any other kind (e.g., mechanically separated turkey) should not be permitted, FSIS agrees. This provision assures that MSP made from a certain kind of poultry is not used in a poultry product represented as containing ingredients from a different kind or kinds of poultry, thus avoiding situations of misbranding.

The Agency however, agrees with comments on the proposed use restrictions of MSP in processed products composed of whole poultry muscle that suggested a restriction was unnecessary because the use of MSP in a product formulation is an issue of product quality. The Agency recognizes the increasing market popularity of convenient, ready-to-cook or ready-to-eat products that are composed of whole poultry muscle to which a portion of MSP is added. MSP benefits the manufacture of such products because it is batter-like and can be molded to form a desired product shape, and fill voids or spaces to make product shapes uniform. The level of use of MSP that is associated with these products exceeds the level that is used for strictly binding muscle pieces together—an allowance that was acknowledged in the proposal. The presence of MSP will be declared in the ingredients statement according to the requirements in this final rule. Therefore, regardless of the level of MSP used, consumers will have the information necessary to make an informed purchase decision.

The Agency is also keenly aware that with the allowance for the addition of MSP (and other highly comminuted boneless poultry products) to products composed of whole poultry muscle there is presented an issue regarding truthful and non-misleading product names. The names for these products should also convey to the consumer that the product is not composed of entirely intact, whole muscle, perhaps through the use of a qualifying statement. It is expected that the names for products composed of whole poultry muscle and portions of MSP, or other boneless, comminuted poultry, would reflect this fact in their names to make them truthful and accurate. The Agency will be assessing for possible future policy development the broad issue of the appropriate naming of products composed of MSP or other boneless poultry to convey to consumers that they are not composed of intact, whole muscle, as may be expected.

FSIS agrees with the commenters views that there is no need for a requirement that would impose restrictions based on the potential fluoride contribution of MSP made from fowl (i.e., mature female chickens). In the proposed rule, FSIS proposed restricting the use of MSP made from fowl in baby, junior, and toddler foods, citing its concern for the potential effect of fluorosis in the susceptible population of babies, infants, and toddlers. MSP made from fowl has higher amounts of fluoride because the bones of older female chickens contain more fluoride than younger chickens. In the proposal, the Agency cited the conclusions of the 1993 National Academy of Science's (NAS) Subcommittee on Health Effects of Ingested Fluoride (NAS Fluoride Report)[9] which indicated that the most effective approach to controlling the prevalence of dental fluorosis, without jeopardizing the benefits of fluoride to oral health, is likely to come from more judicious control of fluoride in foods, especially those items used by young children. The Agency requested that commenters provide any information that would either reaffirm or contradict the conclusions reached in the 1979 health and safety report regarding fluoride.

After reviewing the information submitted by commenters, and reevaluating the findings of the NAS Fluoride Report, FSIS no longer has a concern regarding the potential effect of fluorosis. Most noteworthy among the information FSIS considered in withdrawing the proposed limitation on MSP from fowl are reports of the changing sources of fluoride ingestion, the positive effects of increased fluoride intake on reduction of dental caries in the 1990's, and the decrease in the ingestion of fluoride from infant formulas since 1979. Therefore, FSIS will not impose a restriction on the use of MSP from fowl in baby, junior, or toddler foods. Because the Agency has concluded that MSP made from fowl should not be restricted in baby foods, there is no longer a need to require the labeling of MSP from fowl, as ''mechanically separated chicken, made from fowl,'' as proposed.

In addition, in response to comments seeking clarification on the uses of MSP, FSIS will not prohibit the use of MSP in cooked sausage products, such as frankfurters, franks, furter, hot dogs, vienna, bologna, garlic bologna, knockwurst, and similar products. The Agency will permit MSP to be used alone or in combination with poultry meat in cooked sausage products identified in 9 CFR 319.180, however, not in excess of 15 percent of the total ingredients, not including water. FSIS is amending 9 CFR 319.180 to allow for such use. FSIS inadvertently omitted such a provision in the proposed regulations.

C. Labeling

Commenters had varying opinions regarding the labeling of poultry product produced by mechanical separation as ''MSP.'' Of the 14 commenters responding to this issue, three stated that poultry product produced by mechanical separation should be labeled as ''mechanically separated (chicken, turkey, or other kind of poultry) with skin,'' because consumers have a ''right-to-know'' that skin and other ''by-products'' are present. Two stated that MSP should be listed in the ingredients statement on a product's label. Other commenters also suggested that there should be full disclosure of all ''ingredients'' resulting from the mechanical deboning process, including bone particles, marrow, kidneys, sex glands and lungs. Another commenter disagreed with the Agency's proposed requirement to label MSP from fowl as such.

In response to comments that stated that MSP should be labeled to reflect the presence of skin, skin is a naturally existing edible component of poultry. Consumers have historically accepted and purchased whole poultry carcasses (e.g., ''basted young turkey'') and parts of carcasses (e.g., ''chicken drumsticks'') with skin, as well as cooked poultry products, e.g., fried chicken, without the presence of skin being specifically reflected on the product's label. FSIS believes that the presence of skin should be labeled only when it is present in excess of natural proportions because this would be a condition in conflict with what a consumer expects poultry to be. If skin is added to a product and

[9] This report is available for public review in the FSIS Docket Clerk's office.

is present in an amount that exceeds that found naturally on the carcass or the part of a carcass according to the figures presented in the regulations (9 CFR 381.117(d)), the label must reflect the presence of skin. FSIS has determined that the name of the product (e.g., ''Mechanically Separated (Kind of Poultry) (MSP))'' must be followed immediately by the phrase ''with excess skin'' unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass, as presented in the regulations.

Furthermore, there must be appropriate descriptive terminology on the labeling of MSP (with or without skin in excess of natural proportions) if heat treatment has been used in the preparation of such product, e.g., ''cooked mechanically separated (kind of poultry).'' Because cooking would affect the use of MSP, FSIS is requiring that such characteristic be clearly identified on the label when MSP leaves the establishment at which it is manufactured. The poultry products inspection regulations already require that information on use, including deviations from the natural whole carcass proportion of skin as well as the fact of cooking, appear on the label of boneless poultry products produced by mechanical separation (9 CFR 381.117 (d)). The presence of skin or its presence in excess of the natural whole carcass proportion would continue to affect product use if the regulations are amended. The use of heat treatment in the preparation of the product also would be of continuing relevance (9 CFR 381.157(a)). FSIS is requiring the labeling for excess skin in MSP and for heat treatment of MSP in order to assure consistency with regulatory requirements in 9 CFR 381.117 (d) for boneless poultry products and, thereby, to prevent the adulteration and misbranding of finished poultry products and meat food products.

In response to other comments on the need for disclosure of the potential constituents of the starting materials from which MSP results (i.e., bones with muscle tissue and other edible tissue, with or without skin), FSIS has certain regulatory requirements in this final rule or currently in the regulations that address bone particles, kidneys, sex glands, and lungs that negate the need for specific labeling of these constituents.

This final rule will continue the current limit of 1 percent bone solids (measured as calcium) that has been applied to all boneless poultry products since 1969. The size of bone particles has been limited by this final rule as a process control criterion to ensure that the process of mechanical separation is operating in accord with good manufacturing practices. There are no health or safety issues concerning the bone content or bone particle size criteria being established by this rule. Furthermore, the requirement that processed poultry (and meat food) products bear nutrition labeling that includes a calcium declaration in the Nutrition Facts panel will provide meaningful information to consumers who wish to monitor their calcium intake and will reflect the calcium contributed to a product from bone. For these reasons, specific labeling that addresses the presence of bone and bone particles is not necessary.

In regard to the comments on the need to label the presence of bone marrow, no factual basis was provided that would justify such labeling. As explained below, the Agency believes such labeling is unnecessary due to the extremely small amount of marrow that is potentially present, the composition of marrow, the lack of any health or safety concerns about bone marrow from poultry bones, and the role of nutritional labeling in disclosing any potential nutritional impact from the presence of bone marrow in a product. Discussions with poultry scientists, physiologists and geneticists at a variety of universities and research organizations support this conclusion. Based on the limited available data and the discussions with these experts, the following response to the comments on the need for labeling bone marrow in MSP is offered.

Most of the ready-to-cook poultry marketed today are raw, uncooked young poultry carcasses. The bones with attached edible tissue of this class of poultry represent the bulk of the starting materials from which MSP is produced. Young chickens, i.e., broilers, are typically less than 7 weeks of age (although the poultry products inspection regulations, 9 CFR 381.170, define them as being under 13 weeks). Young turkeys are typically less than 8 months of age according to the poultry products inspection regulations (9 CFR 381.170). The young age at which these birds are marketed does not provide time for the production of substantial bone content and, thus, bones from such poultry would not contain much marrow. Moreover, the physiology of poultry is such that, in order for the birds to fly, their bones cannot be dense with tissue and most of the bones could be categorized as being composed mostly of air with minimal tissue (marrow) content. In fact, references [10] indicate that the bones of most birds are porous; many are filled with air, not marrow, and are connected to the respiratory organs. The bones with some marrow are mostly the larger ones, e.g., the leg bones, and are involved in blood production, the function of ''marrow.'' In actuality, the bone marrow represents part of the bird's vascular system.

Information on the actual amount of marrow in poultry bones is lacking. According to the 1979 report entitled ''Health and Safety Aspects of the Use of Mechanically Deboned Poultry,'' marrow content varies in amount with age of the bird, and varies between different bones from the same bird. Determining the actual amount of marrow is difficult because it is difficult to separate marrow from the inner surfaces of bones, and to determine what proportion of the separated tissue is actually ''marrow.'' Moreover, because bone marrow is composed of fat, heme pigments, blood cells, and other constituents normally found in the edible tissue of poultry, it would be difficult to distinguish it from the other edible tissue comprising MSP to determine the minimal amount that may actually be contributed to MSP.

However, with regard to the minimal contribution of bone marrow to MSP that may be possible, it has not been reported to be a health or safety concern. The 1979 Report, the most comprehensive review of MSP to-date, is reliable today as an information source because the basic composition of poultry that would be the starting materials for MSP has not changed since the report was prepared. The 1979 Report made no recommendations regarding the presence of marrow and the need for specifically labeling bone marrow.

Therefore, because it has been estimated that there would be an extremely small marrow constituent in MSP, so small and so similar in composition to other components of MSP that it would be difficult to quantify it, and that there are no known health or safety issues with regard to bone marrow, there is no basis for the specific labeling of bone marrow in MSP. If data on the quantity of bone marrow in MSP become available at some point in the future that would present a basis to reconsider this position, the Agency would certainly reconsider it.

[10] Terres, J.K., 1991. The Audubon Society Encyclopedia of North American Birds, Wings Books, New York. A copy of this reference is available for review in the FSIS Docket Clerk's office.

The 1979 Report did, however, suggest that bone marrow is a potential source of cholesterol in MSP, in addition to that contributed by skin and muscle tissue. The 1979 Report recommended that because of the potential contribution of cholesterol in MSP to foods, which may be of importance to people who have the hereditary condition known as hypercholesterolemia, it is desirable to identify products that contain MSP. This final rule requires that the MSP in a product be labeled and, thus, the recommendation of the 1979 Report has been accepted. More importantly, recent regulations on nutrition labeling address the issue of the potential contribution of cholesterol to the diet from any food. Thus, the potential minimal contribution of marrow to the cholesterol content of a product would be reflected in the mandatory labeling of cholesterol, which is reflected in the Nutrition Facts panel of a product's labeling.

As noted, raw, uncooked young poultry carcasses make up the majority of the ready-to-cook poultry marketed today. Young poultry carcasses are currently sold with kidneys and have been historically sold in this manner. The presence of kidneys in young poultry does not pose a health or safety concern because there are no constituents, e.g., heavy metals, known to be present in these kidneys that are of potential concern. Kidneys from young poultry can be present in the poultry purchased at the supermarket and in the poultry products consumed at retail fast food outlets.

FSIS does, however, require the removal of kidneys of mature turkeys and chickens from their carcasses before completion of the eviscerating operations during the slaughtering process (9 CFR 381.65(d)). Kidneys of mature poultry pose a potential health concern because of the possibility of the presence of certain constituents in these organs, e.g., heavy metals, such as cadmium, which are deposited in the kidneys of older birds over time.

Since kidneys of young poultry pose no health or safety concern and have been historically accepted in ready-to-cook poultry, there is no basis to require specific labeling of these on a product's label. Furthermore, since kidneys from mature poultry must be removed, there is no basis for requiring labeling of kidneys from mature poultry.

In response to comments on the presence of sex glands in MSP, mature reproductive organs (or sex glands) are precluded from being present in ready-to-cook poultry, i.e., poultry subsequent to the slaughtering process, by the poultry products inspection regulations (9 CFR 381.1(b)(44)). Therefore, mature sex glands cannot be present as part of the carcasses or parts of carcasses that are the starting materials from which MSP is made. Mature male sex glands are, however, marketed as an edible poultry product known as ''chicken or turkey fries'' in various regions of the United States.

There are no prohibitions on the presence of immature sex glands, however, in poultry carcasses or parts of carcasses sold to the consumer, or in ready-to-cook poultry used as starting materials for MSP. Immature sex glands have historically been present in these products because they are considered to be an indistinguishable part of the edible tissue of poultry. The young age at which most chickens and turkeys are marketed (as previously noted) does not provide ample time for the development of reproductive organs, e.g., in chickens, sexual maturity of the testes and ova does not begin until about 20 weeks of age. At 6 or 7 weeks of age, the age at which most broilers (the source of most starting materials for MSP) are marketed, the sex glands are merely a thin membrane covering over undefined tissue which is no different in biological or chemical function than other, edible tissue of the carcass. At 6 or 7 weeks, the weight of the barely distinguishable, inert tissue that will later become the sex glands has been estimated to be less than a tenth of a percent of the weight of the raw, uncooked broiler. There are no health or safety concerns related to immature sex glands. Thus, because the tissue of immature sex glands is virtually indistinguishable from other edible poultry tissue and there are no health or safety concerns related to immature sex glands, there is no need to require specific labeling of their presence in a product.

With regard to poultry lungs, poultry lungs must be removed during the processing of ready-to-cook poultry. Lungs are not defined as part of the edible portion of ready-to-cook poultry and must be removed according to the poultry products inspection regulations (9 CFR 381.1(b)(44)). Therefore, specific labeling regarding the presence of lungs is not needed, since lungs are removed before the starting materials used for MSP are obtained.

As noted, a comment was received on the need for the proposed labeling requirement for MSP made from fowl. Because FSIS is not restricting the use of MSP made from fowl, it is eliminating the proposed labeling requirement which requires products made with mechanically separated chicken from fowl to contain on the label the phrase ''made from fowl'' after the product name (e.g., ''mechanically separated chicken (made from fowl)).''

D. Nutrition

Although FSIS did not propose any specific requirements that addressed nutrition, the Agency did receive several comments related to ''Nutrition Facts'' and cholesterol. Fifteen commenters stated that the ''Nutrition Facts'' on product labels is a reflection of the product formula that will satisfy consumers concerning poultry product produced by mechanical separation. Three other commenters stated that cholesterol is not an issue in poultry product produced by mechanical separation.

FSIS recognizes that a recommendation in the 1979 Report was to label products containing MSP with cholesterol content information. This recommendation was based on the evaluation of cholesterol contents of different MSP products that showed they were nearly double the contents in hand-deboned poultry. However, it was stated that, based on consumption estimates, daily increases in cholesterol consumption from use of MSP would be negligible on a per capita basis, and would not pose a health hazard for the general public. It was noted that, for a small segment of the population which must limit their intake of cholesterol for health reasons, foods containing MSP should be specifically labeled to show its presence. However, specifically labeling cholesterol on products containing MSP is not an issue because the provisions of the nutrition labeling regulations (58 FR 632) published by FSIS, which were effective July 6, 1994, would be a means of educating consumers regarding certain nutrients and other components of processed meat and poultry products produced by mechanical deboning, including cholesterol.

E. Safety Concern Regarding Poultry Products Produced by Mechanical Separation

FSIS received 1426 comments regarding the safety of poultry product produced by mechanical separation. Fourteen hundred and twenty commenters stated that there are no safety concerns regarding the use of poultry product produced by mechanical separation. Some of the commenters stated that there are no bone particles of a size that would pose a health concern. Five of the commenters believe that Hazard Analysis and Critical Control Point (HACCP) addresses the needs for process controls that would be related to

poultry product produced by mechanical separation. One commenter suggested that the proposed rule has no conceivable relationship with health or safety, and is a timely example of unnecessary regulation.

In addition, one commenter stated that there are microbiological concerns specific to poultry product produced by mechanical separation. The commenter pointed out that the skin of poultry, including pin feathers, feather particles, and hair are sources of potential microbiological contamination.

FSIS agrees with the commenters that there are no unique safety or health concerns regarding the use of poultry products produced by mechanical separation. Although the data reviewed in the 1979 Report indicate that poultry products produced by mechanical separation generally are acceptable from a microbiological standpoint, the data also show that, where bacterial loads tend to be higher, it can be attributed to the starting material used. This is not unique to poultry products produced by mechanical separation; it can be applied to other finely comminuted and comminuted products as well. FSIS is currently developing a separate rulemaking on HACCP and pathogen reduction efforts that will deal with this issue more fully for all poultry and meat products, including poultry products produced by mechanical separation, and the material from which they are manufactured.

F. Economic and Market Impact

FSIS received 1720 comments on the economic and market impact of the proposed rule on industry. The comments fell into four general categories: (1) The Agency's economic analysis was not sufficient; (2) the new labeling requirement would reduce the demand for products containing MSP; (3) the labeling costs are underestimated; and, (4) the meat industry has been hurt by a similar labeling requirement. These comments are presented and responded to below.

Adequacy of the Agency's Analysis on Economic Impacts

The Small Business Administration (SBA), citing many of the industry objections to the proposed rule, advises that it does not concur in the Administrator's conclusion that the proposed rule will not have a ''significant economic impact on a substantial number of small entities,'' and that, therefore, under the Regulatory Flexibility Act, a more substantial economic analysis is required to support continued rulemaking in this matter. SBA states its belief that further analysis would reveal significant additional costs to industry and disproportionate impacts on small entities, and would disclose other, less burdensome regulatory options.

Others made comments similar to those of the SBA, namely, that the economic analysis of the proposed rule was inadequate and that the proposal constitutes a major rule requiring a far more detailed economic analysis prior to final rulemaking.

Neither the SBA comment nor any other comment received provides data or other evidence that would cause the Agency to alter its estimate of the impacts outlined in the proposal or the economic assumptions upon which they are based. No new evidence has been provided that suggests that this rule will have a disproportionate, or even a significant, economic impact on a substantial number of small entities. Moreover, FSIS believes that the 12-month period prior to implementation of the final rule and its requirements, including the labeling requirements, will render the attendant costs to manufacturers, including small businesses, negligible.

Proposed Requirement Would Reduce Demand for Product

Several commenters believe that the effect of the labeling requirements will be a significant economic and market impact on manufacturers of MSP and that the impact has not been adequately considered by the Agency. It is their belief that this impact would come from the fact that the new label would be unappealing to consumers and would lead commenters to believe that the product is inferior to what they are used to buying, or that something new has been added to the product, or that the product has undergone other changes. This confusion would, they believe, adversely affect demand for products containing MSP.

One commenter indicated that many manufacturers may choose to avoid the misleading connotations of the proposed labeling and reformulate their products with other, more costly ingredients. The commenter further stated that if only 25 percent of the usage of this ingredient were curtailed on this basis, net costs to consumers from such manufacturing decisions would exceed $134 million dollars per year.

Another commenter provided the information that the current market price quotes for raw comminuted turkey meat (frozen, 20% skin) are less than current price quotes for hand-deboned breast and scapula trim meat and boneless, skinless thighs by about $0.50/lb. to $1.00/lb., in order to illustrate that reduced purchases due to the proposed labeling would force industry to use higher cost ingredients such as hand-deboned and boneless meats and that such costs would be directly passed on to the consumer.

Another commenter raised the same issue, indicating that companies that are apprehensive about the labeling change and that fear that their brands will be damaged by the potential negative connotation will reformulate products with higher cost materials. According to this commenter, reformulation will have the effect of increasing the cost of raw materials for both poultry and red meat, ultimately raising the consumer's cost to purchase these products. The commenter stated that the proposal did not address the cost of replacement raw materials and the effect on the raw materials market and believes that if these factors were included in the economic impact, the cost would be between $150 and $200 million.

FSIS has not acquired any reliable data to support the assertion that this rule's labeling requirements will adversely affect the demand for products containing MSP. FSIS believes, however, that if the rule's labeling requirements do reduce demand to some extent for the product or products containing MSP, then it is difficult to draw any conclusion other than that the consumer has been misled by the absence of such labeling.

The primary objective of the Agency's labeling authority is to facilitate informed purchasing decisions. If, as a result of labeling requirements, some consumers will not want the products such evidence would strongly suggest that such labeling is needed. It is the responsibility of FSIS to help ensure that labeling is not deceptive or misleading, and it would be contrary to the Agency's statutory objectives to permit misleading labeling.

The Agency does not believe, however, that it is likely that consumers will face less choice in the market and be forced to buy similar products with higher-cost ingredients because of this rule. In an industry as competitive as the poultry industry, the products demanded by the consumer will be produced. Price is an important factor in selling products, and consumers are unlikely to abandon a popularly-priced, high-quality product which they have found to be satisfactory simply because it has a more informative label. Further, if some consumers shift to their purchases to higher-priced products, it is difficult to see why this would not be a favorable outcome for both the consumer and the industry. The Agency

believes that the poultry industry is a mature and sophisticated industry that is capable of producing and marketing any array of products for which there is a demand, and that this rule will not restrict or hamper the industry's ability to meet the needs and desires of its customers.

The Red Meat Experience With Similar Labeling

One commenter stated that the meat industry's experience in a comparable regulatory situation strongly, if not conclusively, suggests that assumptions made in the economic analysis are invalid.

The Agency assumes this commenter is referring to the widely held belief that product labeled as ''Mechanically Separated (Species),'' here referred to as MSM, has not been a highly profitable undertaking for the red meat industry. The Agency has no data to confirm or refute this proposition. It does believe, however, that the red meat and the poultry situations are not comparable from an economic point of view.

The red meat industry never had an established market for MSM, and it would be difficult to attribute the asserted lack of success to the required label rather than to the decision not to try and build that market. Further, it is not obvious that the MSM label is solely responsible for the decision not to try to build the market. Numerous other factors, particularly the marketing expense of launching new products with an unknown demand, could have been a determining factor in the decision not to try to build a new market for MSM products.

The poultry industry, on the other hand, has established markets and satisfied consumers for products that have always been made with MSP. Its position is, therefore, not comparable to that of the red meat industry which would have to take a chance on new products with an unknown consumer reception.

Labeling Costs

One commenter stated that his company would have more than 250 labels affected by this rule. The company believes that it will cost a minimum of $1,000 for each label change, which includes internal management time, printing costs, and obsolete label inventory.

The cost of labeling changes can be significantly reduced by allowing companies to use up their old stocks, which the rule has provided for by making the rule not effective until one year from its publication date.

G. Finished Poultry Products and Meat Food Products

Several commenters disagreed with the Agency's proposed position to regulate MSP as a distinctive ingredient with standardized characteristics that is defined by its own name, e.g., ''Mechanically Separated (Kind of Poultry)'' which must be declared in the ingredients statement of finished product labels. One commenter noted that the Agency has provided no evidence of salient differences between what they refer to as ''finely ground poultry'' and hand-deboned poultry to suggest that mechanically separated poultry should be regulated as proposed. The commenter further stated that the Agency has provided no legitimate reasons for treating mechanically separated poultry and MSM similarly and for regulating the final products based on the process used to make them. The commenter noted that the poultry industry uses raw materials containing greater proportions of meat and produces a product much lower in bone content, which is analytically similar to whole muscle cuts from the same species.

In addition, another commenter suggested that since calcium and cholesterol nutrition information is fully disclosed in the Nutrition Facts panel, which is a reflection of the product formula, the term ''mechanically separated'' is not needed in the ingredients statement.

FSIS believes that such a labeling requirement is necessary to fulfill its statutory responsibility to protect consumers by assuring that the labels of finished poultry products and meat food products are accurate. MSP is materially different in form and texture as compared to hand-deboned poultry, and this is a direct result of the mechanical separation process and the types of starting materials used to make MSP. MSM is a similar red meat product, resulting from a similar process. FSIS has concluded that MSP should be defined by its own name, i.e., ''Mechanically Separated (Kind of Poultry),'' and should be declared in the ingredients statements on finished product labels.

The starting materials used to make MSP may vary in the amount of edible tissue remaining on the poultry bones after hand-deboning, but the variance is minimal because a substantial portion of the muscle and other edible tissues has already been removed by hand-deboning methods. That a significant amount of muscle remains on the bones is not likely because the process of mechanical separation for both poultry and livestock has been designed to salvage the tissue left on the bones to produce a wholesome, low-cost, and functional poultry product. The comparison made by a commenter regarding the amount of tissue on starting materials for making MSP and materials used to make MSM is irrelevant. It is the fact that the process starts with bones on which a minimal amount of tissue remains and that both processes are designed to salvage muscle and other edible tissues, and both processes result in a paste-like and batter-like product in terms of form and consistency, that warrant their distinct declaration.

H. Ergonomic Impact

FSIS received several comments regarding the ergonomic impact of this rule. According to the commenters, mechanical deboning systems have substantially lowered the risk of cumulative trauma disorders (CTD) resulting from repetitive hand, arm, and wrist motions. However, the commenters indicated that industry may be forced to use more hand-deboned products in lieu of this wholesome mechanically separated product due to this rule. The commenters believe the rule negatively impacts the industry's ability to use mechanical deboning and other ''mechanical'' means in harvesting meat from turkey and chicken parts and carcasses. They indicated this is because the labeling requirements will diminish sales and production of products containing MSP and make the industry revert to using hand-deboned poultry.

FSIS agrees that it is likely that mechanical separation systems have substantially lowered the risk of cumulative trauma disorders, although there were no data supplied to document this conclusion. However, FSIS does not agree with the assertion that this rule will force industry to use more hand-deboned products, in lieu of mechanically separated product, because of the requirement that use of MSP in a product be separately reflected in a product's ingredients statement. This assertion appears to be based on the assumption that it would be economically feasible to hand debone the materials from which MSP is made. However, FSIS does not believe that it would be economically feasible for the industry to hand debone, as opposed to mechanically separate, the bits and pieces of poultry that remain on poultry carcasses, and parts of carcasses from which mechanically separated product is obtained.

I. Miscellaneous

FSIS received other miscellaneous comments which addressed the following issues: (1) use of MSP in the manufacture of a flavoring should not require a separate and distinct listing of MSP as an ingredient of the flavoring in the ingredients statement of the product in which it is used, (2) an extension of the comment period for 30 days should be granted, and (3) industry should be given sufficient time to use up most of its printed labels before the final rule's new labeling requirements become effective.

FSIS is familiar with the issue raised by the commenters that MSP is frequently used as a protein source for ''reaction'' (or process) flavors produced under the jurisdiction of the Food and Drug Administration (FDA) and may currently be labeled as ''(kind) flavor'' according to the guidelines on reaction flavors established by the Agency. FSIS does not intend to change these policies because the chemical reactions involved in manufacturing process flavors involves the removal of the soluble flavoring components of the poultry ingredients and does not include the solid portion of the poultry ingredients.

At the request of commenters, FSIS extended the comment period for the proposed rule an additional 30 days to March 6, 1995. FSIS considered these requests to have additional time to study and develop information relating to the proposal to be reasonable. Also, as discussed previously, FSIS has made its final rule effective one year from its date of publication, which should allow ample time to use up label stocks.

Executive Order 12866

This final rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Total federally inspected broiler and turkey meat production in the United States in 1993 was about 27 billion pounds on a ready-to-cook basis (i.e., subsequent to the slaughtering step in processing). (Broilers represent the majority of chickens grown and slaughtered in the U.S.) Broiler production was 22.2 billion pounds and turkey 4.8 billion pounds. Continued growth in poultry production has resulted in large increases in the volume of poultry meat going into further processed products such as bologna, hot dogs, fritters, patties, and luncheon meats, many of which use MSP. FSIS has estimated that 1 billion pounds of poultry product is processed annually into MSP, with a yield of 70%, or 700 million pounds of MSP product for human use. (Industry sources suggest that a larger amount of MSP product is produced annually.) FSIS estimated that 400 million pounds are used in sausage products and 300 million pounds in patties and nuggets. In any case, size of the market does not directly affect the cost of this rule (see below).

The Broiler Council estimates that broiler meat is produced in about 200 establishments, of which 50 are further processing establishments. MSP is produced in about 108 establishments. About 25–30 of these establishments with MSP equipment produce hot dogs. The product from the other 75–80 establishments is sold to establishments that further process poultry or to red meat processors. Industry sources indicate that some small firms specialize in MSP production, buying carcasses from poultry slaughter establishments for further processing.

Based on inspection task records, FSIS estimated that 108 establishments produce (or are capable of producing) MSP. An assessment of MSP production by establishment size is not available. However, total further processed product production by size of establishments shows 7 establishments with production less than 10,000 pounds of MSP annually. The average production of the 108 establishments is 51 million pounds of all further processed products.

Under this rule, products containing mechanically separated poultry are required to separately label ''Mechanically Separated (Kind of Poultry)'' in the list of ingredients. There is no precise information on the total number of products that currently contain MSP because MSP may appear simply as ''chicken'' or ''turkey'' in product formulations in which it is an ingredient. However, an estimate of the number of products containing MSP can be made by estimating the number of labels for MSP and for categories of products to which it is frequently added. These estimates were made by using the database of label information that is maintained by FSIS' Food Labeling Division, as part of the Agency's prior label approval system. There are 602,000 approved labels for poultry and meat, not all of which are necessarily in use. These include 529 labels for MSP itself. There is also an unknown number of labels for products containing MSP, such as frankfurters, chili, bologna, poultry baby foods, chicken nuggets or patties. FSIS estimates that, in total, about 5,000 products would require relabeling. There is no currently available data on the size breakdown of the establishments producing products containing MSP.

Costs and Benefits of the Rule

Analysis of the economic impact of a rule requires consideration of all significant costs and benefits.

Benefits

The benefits are the values consumers place on the ability to make a more informed purchase based on more accurate labeling. Informed purchases, which in this case result from accurate labeling, are an essential principle of the free market in which meat and poultry products trade and one of the principal justifications for the regulation of labels. FSIS has a statutory mandate to avoid false and misleading labeling. Therefore, if, as the Agency has determined here, a label is misleading or false, the Agency has a responsibility to correct that situation.

As discussed earlier in the preamble to this rule, several commenters suggested that the labeling requirements of the rule would adversely affect demand for products made with MSP. FSIS has not acquired any data that can be used to estimate the impact this rule will have on the demand for MSP. However, the Agency's experience is that consumers do distinguish between muscle meat and more finely comminuted product. It is also apparent that there are texture differences in these two types of products. The public comments on this action have reinforced this belief. Many commenters have stated that they believe consumers will not buy the product if it is labeled under the new requirement. Further, the producers of a similar red meat product, which already requires labeling of the type promulgated by this rule, claim that the required labeling keeps the public from buying their product. The Agency has not quantified the magnitude of change in consumer demand under the present rule, but it does recognize that these comments demonstrate there is widespread recognition that comminuted product could be viewed less favorably than muscle meat by the consumer.

Furthermore, as also discussed earlier in the preamble to this rule, the Agency has concluded that use of the term ''mechanically separated'' truthfully describes the nature of the product and that purchases of MSP using this label will accurately reflect the real value placed on it by consumers.

As a result of the current labeling practices, consumers are being misled and are possibly consuming more MSP than they otherwise would if they had better information. The extent to which

consumers reduce their demand for this product as a result of the labeling change will reflect the level to which consumers have been misled. The increased value placed by consumers on inaccurately labeled MSP products represents a welfare loss to consumers and society. The misdirected purchasing power placed on inaccurately labeled MSP products could be used to purchase other products of higher value to consumers. The greater the change value placed on this product by consumers, the greater the benefits of the rule. Revenue losses producers experience due to this shift in consumer demand are not social welfare losses, but instead represent resources misallocated toward the excess production of products containing MSP. To the extent that market prices for products containing MSP decline in response to shifts in consumer demand, losses experienced by producers represent gains to consumers and, thus, are in fact transfer payments from producers to consumers.

Taking into account consumer experience with MSP leads the Agency to believe that any change in consumer behavior will be negligible, and FSIS has not acquired any data to show any negative impact on poultry or poultry products made with MSP. The Agency also believes that MSP should continue to be a wholesome and safe low-cost source of protein with nutritional attributes comparable to ''chicken'' or ''turkey.'' As discussed earlier, MSP has certain desirable attributes that will ensure its continued use as an ingredient in many products.

Costs

The Agency recognizes that it has a responsibility to keep the cost impact of this rule to a minimum to keep the burden of regulation as low as possible on the industry. It has done this by giving sufficient time for most businesses to use up their inventory of labels, thus substantially reducing the cost associated with the rule.

Possible sources of costs associated with the rule include the following items:

A. Labeling Changes and Inventory

Under the final rule, finished products containing mechanically separated poultry are required to have ingredient statement labeling of the mechanically separated poultry as ''Mechanically Separated (Kind of Poultry).'' As reported in the proposed rule, estimates range from $200 to $3,000 per product for a simple product ingredient statement label change depending on the type of label. Comments in response to the March 1994 ANPR indicate that changes to the ingredients statement of most labels to which the final rule will apply would fall in the lower end of this range (about $600). FSIS previously reported in the proposal that, assuming an average cost of $1,000 per product, the cost of relabeling would be $5 million ($1,000 times 5,000 products). These estimated costs that were reported in the proposed rule assumed a typical 30-day effective date for implementation of the final rule and its requirements.

However, by establishing the one-year period from publication to the effective date for implementation of the final rule, labeling costs would be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required during the year-long period prior to the effective date of the MSP rule. Many firms routinely make label changes for existing products. For example, about 50% of the 180,000 labels submitted to FSIS each year for approval are for label changes on existing products. These label changes are made for various reasons that reflect the kinetic nature of the food industry and, in particular, the fast-paced research and development of new and modified meat and poultry products, e.g., changes to incorporate less costly, new, or more effective ingredients that extend shelf-life, improve taste or texture, or replace fat; changes to add recipes or consumer purchase incentives to labeling; changes to make new or different claims about a product's nutrient content or performance; changes to alter features such as net weight or logos; or changes to modify the color or size of print. These new MSP labeling requirements, therefore, can be worked in with other routine label changes. The modest costs associated with the MSP labeling change are nonetheless necessary to assure that consumers receive meat and poultry products with informative and nonmisleading ingredients statements.

Some firms may discard non-compliant labels when the final rule goes into effect. A survey of meat and poultry companies for the nutritional labeling rule indicated that firms carry an average label inventory of 5 to 6 months. Knowing this, FSIS established a 12-month period to allow ample time for an orderly transition to the new requirements of the rule, including the labeling requirements, and to assure that manufacturers of MSP, and of poultry and meat food products in which MSP is used as an ingredient, have ample time to exhaust current label stock. Therefore, it is not anticipated that manufacturers will have to dispose of label inventories that were printed or ordered for printing prior to publication of the rule. Thus, with the 12-month compliance period, inventory losses, if any, would be minor.

B. Bone Particle Size

A new requirement limits maximum bone particle size. FSIS believes bone particle size will not have a significant effect on actual production and is a measure that augments the current requirement of one percent or less bone solids to show that the process of separating bone from meat is operating effectively. As previously stated, FSIS did not in its proposal, nor is it in this final rule, requirement testing or sampling for bone particle size in MSP. The Agency has concluded that manufacturers should have the flexibility to decide how best to assure compliance with the bone particle size requirement.

Furthermore, the Agency agreed with commenters, as stated previously, that the requirements for keeping records on bone particle size (and bone solids) should not be mandated and, in this respect, will permit flexibility in meeting the rule's requirements. Thus, additional potential costs have been eliminated.

C. Other Costs

The Agency does not agree with the view presented by many commenters that any reduction in income from the reduction of consumption of MSP product labeled under the new requirement should be considered a cost of this rule. To the extent that purchasers reduce their consumption of MSP products because of the new labeling, the revenue received by the industry from such purchases is really revenue derived rom an inaccurate and misleading label, and are not properly considered as costs attributable to this rule given the statutory mandate.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the

FMIA and section 11 of the PPIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA and the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge to the provisions of this final rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Because the implementation date for this final rule provides ample time for transition to the new requirements, including the labeling requirements, producers with smaller lot size than large producers will not have higher compliance costs per pound of product because of relabeling costs attributable to the rule. By establishing the one-year effective date for implementation of the final rule, new labeling costs will be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required during the year-long period prior to the effective date and implementation of this rule.

Paperwork Requirements

This final rule will allow establishments to voluntarily maintain records of bone solids content and bone particle size as a measure of process control. FSIS will allow manufacturers flexibility to determine the best methods for compliance with these requirements, provided such procedures and methods are in accord with good manufacturing practices.

This final rule will also require labels of poultry products produced by mechanical separation (i.e., products currently termed mechanically deboned poultry or MDP) or products containing this ingredient to be revised to include in the ingredients statements the term ''Mechanically Separated (Kind of Poultry)'' and be submitted to FSIS for approval. However, by providing a one-year period between publication of this rule and the effective date for implementation, labeling costs will be substantially reduced. The cost of relabeling would be negligible because the mandated MSP label changes can be coordinated with other label changes planned or required to meet other regulatory tenets during the year-long period of promulgation of the MSP rule and its enforcement.

The paperwork requirements contained in this final rule have been approved by the Office of Management and Budget under control number 0583–0101.

List of Subjects

9 CFR Part 318

Meat inspection.

9 CFR Part 319

Meat inspection, Standards of identity

9 CFR Part 381

Food labeling, Poultry and poultry products, Standards of identity.

Final Rule

For the reasons set forth in the preamble, FSIS is amending 9 CFR parts 318, 319, and 381 of the Federal meat and poultry inspection regulations as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.6 is amended by adding a new paragraph (b)(13) to read as follows:

§ 318.6 Requirements concerning ingredients and other articles used in preparation of products.

* * * * *

(b) * * *

(13) Use of ''Mechanically Separated (Kind of Poultry),'' as defined in § 381.173 of this chapter, in the preparation of meat food products shall accord with § 381.174 and all other applicable provisions of this subchapter.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 319.180 is amended by revising the sixth sentence of paragraph (a) and the seventh sentence of paragraph (b).

§ 319.180 Frankfurter, frank, furter, hot dog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products.

(a) * * *. Such products may contain raw or cooked poultry meat and/or Mechanically Separated (Kind of Poultry) without skin and without kidneys and sex glands used in accordance with § 381.174, not in excess of 15 percent of the total ingredients, excluding water, in the sausage, and Mechanically Separated (Species) used in accordance with § 319.6. * * *

(b) * * *. These sausage products may contain poultry products and/or Mechanically Separated (Kind of Poultry) used in accordance with § 381.174, individually or in combination, not in excess of 15 percent of the total ingredients, excluding water, in the sausage, and may contain Mechanically Separated (Species) used in accordance with § 319.6. * * *.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.15 is amended by revising paragraphs (a)(1), (a)(2), (b)(2), and (c)(1) to read as follows:

§ 381.15 Exemption from definition of ''poultry product'' of certain human food products containing poultry.

* * * * *

(a) * * *

(1) It contains less than 2 percent cooked poultry meat (deboned white or dark poultry meat, or both) and/or

''Mechanically Separated (Kind of Poultry)'' as defined in § 381.173;

(2) It contains less than 10 percent of cooked poultry skins, giblets, or fat, separately, and less than 10 percent of cooked poultry skins, giblets, fat, and meat (as meat is limited in paragraph (a)(1) of this section) or ''Mechanically Separated (Kind of Poultry)'' as defined in § 381.173, in any combination;

* * * * *

(b) * * *

(2) It contains less than 15 percent cooked poultry meat (deboned white or dark poultry meat or both) and/or ''Mechanically Separated (Kind of Poultry) '' as defined in § 381.173, computed on the basis of the moist deboned, cooked poultry meat and/or ''Mechanically Separated (Kind of Poultry)'' in such product; and

(3) * * *

(c) * * *

(1) They contain poultry meat and/or ''Mechanically Separated (Kind of Poultry) '' as defined in § 381.173 or poultry fat only in condimental quantities;

* * * * *

5. Section 381.117 is amended by revising the section title and adding a new paragraph (e) to read as follows:

§ 381.117 Name of product and other labeling.

* * * * *

(e) On the label of any ''Mechanically Separated (Kind of Poultry) '' described in § 381.173, the name of such product shall be followed immediately by the phrase: ''with excess skin'' unless such product is made from poultry product that does not include skin in excess of the natural proportion of skin present on the whole carcass, as specified in paragraph (d) of this section. Appropriate terminology on the label shall indicate if heat treatment has been used in the preparation of the product. The labeling information described in this paragraph shall be identified on the label before the product leaves the establishment at which it is manufactured.

6. Subpart P is amended by adding new §§ 381.173, and 381.174 to read as follows:

§ 381.173 Mechanically Separated (Kind of Poultry) .

(a) ''Mechanically Separated (Kind of Poultry)'' is any product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses that has a paste-like form and consistency, that may or may not contain skin with attached fat and meeting the other provisions of this section. Examples of such product are ''Mechanically Separated Chicken'' and ''Mechanically Separated Turkey.''

(b) ''Mechanically Separated (Kind of Poultry)'' shall not have a bone solids content of more than 1 percent. At least 98 percent of the bone particles present in ''Mechanically Separated (Kind of Poultry) '' shall have a maximum size no greater than 1.5 mm (millimeter) in their greatest dimension and there shall be no bone particles larger than 2.0 mm in their greatest dimension.

(c) ''Mechanically Separated (Kind of Poultry)'' shall not have a calcium content exceeding 0.235 percent when made from mature chickens or from turkeys as defined in § 381.170(a)(l)(vi) and (vii) and (a)(2), respectively, or 0.175 percent when made from other poultry, based on the weight of product that has not been heat treated, as a measure of a bone solids content of not more than 1 percent.

(d) ''Mechanically Separated (Kind of Poultry)'' may be used in the formulation of poultry products in accordance with § 381.174 and meat food products in accordance with subchapter A of this chapter.

(e) Product resulting from the mechanical separation process that fails to meet the bone particle size or calcium content requirements for ''Mechanically Separated (Kind of Poultry)'' shall be used only in producing poultry extractives, including fats, stocks, and broths and labeled as ''Mechanically Separated (Kind of Poultry) for Further Processing.''

§ 381.174 Limitations with respect to use of Mechanically Separated (Kind of Poultry).

(a) A poultry product required to be prepared from a particular kind of poultry (e.g., chicken) shall not contain ''Mechanically Separated (Kind of Poultry)'' described in § 381.173, that is made from any other kind of poultry (e.g., Mechanically Separated Turkey).

(b) ''Mechanically Separated (Kind of Poultry)'' described in § 381.173 may be used in the formulation of any poultry or meat food product, provided such use conforms with any applicable requirements of the definitions and standards of identity or composition in this subchapter or part 319 of this chapter, and provided that it is identified as ''Mechanically Separated (Kind of Poultry).''

Done at Washington, DC, on: October 30, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–27305 Filed 11–1–95; 8:45 am]

BILLING CODE 3410–DM–P

federal register

Friday
November 3, 1995

Part VII

The President

Proclamation 6846—National Adoption Month, 1995

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6846 of November 1, 1995

National Adoption Month, 1995

By the President of the United States of America

A Proclamation

For many people across the United States, adoption provides a means for building and strengthening families. It places children into loving, permanent homes where they can flourish and grow up to become happy, healthy, productive members of our national community. Adoption also enables adults to experience the unique joys of parenthood.

As many as 70,000 children in America's foster care system may need adoptive families in the next few years—young people of all ages and backgrounds who, for whatever reason, cannot return to their original homes. Many, but not all, are children with special needs. These young people long for the same affection, security, and stability that most of us take for granted, yet too many have waited—and will continue to wait—for years to be adopted.

My Administration has taken important actions to encourage adoption and to support the wonderful families that choose to open their hearts and homes to waiting children. The Multiethnic Placement Act, which I signed into law in October 1994, helps to facilitate adoption for all children and families, regardless of their race or ethnic origin. We will continue to champion and improve programs that break down barriers to adoption through aggressive recruitment of families, financial aid to support placements, and technical assistance to agencies committed to special needs adoption.

As we observe National Adoption Month, we celebrate these achievements and recognize the rewards of adoption, but we must also remember that much work remains to be done. Citizens from all communities and organizations from the public and private sectors must join together to renew our commitment to finding permanent homes for each one of America's children.

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 November 1995, as National Adoption Month. I urge the people of the United States to observe this month with appropriate activities and programs and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, 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. 95–27516
Filed 11–2–95; 10:52 am]
Billing code 3195–01–P

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S. 227/P.L. 104–39

Digital Performance Right in Sound Recordings Act of 1995 (Nov. 1, 1995; 109 Stat. 336)

S. 268/P.L. 104–40

To authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes. (Nov. 1, 1995; 109 Stat. 350)

S. 1111/P.L. 104–41

To amend title 35, United States Code, with respect to patents on biotechnological processes. (Nov. 1, 1995; 109 Stat. 351)

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