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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AH31

Funding of Administrative Law Judge Examination

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to require agencies employing administrative law judges to reimburse OPM for the cost of developing and administering examinations for judge positions. The regulations implement Public Law 104–52 (November 19, 1995), which amended 5 U.S.C. 1104 to authorize OPM to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for the cost of administrative law judge examinations.

DATES: Interim rules effective on July 29, 1996. Written comments will be considered if received on or before August 28, 1996.

ADDRESSES: Send or deliver written comments to Donna Beecher, Deputy Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415 (FAX 202–606–1768).

FOR FURTHER INFORMATION CONTACT: Richard A. Whitford on 202–606–2525, TDD 202–606–0591, or FAX 202–606–1768.

SUPPLEMENTARY INFORMATION: The President's National Performance Review, in its 1993 report From Red Tape to Results: Creating a Government That Works Better 7 Costs Less, recommended that Federal agencies conduct their own competitive examining, with the option of obtaining examining services from OPM on a reimbursable basis. OPM's appropriations act for FY 96 implements this recommendation.

The Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52, November 19, 1995) amended OPM's authority in section 1104(a) of title 5, United States Code, to permit it to delegate examining authority for all competitive service positions except for administrative law judges. As a result, OPM will continue to be responsible for the conduct of the administrative law judge examination. Pub. L. 104–52 also requires agencies employing administrative law judges to pay the cost of OPM-conducted examinations for these positions.

OPM is reviewing 5 CFR § 930.201, dealing with appointment of administrative law judges, to reflect the new funding arrangement. The revised regulation requires the affected agencies to reimburse OPM annually for the cost of developing and administering administrative law judge examinations. For FY 96, the fee will be prorated to cover only the fourth quarter to reflect the level of examining conducted on behalf of the employing agencies.

The amount of the reimbursement fee will be based on each employing agency's proportionate share of the administrative law judge workforce. Employment levels will be taken from OPM's Central Personnel Data File (CPDF) as of March 31 of each year. In future years, OPM will need to notify agencies of their share of the third quarter of the fiscal year preceding the one in which reimbursement is due to allow for agency budget planning. Because agencies transmit personnel actions to CPDF on a quarterly basis, the most recent available data will be as of March 31 of each year.

For the future, OPM will establish a working group consisting of officials form representative agencies and OPM to review the effectiveness and efficiency of the program and make recommendations for needed improvements. OPM will notify each affected agency annually of the costs of the program, its obligation, and of payment procedures.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because the statutory basis for these regulations (Pub. L. 104–52) was effective on November 19, 1995, and OPM's reduced FY 96 appropriation necessitates collection of the reimbursement fee beginning in fourth quarter of FY 96. It would be contrary to the public interest and impracticable to delay implementation.

For the same reasons, and pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days.

Regulatory Flexibility Act

I certify that this regulation will not have a significant impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees, Motor vehicles.

Office of Personnel Management.
James B. King,
Director.

Accordingly, OPM is amending 5 CFR part 930 as follows:

PART 930—APPOINTMENT, PAY, AND REMOVAL OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for part 930 continues to read a follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3323(b), 3344, 4301(2)(D), 5372, 7521.

2. In § 930.201, paragraph (c) is added to read as follows:

§ 930.201 Coverage.

* * * * *

(c) In accordance with 5 U.S.C. 1104(a)(2), OPM shall conduct competitive examinations for administrative law judge positions, and agencies employing judges shall reimburse OPM for the cost of

developing and administering such examinations. Each employing agency's share of reimbursement shall be based on its relative number of administrative law judges as of March 31 of the preceding fiscal year. OPM will work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. Subsequently, OPM will annually compute the cost of the examination program and notify each agency of its share, along with a full accounting of the costs, and payment procedures.

[FR Doc. 96–19100 Filed 7–26–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends its General Administrative Regulations by revising the Disputes clause. The intended effect of this rule is to provide reinsured companies with an informal reconsideration process through an administrative officer of FCIC and the right to appeal the administrative officer's determination to the Board of Contract Appeals.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, (202) 720–2832.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

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 constitutes 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 March 31, 1999.

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

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments of the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications 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.

Regulatory Flexibility Act Analysis

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies should not increase because this action only changes the forum which determines the validity of decisions rendered by the agency. 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.

Federal Assistance Program

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

Executive Order 12372

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.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions contained in these regulations and the appeal provisions promulgated by the Board of Contract Appeals, 7 CFR part 24, subtitle A, must be exhausted before action for judicial review may be brought.

Environmental Evaluation

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.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

As a result of the Departmental reorganization mandated by the Department of Agriculture Reorganization Act of 1994, FCIC must amend its dispute provisions located at 7 CFR 400.169 to provide reinsured companies with a mechanism to request reconsideration of appeal of adverse decisions determined by FCIC.

On May 1, 1995, FCIC published an interim rule in the Federal Register at 60 FR 21035 to amend the General Crop Insurance Regulations, Subpart L, Reinsurance Agreement; Standards for Approval, by revising the disputes clause to provide reinsured companies with an informal appeal process through the FCIC, and a formal appeal process through the United States Department of Agriculture Board of Contract Appeals (BCA), for the purpose of resolving

disputes between the FCIC and reinsured companies on Standard Reinsurance Agreement (SRA) issues. Following publication of that interim rule, the public was afforded 60 days to submit written comments, data, and opinions. On August 7, 1995, FCIC extended the comment period for these regulations to August 18, 1995 (60 FR 40055). Three comments, two from private law firms and one from a trade association were received in response to the requests for comment on the interim rule.

Comment: All three comments questioned the jurisdiction of the United States Department of Agriculture BCA over SRA issues in dispute since the SRA is not a typical Federal procurement contract.

Response: The BCA continues to function as the agency board pursuant to the Contract Disputes Act of 1978 (Act), *and* as the agency board pursuant to jurisdiction outside the Act as set forth in 7 CFR § 24.4. The BCA's jurisdiction is not, and never has been, limited to procurement disputes. Section 24.4 has been expanded to specifically cover appeals of final administrative determinations of FCIC pertaining to the SRAs under 7 CFR § 400.169(d). Since BCA has jurisdiction over these issues, the disputes are not ''adverse decisions'' subject to appeal before the National Appeals Division according to 7 U.S.C. § 6991. They also are specifically excluded from the scope of Farm Service Agency informal appeal regulations published at 7 CFR part 780. Disputes involving SRAs raise factual and legal questions of a contractual nature which fall within the express expertise of the BCA. The rules of procedure for these appeals are the same as for all others under 7 CFR part 24. There is no longer a distinction between ''statutory'' and ''nonstatutory'' appeals.

Comment: All three comments expressed concern with respect to the BCA's jurisdiction to hear appeals of final determinations rendered under § 400.169.

Response: The BCA amended its jurisdictional provisions on November 7, 1995 (60 FR 56206) to provide the BCA with jurisdiction over final administrative determinations of the FCIC pertaining to SRAs under 7 CFR § 400.169(d). That is separate from its jurisdiction to hear contract disputes under the Contract Disputes Act. Therefore, no change will be made.

Comment: Two commentors questioned the nonappealability of FCIC decisions rendered under bulletins and directives and complained that FCIC was limiting the companies' due process rights by limiting the types of disputes appealable.

Response: The interim rule does not limit the companies' due process rights or their right to appeal any decision of FCIC based on any bulletin or directive that affects, interprets, explains or restricts any term of the SRA. FCIC has the right to limit the appeal of any decision that is solely within its discretion and not required under the SRA. Bulletins or directives that *do not* affect, interpret, explain or restrict any term of the SRA include, but are not limited to, those that provide changes in crop insurance policies before the contract change date, the addition of new crop insurance policies or programs, granting relief from requirements or sanctions if such requirements or sanctions are not required by the SRA, and requiring companies to take actions to protect the integrity of the program, even if such action may cause the company to incur additional costs, provided such requirement is implemented before the start of the reinsurance year. No change will be made to the rule.

Comment: All three commentors expressed concern with respect to the propriety of permitting the Director of Compliance and the Director of Insurance Services to render final administrative decisions.

Response: Section 400.169 provides an informal mechanism for companies to challenge decisions rendered by FCIC. Reconsideration of these decisions allows the division that rendered the decision the opportunity to correct any error prior to an appeal to the BCA. The Directors of Compliance and Insurance Services are persons with the most knowledge of the programs they administer and are most qualified to render final determinations. Therefore, there is no need to amend the rule to have the Deputy Manager make final determinations.

Comment: One commentor questioned whether a FCIC decision of appealability itself should be reviewable or appealable.

Response: Nothing in this rule prohibits a company from seeking a review of a determination of nonappealability from the BCA. The issue on appeal would be limited to a determination of whether the decision of FCIC was based on a provision of the SRA, a compliance review, or a bulletin or directive which affects, interprets, explains or restricts a term of the SRA.

Comment: Two comments were received with respect to the definition of ''contracting officer.'' The commentors suggested that the term be amended to include the Directors of Insurance Services and Compliance and that these persons be given authority to settle disputes.

Response: The term ''contracting officer'' is not defined in FCIC's regulations. Further, the Manager of FCIC has the authority to designate contracting officers and provide these persons with the authority to resolve disputes between reinsured companies and FCIC. This rule provides a delegation to these Directors to resolve such disputes. Therefore, no change is necessary.

Comment: One comment suggested that the rule be amended to permit companies to bypass the BCA and go directly to the district court or the National Appeals Division (NAD).

Response: It has been determined that the BCA is the best forum to hear these appeals. Although the BCA may not be an expert with respect to the SRA, it has extensive experience in contract matters. Since NAD does not have jurisdiction to hear any matter over which the BCA has jurisdiction, the BCA acquired jurisdiction over these cases. FCIC has no authority to permit any appeal to NAD. Further, administrative appeals provide the valuable service of permitting the Department to correct any errors and, therefore, conserving judicial resources. Therefore, the rule will not be amended to permit companies to appeal directly to the Federal courts or to NAD.

Comment: One comment suggested that the rule be amended to specify the forum for an appeal of a BCA decision.

Response: An amendment to the rule is not necessary. The administrative appeals process ends with a BCA decision. The Department of Agriculture Reorganization Act provided that once the administrative appeals process is complete, persons may bring suit. Section 506(d) of the Federal Crop Insurance Act, as amended, states that the Federal district court has exclusive original jurisdiction over any suit brought against FCIC.

The comments did not result in any change to the final rule. Therefore, the interim rule as published on May 1, 1995, at 60 FR 21035 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 400

Crop insurance.

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 60 FR 21035 on May 1, 1995.

Signed in Washington, DC, on July 18, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–19139 Filed 7–26–96; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV96–945–1 IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Idaho-Eastern Oregon Potato Committee (Committee) under Marketing Order No. 945 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by August 28, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,100 producers of Idaho-Eastern Oregon potatoes in the production area and approximately 61 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The Idaho-Eastern Oregon potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 4, 1996, and unanimously recommended 1996–97 expenditures of $122,046 and an assessment rate of $0.0026 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $111,732. The assessment rate of $0.0026 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $63,896 for salaries, $7,000 for the manager's travel, $5,500 for Federal payroll taxes, and $15,000 for reserve/auto purchase. Budgeted expenses for these items in 1995–96 were $63,232, $6,000, $5,300, and $9,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Potato shipments for the year are estimated at 34,000,000 hundredweight, which should provide $88,400 in assessment income. Income derived from handler assessments, along with funds from interest income and the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new Subpart—Assessment Rates consisting of a new § 945.249 and a new subpart heading—Handling Regulations are added immediately preceding § 949.341, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 945.249 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.0026 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Subpart—Handling Regulations

Dated: July 22, 1996.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–18996 Filed 7–26–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1782–96]

RIN 1115–AB93

Adding Australia to the List of Countries Authorized To Participate in the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (''Service'') regulations by adding Australia to the list of countries designated to participate in the Visa Waiver Pilot Program (VWPP), thereby permitting nationals of Australia to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This action will facilitate travel to the United States and benefit United States businesses.

DATES: This interim rule is effective July 29, 1996. Written comments must be submitted on or before September 27, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS number 1782–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Tom Graber, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone number: (202) 616–7496.

SUPPLEMENTARY INFORMATION: Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service designated by regulations published in the Federal

Register, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) United Kingdom	July 1, 1988	53 FR 24901, June 30, 1988.
(2) Japan	December 15, 1988	53 FR 50161, December 13, 1988.
(3) France	July 1, 1989	54 FR 27120, June 27, 1989.
(4) Switzerland	July 1, 1989	54 FR 27120, June 27, 1989.
(5) Germany	July 15, 1989	54 FR 27120, June 27, 1989.
(6) Sweden	July 15, 1989	54 FR 27120, June 27, 1989.
(7) Italy	July 29, 1989	54 FR 27120, June 27, 1989.
(8) Netherlands	July 29, 1989	54 FR 27120, June 27, 1989.

Section 201 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated by regulations published in the Federal Register, the following fifteen (15) additional countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) Andorra	October 1, 1991	56 FR 46716, September 13, 1991.
(2) Austria	October 1, 1991	56 FR 46716, September 13, 1991.
(3) Belgium	October 1, 1991	56 FR 46716, September 13, 1991.
(4) Denmark	October 1, 1991	56 FR 46716, September 13, 1991.
(5) Finland	October 1, 1991	56 FR 46716, September 13, 1991.
(6) Iceland	October 1, 1991	56 FR 46716, September 13, 1991.
(7) Liechtenstein	October 1, 1991	56 FR 46716, September 13, 1991.
(8) Luxembourg	October 1, 1991	56 FR 46716, September 13, 1991.
(9) Monaco	October 1, 1991	56 FR 46716, September 13, 1991.
(10) New Zealand	October 1, 1991	56 FR 46716, September 13, 1991.
(11) Norway	October 1, 1991	56 FR 46716, September 13, 1991.
(12) San Marino	October 1, 1991	56 FR 46716, September 13, 1991.
(13) Spain	October 1, 1991	56 FR 46716, September 13, 1991.
(14) Brunei	July 29, 1993	58 FR 40581, July 29, 1993.
(15) Argentina	July 8, 1996	61 FR 35598, July 8, 1996.

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

Addition of Australia to the VWPP

Australia does not require visas for citizens and nationals of the United States entering for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States citizens and nationals. Australia also meets the statutorily prescribed limits on visa refusal rates for the prior 2-year period and for each of those two years. Australia also has a machine-readable passport program and the Attorney General has determined that law enforcement interests would not be compromised by the designation of Australia. Accordingly, this interim rule amends 8 CFR part 217 to extend the VWPP to include the country of Australia, which meets all the requirements for that status. Australia is, therefore, designated as a country participating in the VWPP by the Secretary of State and the Attorney General, acting jointly through their designees. [See the Department of State rule published elsewhere in this issue of the Federal Register.]

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: This interim rule relieves a restriction and is beneficial to both the traveling public and United States businesses.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 217

Administrative practices and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187, 8 CFR part 2.

2. In § 217.5, paragraph (a)(1) is revised to read as follows:

§ 217.5 Designated countries.

(a)(1) *Visa Waiver Pilot Program Countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); Germany and Sweden (effective July 15, 1989); Italy and the Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); Argentina (effective July 8, 1996); and Australia [Insert date of publication in the Federal Register] have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Dated: July 24, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–19169 Filed 7–26–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 92–026F]

RIN 0583–AB65

Use of Trisodium Phosphate on Raw, Chilled Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations to permit the application of trisodium phosphate (TSP) on raw, chilled poultry carcasses passed for wholesomeness. The TSP solution will be permitted as an antimicrobial agent on such poultry carcasses at a level of 8 to 12 percent. The solution must be maintained at a temperature of 45 °F to 55 °F and applied by spraying or dipping carcasses for up to 15 seconds. Tests conducted by industry and FSIS have shown that the use of TSP, at the above-stated concentration, temperature, and duration, reduces microbial populations on raw, chilled poultry surfaces.

EFFECTIVE DATE: August 28, 1996.

ADDRESSES: Copies of the studies, reports, letters, and publications referenced in this docket are available for public inspection in the FSIS Docket Room, USDA, 14th and Independence Avenue, SW., Room 4352, South Agriculture Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. William O. James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

FSIS was petitioned by Rhône-Poulenc, Inc., Cranbury, New Jersey, to permit the use of food-grade TSP as a processing aid in post-chill poultry slaughter operations. TSP is listed in the Food and Drug Administration (FDA) regulations as generally recognized as safe (GRAS) for multiple-purpose use in accordance with good manufacturing practices (21 CFR 182.1778). The petitioner requested the use of a treatment solution consisting of TSP dissolved in water to a concentration of 10 percent, plus or minus 2 percent (8 to 12 percent). The petitioner requested exposure of the poultry to the TSP treatment solution for no more than 15 seconds, with the TSP treatment solution being maintained at 50 °F, plus or minus 5 °F (45 °F to 55 °F).

The petitioner included data in its petition demonstrating that the use of TSP is effective in reducing the levels of bacteria, including pathogenic bacteria, found on raw, chilled poultry carcasses. FSIS also conducted studies to determine the efficacy of TSP on raw, chilled poultry carcasses. These studies demonstrate that the use of TSP on raw, chilled poultry carcasses results in statistically significant reductions in the levels of bacteria.

Additionally, FDA evaluated the petitioner's request for the use of TSP as a processing aid in poultry and concluded that the treatment leaves no residues on the product which could be harmful to consumers. Therefore, in an August 25, 1992, letter to Rhône-Poulenc, Inc., FDA approved the use of TSP as a processing aid on raw poultry, under conditions to be established by FSIS.

FSIS determined that use of TSP requested by the petitioner was suitable for the intended purpose and that the use of this substance on raw, chilled poultry carcasses at the stated level would not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the Poultry Products Inspection Act.

On January 5, 1994, FSIS proposed to amend the poultry products inspection regulations at 9 CFR 381.147(f)(4) to add antimicrobial agents as a new class of substance for use on poultry products, and to add TSP as an approved antimicrobial agent. FSIS proposed to permit the use of TSP on raw, chilled poultry carcasses at a level of 8 to 12 percent. The TSP treatment solution would be maintained at 45 °F to 55 °F, and would be applied either by spraying or dipping the raw, chilled poultry carcasses for up to 15 seconds.

Discussion of Comments

FSIS received 21 comments in response to the proposed rule. All but 2 commenters favored the proposal. In general, those favoring the proposal stated that TSP treatment reduces bacterial levels on poultry carcasses and decreases consumer exposure to pathogens. They believed food-grade TSP has been proved safe. The following is a discussion of the relevant issues raised in all of the comments.

One commenter believed FDA's GRAS affirmation of TSP did not apply to the hydrous formulation of AvGard, a proprietary name for food-grade TSP.

In a 1979 proposed rule, FDA specifically defined TSP as containing ''* * * 1 or 12 molecules of water of hydration'' (44 FR 74845, 74857). AvGard contains 12 molecules of hydration and, therefore, is included in the definition of TSP. Citing the report of the Select Committee on GRAS Substances, FDA concurred that ''there is no evidence in the available information on * * * sodium phosphate, tribasic [TSP] * * * that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they [GRAS phosphates] are used at levels that are now current or might reasonably be expected in the future'' (44 FR 74851–52).

It is within FDA's purview to affirm the multiple purpose GRAS status of TSP, which FDA did in the previously noted August 25, 1992, letter to Rhône-Poulenc. The Food Chemicals Codex, 3rd edition, specifically lists anhydrous and hydrous formulations of TSP as meeting the specifications for TSP.

One commenter questioned the validity of FSIS's TSP study conducted in April 1992. Since the control and treated carcass bacterial counts were low, this commenter wondered whether the results were representative.

A statistically valid number of carcasses were randomly selected by FSIS personnel over four consecutive days in April, 1992. Routine FSIS quality control checks on the ability of the nutrient broth, agar, and reagents to recover microorganisms were within normal limits. These routine FSIS quality control checks verified the accuracy of the results from the April 1992 study.

Additional data submitted with the petition, and available during the comment period, demonstrated statistically significant reductions of bacteria, including *Salmonella*, on poultry carcasses following post-chill immersion in TSP. The data showed that *Salmonella* prevalence after TSP treatment was consistently reduced from levels as high as 31 percent to levels below the laboratory limit of detection. Comparable results were obtained whether the samples were refrigerated or frozen. Similar results were found using prevalence or most probable number. Inoculation studies with *Salmonella typhimurium* showed a reduction between 95 and 100 percent. The Bender/Brodsky patented process for TSP application references similar test results.

Independent scientific studies [1],[2] also demonstrate the efficacy of TSP in reducing *Salmonella* on raw, chilled poultry carcasses. A study on the effect of TSP on *Salmonella typhimurium*, *Campylobacter jejuni*, *E. coli* 0157:H7, and *Listeria monocytogenes* showed that TSP not only reduced bacterial counts on raw poultry, but could potentially be used to reduce bacterial counts on other foods and on food and non-food contact surfaces. [3]

Therefore, FSIS has determined that information submitted by the petitioner, in the Agency's own studies, and in the scientific literature substantiates the efficacy of TSP as an antimicrobial agent on raw, chilled poultry carcasses.

On commenter questioned the petitioner's results due to unknown testing methodology and asked whether FSIS will seek comment on the experimental protocol.

Before any chemical not listed in 9 CFR 381 can be tested in official poultry establishments, the proposed conditions of use are reviewed by FSIS scientists. Only after acceptance of the testing protocol by FSIS may a trial begin. Since these trials are conducted in official establishments, supervised by FSIS personnel, and designed to address FSIS information requirements, FSIS does not routinely seek outside comment on the testing protocols.

One commenter questioned the relationship between the proposed conditions of TSP use (8–12 percent solution maintained at a temperature between 45 °F and 55 °F, and applied for up to 15 seconds) and the supporting studies.

FSIS and industry studies referenced in the proposed rule demonstrate TSP efficacy against bacteria, including pathogenic bacteria, at concentrations as low as 6 percent and temperatures as low as 42 °F. The most consistent results were achieved at TSP concentrations of 8–12 percent. Although efficacy of TSP is primarily related to solution concentration, not solution temperature, an upper 55 °F temperature limit for post-chill TSP use is consistent with the general chilling requirements in 9 CFR 381.66(b)(1), which permits a maximum internal temperature of 55 °F in processing operations, providing other requirements are met. Fifteen seconds was the time necessary to adequately apply the TSP to raw, chilled poultry carcasses on a moving line.

This commenter also asked whether these supporting studies used AvGard, a proprietary name for food-grade TSP. All TSP studies referenced in this docket used AvGard.

One commenter suggested TSP use may increase or decrease moisture absorption in poultry carcasses. Under current industry practice, broiler carcasses are chilled for approximately 60 minutes in immersion chillers. FSIS and petitioner studies have demonstrated the additional 15 second application of TSP does not result in moisture violations. As part of the poultry chilling process, poultry carcasses may gain moisture up to the levels permitted in 9 CFR 381.66(d). Poultry establishments using TSP are not exempted from the moisture absorption and retention limits contained in 9 CFR 381.66(d). Federal establishments applying TSP to raw, chilled poultry will include the TSP application in their washing, chilling, and draining method as outlined in 9 CFR 381.66(d)(8).

One commenter questioned the petitioner's claim that virtually no residue remains on or in treated poultry carcasses. The commenter referenced an abstract from an Agricultural Research Service (ARS) study, ''Effect of TSP on Salmonella Attached to Chicken Skin'' that seemed to refute the petitioner's claim. That abstract incorrectly stated that a high residual skin pH indicated the presence of TSP residue. In response to peer-review of the study, that assertion was removed when the study was published in the *Journal of Food Protection*.

Testing carcasses for pH does not directly correlate with phosphate residues. FSIS monitors meat and poultry for chemical residues by using specific analytical tests for the chemical residue in question. The 1993 FSIS Food Chemistry Guidebook recommends the quimociac method for phosphate determinations in meat and poultry. This analytical method determines phosphate levels within 0.05 percent. The petitioner used the FSIS recommended quimociac method, and, therefore, FSIS accepted the petitioner's results of virtually no residue.

One commenter asked whether use of an ''* * * FSIS approved drag through tank and attendant pump and filtration unit * * *,'' as mentioned in the petition from Rhône-Poulenc, would be required. This commenter also requested information on the significance of such equipment.

FSIS believes that requiring specific application equipment would not afford establishments sufficient flexibility in meeting good manufacturing practices (GMP) for TSP application. The Agency believes that the regulations in 9 CFR 381.53, regarding use of equipment in official establishments, are sufficient to ensure that the proper equipment is used for TSP application.

The equipment used was not significant in the results of the studies. However, it is unlikely that establishments, using current industry practices, will be able to apply TSP as a dip to raw, chilled poultry on a moving line without use of a drag-through tank. The process used in the studies is patented by Rhône-Poulenc, Inc.

One commenter expressed five concerns regarding the occupational safety of TSP. First, this commenter referenced U.S. Coast Guard and U.S. Department of Housing and Urban Development documents describing non-food-grade TSP as potentially hazardous to worker safety.

These references referred to use of non-food-grade TSP as a paint stripper on ocean vessels and for lead paint abatement in buildings. This commenter did not document any hazards from the use of food-grade TSP. TSP has been safely used for decades in a variety of food manufacturing establishments producing processed cheeses, breakfast cereals, and snack foods.

Second, the commenter referenced TSP workplace environmental exposure limits from the American Industrial

Hygiene Association, an industry group without regulatory authority, and incorrectly stated that the Occupational Safety and Health Administration (OSHA) does not have general exposure limits for TSP.

Although OSHA does not list air contaminant limits specifically for TSP, OSHA considers TSP a ''Particulate not otherwise regulated'' (PNOR) (29 CFR 1910.1000 Table Z–1). Additionally, OSHA has regulatory authority over worker and workplace safety, including those in federally inspected establishments. The OSHA regulations contained in Title 29, Code of Federal Regulations, address worker and workplace safety regarding the use of TSP.

Third, this commenter inquired about the nature of any communication regarding TSP between OSHA and FSIS.

The OSHA workplace safety levels for TSP as a PNOR are clearly codified in the above-referenced regulations, and FSIS has confirmed with OSHA that TSP is regulated as a PNOR.

Fourth, this commenter referred to U.S. Coast Guard recommendations for protective respiratory equipment for workers using non-food-grade TSP, even though OSHA does not specifically require the use of such protective respiratory equipment.

OSHA regulations state, in part, that accepted engineering control measures, such as adequate ventilation, where feasible, may be sufficient to prevent atmospheric contamination (29 CFR 1910.134).

To evaluate the safety of TSP use, FSIS contracted for industrial hygiene studies at two federally inspected establishments that are using TSP under interim approval. Because of the alkalinity of TSP, these studies recommended use of protective eyeware and gloves for FSIS employees monitoring the TSP application equipment. No medically substantiated occupational illness related to TSP use was documented from those two studies. Three TSP commercial poultry trials and 30 in-plant demonstrations, totaling more than 1,000 combined days of TSP use or testing, demonstrated no documented worker or workplace problems as a result of working in, around, or with food-grade TSP treatment facilities or TSP-treated product. As a result of the FSIS-initiated industrial hygiene studies, FSIS requires establishment management to provide FSIS employees with protective clothing or equipment. The establishment's ''Material Safety Data Sheet,'' as required under OSHA regulations, specifies the conditions under which establishment management must provide protective gear. FSIS employees have access to the Material Safety Data Sheet. The necessity of using protective equipment, such as eye wear or latex gloves, will depend on OSHA requirements (29 CFR 1910.133) and specific methods of TSP application in individual establishments.

Fifth, this commenter expressed concern over the lack of a specific antidote for any TSP-related industrial overexposure (e.g., dermal, oral, ocular, or respiratory exposure).

In fact, most substances do not have specific antidotes for overexposure. Therapy for most excessive exposures entails symptomatic treatment. As with all chemicals, especially those used in an industrial environment, caution should be exercised in handling. Protective equipment suitable for the specific application and access to means for diluting accidental chemical exposure, such as eyewashes and emergency showers, are commonly available.

One commenter expressed concern regarding the effect of TSP, an orthophosphate compound, on the environment, and referenced the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Title 42 U.S.C. 9601 *et seq.*) and U.S. Department of Transportation (DOT) requirements for notification of TSP release into the environment.

TSP (sodium phosphate, tribasic) is classified as a Category D hazardous substance under CERCLA (40 CFR 302.4). Category D substances, being the safest of five hazardous substance categories, are subject to CERCLA notification only for releases of 5,000 pounds. DOT regulations (49 CFR 172.101, App. A), which are based on the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499), have an identical requirement for reporting releases of 5,000 pounds of TSP into the environment. This commenter also inquired about any communication and coordination between the U.S. Environmental Protection Agency (EPA), DOT, and FSIS on this rule. FSIS contacted EPA to affirm that CERCLA notification for TSP was 5,000 lbs. and that individual states regulate industrial effluent either directly or indirectly.

One commenter believed the disposal of TSP as an animal-feed ingredient should be required by FSIS to minimize the potential for phosphate release into the environment.

FDA, not FSIS, has the authority to determine whether TSP can be disposed of by conversion into an animal-feed ingredient. In a July 13, 1992, letter to Rhône-Poulenc, Inc., FDA stated the conditions under which it would permit TSP to be converted into an animal feed, and stated that it will consider, on a case-by-case basis, requests for the use of other by-products from the permitted recovery process. Additionally, State and local authorities have the authority to promulgate standards for phosphate discharge into the environment. Establishment effluent is regularly monitored by State or local officials with statutory authority over effluent discharge.

Another commenter questioned the safety of eating animals that have consumed calcium phosphate derived from the conversion of spent TSP.

No supporting documentation accompanied that comment. FDA stated in a July 9, 1992, letter to Rhône-Poulenc that precipitation of spent TSP with tricalcium phosphate forms calcium phosphate in accordance with the Association of American Feed Control Officials definition. FDA partially based its decision allowing this conversion of spent TSP into calcium phosphate on the known safety of the commonly used feed additive calcium phosphate to humans and animals. FSIS is not aware of any published study suggesting that use of calcium phosphate in animal feeds is a human health hazard.

One commenter questioned the safe environmental disposal of TSP and referenced a United Nations (U.N.) Environment Programme data profile for chemicals, but incorrectly stated this document reflected U.N. standards for TSP disposal. This U.N. document specifically states that it does not necessarily reflect the views or official policies of the U.N. Environment Programme. The U.N. data profiles for chemicals is intended to be used by those professionally engaged in the management of waste. The referenced data profile should not be considered on its own merit, but merely as part of an integrated body of scientific evidence. Local and state governments, not U.N. data profiles, have statutory authority over phosphate release by official establishments.

One commenter raised questions regarding pre-chill uses of TSP. Uses of TSP, other than those discussed in the proposed rule, as appropriate, will be handled through separate rulemakings.

Three commenters noted that use of TSP should not be a substitute for current inspection practices. FSIS agrees and views the use of TSP as an addition to, not a substitute for, effective inspection and process control.

One commenter stated that regular end-product testing should be

conducted to ensure the effectiveness of TSP.

FSIS does not currently plan to conduct routine microbiological monitoring of TSP-treated product. Previously referenced studies demonstrate the efficacy of TSP when applied with the FSIS-accepted concentration, time, and temperature. Industry and FSIS will monitor the TSP application process to ensure adherence to good manufacturing practices.

One commenter preferred use of ''alternate methods to reduce microorganisms,'' such as trimming contamination, slowing line speeds, and utilizing air chilling, rather than either utilizing the current method of immersion chilling or applying TSP. This commenter did not provide evidence in support of these ''alternate methods.'' FSIS is aware of several studies regarding these alternate methods. [4], [5], [6], [7] None demonstrates that removing contamination solely by trimming or line-speed reductions lowers levels of microorganisms on poultry carcasses.

Regarding air chilling, studies conducted by the Commission of the European Communities, [8] using birds from the same flock, showed that immersion-chilled and air-chilled poultry carcasses had similar numbers of *Salmonella*. However, unlike these alternate methods, use of a TSP solution has demonstrated statistically significant reductions in bacteria, including pathogenic bacteria, on poultry carcasses.

J. E. Thomson et al. [9] concluded that commercial immersion chilling of broilers, with properly used equipment and adequate water replacement, can reduce bacterial counts to lower levels than air-blast chilling. Air-blast chilling does not significantly reduce bacterial counts. Air chilling in chill-rooms or by continuous air-blast requires low scald temperatures to minimize surface drying and does not have the advantage of the washing effect of submersion chilling. Air chilling does not reduce levels of *Campylobacter* contamination dramatically, presumably because the carcass does not dry-out sufficiently on all parts of the surface, either inside or out. Air-chilled carcasses are always likely to have higher bacterial levels than those chilled in a properly controlled immersion chiller. [10] Incidence of *Campylobacter jejuni/coli* can be reduced significantly in establishments using chlorinated chiller water, however the prevalence rates for this organism have been reported in the range of 50 to 100 percent. [9]

The findings of most researchers indicate there is a potential for cross-contamination during immersion chilling, but with properly used equipment, and adequate chlorinated water replacement, the washing effect of commercial immersion chilling of broilers will reduce total bacterial counts. [11], [12], [13], [14] K.N. May [15] collected data that found immersion chilling sanitary with reduction in total bacterial counts. The work of Busta et al. [16] indicates that the number of birds contaminated with pathogens is also reduced by immersion chilling. J.E. Thomson et al. [17] and W.O. James et al. [*13*] demonstrated that chlorination of chiller water reduced or eliminated *Salmonella* cross-contamination. R.M. Blood and B. Jarvis [18] showed that bacterial levels were inversely related to the amount of fresh replacement water along with chlorine at 30–50 ppm added to the chillers.

The commenter's concern over immersion chilling cannot be supported by carefully conducted research on properly operated equipment. In the few reports showing cross-contamination of microorganisms during immersion chilling, one or more of the following existed: extremely high level of initial carcass contamination, low water overflow rates, and absence of chlorination. Air chilling is less efficient and does not improve the sanitary quality of the carcasses. [19]

Lastly, a commenter stated that the use of TSP should be indicated on the product label. TSP is classified by FDA as a multiple purpose GRAS substance. TSP is a processing aid, not an ingredient, and it leaves virtually no residue on or in poultry carcasses. FDA exempts from label declaration requirements, at 21 CFR 101.100(a)(3)(ii)(*c*), processing aids added for technical or functional effect at processing, but not present in the finished food at significant levels and which do not have any technical or functional effect in that food. Therefore, declaring TSP on product labels is not required. However, as with an optional labeling statements, FSIS would evaluate, on a case-by-case basis, requests for optional labeling statements about the purpose of TSP. Such statements must not be false or misleading.

On December 29, 1995, FSIS published in the Federal Register the proposed rule, ''Substances Approved for Use in the Preparation of Meat and Poultry Products,'' (60 FR 67459). The rule proposes to amend the meat and poultry inspection regulations to harmonize and improve the efficiency of the procedures used by FSIS and the FDA for reviewing and approving the use of substances in meat and poultry products. Under the proposed procedures, FSIS would no longer issue its own regulations listing substances it finds suitable for use in meat and poultry products. Instead, by agreement between USDA and the FDA, future FDA regulations would specify whether a substance approved for use in foods under the Federal Food, Drug, and Cosmetic Act (FFDCA) may be used in or on meat or poultry products. Current FDA regulations that approve the use of substances in foods generally, and do not preclude meat and poultry uses, will confer authority to use such substances in meat and poultry products unless expressly prohibited by USDA regulation.

Requests for meat and poultry uses of substances not permitted under title 9 or title 21 of the Code of Federal Regulations (CFR) would have to be made to FDA in the form of a petition for FDA approval. Therefore, FDA simultaneously published its proposed rule, ''Substances Approved for Use in the Preparation of Meat and Poultry Products; Food Standards of Identity, Quality and Fill of Container; Common or Usual Name Regulations,'' (60 FR 67490). FDA's rule proposes to amend FDA regulations governing the review of petitions for the approval of food additives to provide for simultaneous review of such petitions by FSIS when meat or poultry product uses are indicated. This would permit FDA listings to specify whether, and if so under what conditions, such substances may be used in USDA-inspected meat and poultry products. Such listings would eliminate the need for separate FSIS rulemaking.

FSIS would limit any future, substance-specific rulemaking to prohibitions or limitations on meat or poultry uses of specific substances that may be necessary to protect the public under the Federal Meat Inspection Act (FMIA) or Poultry Products Inspection Act (PPIA). FSIS would continue to provide evaluations upon request as to whether substances permitted for general use under current regulations are suitable for specific uses in meat and poultry products.

FSIS proposes to adopt the position that substances that are listed in title 21, CFR, Parts 182 and 184, as generally recognized as safe (GRAS) for use in food generally, with no limitation other than good manufacturing practice, would be accepted by USDA as GRAS for use in meat, meat food products, and poultry products generally, unless otherwise restricted for such use by regulation in title 9, CFR. Other GRAS substances currently permitted for general food use would be evaluated by

FSIS as to their suitability for specified uses in meat food products and poultry products on a case-by-case basis, in consultation with FDA as appropriate.

Until that proposed rulemaking is complete and final rule issued, FSIS will continue to initiate individual rulemaking to add substances to its table of approved substances.

Executive Order 12866 and Regulatory Flexibility Act

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

The Administrator, FSIS, determined this rule will not have a significant economic impact on a substantial number of small entities. The rule will permit establishments voluntary use of TSP.

Establishments choosing to use TSP as an antimicrobial agent will incur a one-time expense for the necessary equipment and an ongoing cost for purchasing TSP. In the proposed rule, the cost for equipment was estimated at $45,000 per processing line, and the cost for the TSP at ½ cent per bird. Since the proposed rule was published, additional analysis of the estimated cost of the equipment and of the TSP has provided minor changes to the cost estimations. The cost for equipment is now estimated to be $40,000 per processing line, and the cost for the TSP is estimated to average about 0.3 cents per broiler and 1.4 cents per turkey.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will provide for the use of TSP as an antimicrobial treatment on raw, chilled poultry carcasses passed for wholesomeness.

States and local jurisdictions are preempted under the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions are also preempted under the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions that are consistent with the PPIA, with respect to any other matters regulated under the PPIA.

Under the PPIA, States that maintain poultry inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the PPIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

In the event of its adoption, no retroactive effect will be given to this rule, and applicable administrative procedures must be exhausted before any judicial challenge to the application of these provisions. Those administrative procedures are set forth in 9 CFR 381.35.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is amending the poultry products inspection regulations as follows:

PART 381—MANDATORY POULTRY PRODUCTS INSPECTION

1. 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 2.18, 2.53.

2. In Table 1 of § 381.147(f)(4), a new class of substance, ''Antimicrobial agents,'' is added, and the substance ''Trisodium phosphate'' is added to the new class of substance, to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	* * *
Anti-microbial agents	Trisodium phosphate.	To reduce microbial levels.	Raw, chilled poultry carcasses.	8 to 12 percent; solution to be maintained at 45 °F. to 55 °F. and applied by spraying or dipping carcasses for up to 15 seconds in accordance with 21 CFR 182.1778.
*	*	*	*	* * *

Done at Washington, DC, on: July 20, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, and 51

RIN 3150–AE96

Decommissioning of Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations on the decommissioning procedures that lead to the termination of an operating license for nuclear power reactors. The final amendments clarify ambiguities in the current rule and codify procedures that reduce the regulatory burden, provide greater flexibility, and allow for greater public participation in the decommissioning process. Some minor amendments pertain to non-power reactors and are for purposes of clarification and procedural simplification. The Commission believes that the final amendments will enhance efficiency and uniformity in the regulatory process of decommissioning nuclear power plants.

EFFECTIVE DATE: August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6194; or S. Singh Bajwa, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1013.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1988 (53 FR 24018), the Commission promulgated decommissioning regulations. On July 20, 1995 (60 FR 37374), the Commission issued proposed amendments to these regulations. A discussion of the current requirements and proposed amendments follows.

Current Requirements

Within 2 years after a licensee permanently ceases operation of a nuclear reactor facility, it must submit a detailed decommissioning plan to the NRC for approval, along with a supplemental environmental report that addresses environmental issues that have not already been considered. Based on these submittals, the NRC reviews the licensee's planned activities, prepares a Safety Evaluation Report (SER) and an environmental assessment (EA), and either makes a negative declaration of impact (the usual case) or prepares an environmental impact statement (EIS). Upon NRC approval of the decommissioning plan, the Commission issues an order permitting the licensee to decommission its facility in accordance with the approved plan. As part of the approval process, the opportunity for a hearing under subpart G of 10 CFR part 2, is made available to the public. Once the decommissioning process is completed and the NRC is satisfied that the facility has been radioactively decontaminated to an unrestricted release level, the NRC terminates the license.

If the licensee chooses to place the reactor in storage and dismantle it at a later time, the initial decommissioning plan submittal need not be as detailed as a plan for prompt dismantlement. However, before the licensee can begin dismantlement, a detailed plan and environmental report must be submitted and approved by the Commission.

Before the decommissioning plan is approved, the licensee cannot perform major decommissioning activities. If a licensee desires a reduction in requirements because of the permanent cessation of operation, it must obtain a license amendment for possession-only status. This is usually granted after the licensee indicates that the reactor has permanently ceased operations and fuel has been permanently removed from the reactor vessel.

A licensee is required to provide assurance that at any time during the life of the facility, through termination of the license, adequate funds will be available to complete decommissioning. For operating reactors, the amount of decommissioning funding required is generically prescribed in 10 CFR 50.75. Five years before license expiration or cessation of operations, a preliminary decommissioning plan containing a site-specific decommissioning cost estimate must be submitted and the financial assurance mechanism must be appropriately adjusted. Finally, the decommissioning plan, submitted within 2 years after permanent cessation of operations, must provide a site-specific cost estimate for decommissioning and a correspondingly adjusted financial assurance mechanism. For delayed dismantlement of a power reactor facility, an updated decommissioning plan must be submitted with the estimated cost of decommissioning and the licensee must appropriately adjust the financial assurance mechanism. Before approval of the decommissioning plan, licensee use of these funds would be determined on a case-specific basis for premature closure, when accrual of required decommissioning funds may be incomplete.

Proposed Amendments

The degree of regulatory oversight required for a nuclear power reactor during its decommissioning stage is considerably less than that required for the facility during its operating stage. During the operating stage of the reactor, fuel in the reactor core undergoes a controlled nuclear fission reaction that generates a high neutron flux and large

amounts of heat. Safe control of the nuclear reaction involves the use and operation of many complex systems. First, the nuclear reaction must be carefully controlled through neutron absorbing mechanisms. Second, the heat generated must be removed so that the fuel and its supporting structure do not overheat. Third, the confining structure and ancillary systems must be maintained and degradation caused by radiation and mechanical and thermal stress ameliorated. Fourth, the radioactivity resulting from the nuclear reaction in the form of direct radiation (especially near the high neutron flux areas around the reactor vessel), contaminated materials and effluents (air and water) must be minimized and controlled. Finally, proper operating procedures must be established and maintained with appropriately trained staff to ensure that the reactor system is properly operated and maintained, and that operating personnel minimize their exposure to radiation when performing their duties. Moreover, emergency response procedures must be established and maintained to protect the public in the event of an accident.

During the decommissioning stage of a nuclear power reactor, the nuclear fission reaction is stopped and the fuel (spent fuel assemblies) is permanently removed and placed in the spent fuel pool until transferred offsite for storage or disposal. While the spent fuel is still highly radioactive and generates heat caused by radioactive decay, no neutron flux is generated and the fuel slowly cools as its energetic decay products diminish. The spent fuel pool, which contains circulating water, removes the decay heat and filters out any small radioactive contaminants escaping the spent fuel assemblies. The spent fuel pool system is relatively simple to operate and maintain compared to an operating power reactor. The remainder of the facility contains radioactive contamination and is highly contaminated in the area of the reactor vessel. However, because the spent fuel is stored in a configuration that precludes the nuclear fission reaction, no generation of new radioactivity can occur. Safety concerns for a spent fuel pool are greatly reduced regarding both control of the nuclear fission process and the resultant generation of large amounts of heat, high neutron flux and related materials degradation, and the stresses imposed on the reactor system. Contaminated areas of the facility must still be controlled to minimize radiation exposure to personnel and control the spread of radioactive material. This situation is now similar to a contaminated materials facility and does not require the oversight that an operating reactor would require.

Based on the preceding discussion, it should be noted that during the operating stage of the reactor a nuclear reaction must be sustained that has the potential during an accident to generate significant amounts of energy and radiation whose consequences can be severe. Moreover, the nature of maintaining and controlling a nuclear reaction and the complexity of systems and operations requirements necessary to prevent and mitigate adverse consequences requires considerable oversight by the NRC. During the decommissioning stage of the reactor, the potential for consequences that could result from an inadvertent nuclear reaction are highly unlikely. The systems required for maintaining the spent fuel in the spent fuel pool as well as the operations required to contain the remaining residual contamination in the facility and spent fuel pool are relatively simple. Consequently, the activities performed by the licensee during decommissioning do not have a significant potential to impact public health and safety and these require considerably less oversight by the NRC than during power operations.

The amendments proposed in July 20, 1995 (60 FR 37374), were intended to provide licensees with simplicity and flexibility in implementing the decommissioning process, especially with regard to premature closure. The proposed amendments were intended to clarify ambiguities in the current regulations, codify procedures and terminology that have been used in a number of specific cases, and increase opportunities for the public to become informed about the licensee's decommissioning activities. The amendments were designed to establish a level of NRC oversight commensurate with the level of safety concerns expected during decommissioning activities.

A. Initial activities. The decommissioning process outlined in the proposed amendments was similar in approach to that in the current decommissioning rule, but included flexibility in the type of actions that can be undertaken without NRC approval. Once a licensee permanently ceases operation of the power reactor, no major decommissioning activities (as defined in the proposed rule) could be undertaken until the public and the NRC were provided information by the licensee. Information required from the licensee in a Post-Shutdown Decommissioning Activities Report (PSDAR) consisted of the licensee's proposed decommissioning activities and schedule through license termination, an assessment of whether such proposed activities are bounded by existing analyses of environmental impacts, and a general decommissioning cost estimate for the proposed activities. The PSDAR would be made available to the public for comment.

Ninety days after the PSDAR submittal to the NRC and approximately 30 days after a public information meeting is held in the vicinity of the reactor site, the licensee could perform major decommissioning activities if NRC does not offer an objection. Before undertaking these activities, the licensee must provide certifications to the NRC that operations have permanently ceased and fuel has been permanently removed from the reactor vessel (elements not formally addressed in the current rule). Once these certifications have been provided to the NRC, the licensee could no longer operate the reactor.

Part 50 technical requirements would also be amended to properly cover the transition of the facility from operating to permanent shutdown status (which also is not explicitly covered in the current rule). Thus, a licensee who has permanently ceased operations and removed fuel from the reactor vessel would no longer need to obtain a license amendment to proceed with certain decommissioning activities within established regulatory constraints.

B. Major decommissioning activities. A major change from the current rule is that power reactor licensees would no longer be required to have an approved decommissioning plan before being permitted to perform major decommissioning activities. Under the proposed rule, licensees would be allowed to perform activities that meet the criteria proposed in § 50.59. Section 50.59 would be amended to include additional criteria to ensure that concerns specific to decommissioning are considered by the licensee. Based on NRC experience with licensee decommissioning activities, the Commission recognized that the § 50.59 process used by the licensee during reactor operations encompassed routine activities that are similar to those undertaken during the decommissioning process. The Commission concluded that the § 50.59 process could be used by the licensee to perform major decommissioning activities if licensing conditions and the level of NRC oversight required during reactor operations are continued, commensurate with the status of the facility being decommissioned. These

objectives were considered in the proposed rule as follows.

(1) The proposed rule would clarify, modify, and extend certain licensing conditions to decommissioning activities.

(2) Aside from changes to part 50, the final safety analysis report (FSAR), which is a licensing basis document for performing activities under § 50.59, would need to be updated to cover decommissioning activities.

(3) A PSDAR would be submitted to the NRC that would contain a schedule of planned decommissioning activities and provide a mechanism for timely NRC oversight. The licensee would provide written notification to the NRC before performing any decommissioning activity that is inconsistent with or makes significant schedule changes from the PSDAR.

C. License termination. A licensee wishing to terminate its license would submit a license termination plan for approval similar to the approach that is currently required for a decommissioning plan. However, the plan would be less detailed than the decommissioning plan required by the current rule, because it would not need to provide a dismantlement plan, and could be as simple as a final site survey plan. The approval process for the termination plan, as in the current rule, would provide for a hearing opportunity under 10 CFR part 2. The proposed rule recognized that, if the spent fuel is either offsite or in an independent spent fuel storage facility (ISFSI), that is covered under a part 72 license, the remaining facility licensed under part 50 is similar to a materials facility and a less formal hearing, under subpart L rather than subpart G of part 2, is more appropriate. As in the current rule, a supplemental environmental report would be required from the licensee that considers environmental impacts that are not already covered in existing EISs. An additional requirement, proposed for the purpose of keeping the public informed, is that a public meeting be held, after the licensee submits the license termination plan to the NRC, similar to the one held after the PSDAR submittal.

D. Financial assurance. The proposed rule would continue the same degree of financial assurance as the current rule, but provide more flexibility by allowing licensee's limited early use of decommissioning funds. This provision was presented in a draft policy statement entitled ''Use of Decommissioning Trust Funds Before Decommissioning Plan Approval'' (59 FR 5216; February 3, 1994) that was published by the Commission for comment and incorporated into the proposed rule. Currently, licensee use of these funds is determined on a case-specific basis for prematurely shutdown plants. However, the proposed rule eliminated the requirement for a decommissioning plan and instead required a PSDAR submittal, which requires a decommissioning cost estimate. The proposed rule permitted some small percentage (3%) of the generically prescribed decommissioning funds to be available to the licensee for planning purposes (''paper studies'') before permanent cessation of power reactor operations. Moreover, to permit the licensee to accomplish major decommissioning activities promptly, an additional generic funding amount would be made available (20%) before a site-specific cost estimate, which must be submitted to the NRC within 2 years after permanent cessation of operations (as in the current rule). The remainder of the funds would be made available after submittal of the site-specific cost estimate, as in the current rule. When the licensee submits the license termination plan, the same financial considerations as those in § 50.82(c) of the current rule would be required to provide assurance that the licensee has adequate funds to complete decommissioning and terminate the license.

E. License extension. The proposed rule clarified that a license that has expired is not terminated until the Commission terminates it and further clarifies what conditions prevail under such circumstances.

F. Grandfathering. The proposed rule applied to power reactor licensees who do not have an approved decommissioning plan on the effective date of the final rule. Licensees that already have an approved plan could, at their option, follow the provisions of the proposed rule.

G. Non-power reactors. There were some minor clarifications and procedural simplifications in the proposed rule for the non-power reactor decommissioning process. Otherwise, the current rule remained essentially unchanged.

Response to Comments

Thirty-four comment letters were received on the proposed rule from power reactor licensees, contractors, Government agencies, Agreement States, citizens groups, and individuals. The comment letters have been categorized into two groups representing commenters generally in favor of the proposed rule and those generally not in favor of the proposed rule. The commenters in favor of the rule (24) consisted of power reactor licensees, contractors, Government agencies, and an Agreement State. The commenters not in favor of the rule (10) consisted of citizens groups, individuals, and an Agreement State. The comments have been summarized and addressed through issue categories based on the proposed rule.

Issue 1—Proposed Rule Approach.

Comments. Commenters in support of the proposed rule were, to varying degrees, supportive of the proposed rule. There were a few commenters in this group who fully supported the proposed rule because it would facilitate efficient decommissioning of power plants by reducing regulatory burden, clarifying the applicability of regulations originally intended for operating reactors, allowing a phased approach to decommissioning, and allowing early partial use of the decommissioning trust fund. A few commenters supported the use of lessons learned from ongoing decommissioning projects, expanding public participation, and providing the rationale behind less formal NRC policies and practices in a way that satisfies the requirements of the Atomic Energy Act (AEA), Administrative Procedure Act (APA), and National Environmental Policy Act (NEPA).

While many commenters were generally supportive of the general concept of the proposed rule, they indicated that the proposed rule did not go far enough in reducing unnecessary regulatory burden. They noted that the existing NRC requirements regarding operating reactors were more than adequate to encompass decommissioning activities and, if anything, should be relaxed rather than expanded. These recommended relaxations pertained to such items as a more liberal attitude toward collection and use of decommissioning trust funds, elimination of unnecessary criteria concerning the use of the proposed § 50.59, elimination of proposed mandatory public meetings, elimination of the proposed Post-Shutdown Decommissioning Activities Report (PSDAR) submittal, and elimination of the proposed license termination plan or eliminating its inclusion into the license by amendment, including elimination of the accompanying proposed Subpart L or G hearing opportunity.

Commenters not in favor of the proposed rule were not supportive of the proposed rule to varying degrees. Many of these commenters were strongly opposed to the proposed rule and indicated that it allowed nuclear power generators to have discretionary

powers to regulate themselves; that NRC was abdicating its responsibility for protecting the health and safety of workers and the public; that, in allowing the decommissioning plan to be included in the Final Safety Analysis Report (FSAR) it could be revised without license amendment, thereby excluding the public from the process; and that major component removal should not be allowed before the decommissioning plan is approved by the NRC. These commenters expressed a variety of views indicating that the existing rule should be left alone or that the current rule should be left basically in place but made more efficient through better implementation and should include greater opportunities for public participation. Finally, a few commenters indicated that significantly greater public participation and oversight are necessary than that prescribed in the proposed rule.

Response. The proposed rule was developed to allow more flexibility in dealing with premature closures, the decommissioning process in general, and the experience gained from recent decommissioning activities such as those at Fort St. Vrain, Shoreham, and Rancho Seco, as well as early component removal at Yankee Rowe and Trojan. The justification and intent of the final rule is unchanged. The NRC's primary concern, as the licensee transitions to decommissioning, is that the licensee will have sufficient funds to complete decommissioning and that the activities undertaken by the licensee will protect the public and the environment. The intent of this final rule is to streamline some of the decommissioning requirements for power reactor licensees, especially in approval of the decommissioning plan before major decommissioning activities can be undertaken and in early use of decommissioning trust funds.

Specific issues addressed in the final rule are discussed in greater detail below.

Issue 2—PSDAR, FSAR, and update requirements.

Comments. Commenters in favor of the rule had various comments concerning the PSDAR, its required update, and the proposed update to the FSAR. Several commenters indicated that the PSDAR requirement should be eliminated because it is more stringent than requirements imposed on operating reactors, that the PSDAR should only require information (detailed schedule) pertaining to the current phase of decommissioning because dismantlement and site restoration may not occur for many years, that the word ''synopsis'' should be used to make it clear that the PSDAR is a high-level summary, and that there should be consistency in the criteria for assessing environmental impacts between the PSDAR and the proposed § 50.59 requirements. A few comments suggested making the reporting requirements more efficient by combining them and updating the PSDAR and FSAR together, requiring updates no more than once every 36 months, or using a single PSDAR for multi-reactor sites. Several comments suggested that the updating requirement for the PSDAR be eliminated because § 50.59 already requires annual reporting requirements, that the term ''significant'' used in the proposed § 50.82(a)(6) should be tied to the § 50.59 safety evaluation, and that the extent of deviation in the PSDAR schedule that is permissible without notice to the NRC should be clarified. Finally, there was a comment that the final rule should make it clear that, if prompt decommissioning (dismantlement) is being pursued by the licensee, the PSDAR and license termination plan should be permitted to be the same document.

Commenters not in favor of the rule did not specifically address Issue 2. However, those commenters believed that the current rule requirements should be followed and that an approved decommissioning plan should be required before a licensee is permitted to perform major decommissioning activities.

Response. The purpose of the PSDAR is to provide a general overview for the public and the NRC of the licensee's proposed decommissioning activities until 2 years before termination of the license. The PSDAR is part of the mechanism for informing and being responsive to the public prior to any significant decommissioning activities taking place. It also serves to inform and alert the NRC staff to the schedule of licensee activities for inspection planning purposes and for decisions regarding NRC oversight activities. Because the final rule eliminates the need for an approved decommissioning plan before major decommissioning activities can be performed, the requirement to submit a PSDAR is less stringent than existing requirements for power reactor licensees.

The information required to be in the PSDAR is less detailed than the information required in the FSAR. Therefore, the PSDAR should not be combined with the FSAR because the two documents have different purposes. The final rule requires a written notification if activities are anticipated that would be inconsistent with the PSDAR activities previously described. The licensee's consideration of such inconsistency would include any milestone scheduling changes of dismantlement tasks and significant increases in decommissioning costs from those described in the PSDAR. The final rule will explicitly include the requirement that activities that would result in significant increases to decommissioning costs from those presented in the PSDAR must be a consideration in the notification requirements of § 50.82(a)(7). It is intended that regulatory guidance addressing the PSDAR Standard Format and Content will be issued soon after the final rule is published.

Currently, FSAR updates are required annually or 6 months after a refueling outage provided the interval between updates does not exceed 24 months. Because the FSAR is the basis for the use of § 50.59, the updates will need to be timely, so the final rule specifies a 24-month FSAR update for decommissioning activities for those nuclear power reactor licensees that have submitted the certifications of permanent cessation of operation and permanent removal of the fuel from the reactor vessel.

If prompt decommissioning is desired by the licensee, the licensee could elect early submittal of the PSDAR, before cessation of operation, and then use of § 50.59 would be permitted at cessation of operation, provided the certification of permanent fuel removal from the reactor vessel has been received and the public meeting had been held in advance. Although the PSDAR and license termination plan serve different purposes, and a formal approval process is required of the latter, the PSDAR and license termination plan can be combined. If a licensee chooses to combine the PSDAR and the license termination plan, the requirements for both would apply to the combined document, including the requisite waiting period, public meeting, and approval by amendment of the license termination plan. The procedure for approval of a license termination plan is similar to that currently required for approval of a decommissioning plan. For a multi-reactor site, the PSDAR could address the activities for all the reactors at the site if decommissioning of each will be undertaken at the same time.

Issue 3—Ninety-Day Time Period Prior to Undertaking Major Decommissioning Activities.

Comment. Several commenters noted that the proposed 90-day waiting period before major decommissioning activities could be undertaken did not address a

health and safety concern and that there are potentially high costs associated with such a delay because licensees could do a lot of dismantlement during this time that would be more efficient and cost advantageous. These commenters emphasized that all activities could be carried out under § 50.59 and the current licensing basis. They further stated that, if the 90-day hold is retained, clarification is needed regarding the NRC's opportunity to interpose an objection to proceeding with major decommissioning and that the NRC review should be based on areas of significant safety. Finally, one commenter expressed a concern that the 90-day waiting period would not allow enough time for public participation, including consideration of comments received from the public after NRC notices the licensee's PSDAR submittal and during a public meeting.

Commenters not in favor of the rule did not specifically address Issue 3. However, those commenters believed that the current rule requirements should be followed and that an approved decommissioning plan should be required before a licensee is permitted to perform major decommissioning activities.

Response. The commenters have correctly noted that the 90-day waiting period does not just address a health and safety issue. The NRC has chosen a 90-day waiting period prior to allowing major decommissioning activities to occur as the minimal time necessary for the NRC to evaluate the licensee's proposed activities and to conduct a public meeting. The public meeting is informational and may be chaired by a local official, with a presentation of the regulatory process for decommissioning by the NRC, presentation of planned decommissioning activities by the licensee, and participation by State representatives. A question and answer period would follow the presentations. By submitting the PSDAR before cessation of operation, a licensee could reduce the need for a waiting period (see the response to Issue 2 for an additional discussion on ways that the waiting period may be reduced).

Issue 4—Proposed Rule Modifications to § 50.59.

Comment. Many commenters approved of some form of the proposed modifications to § 50.59. Many of these commenters noted that § 50.59(e) in the proposed rule is more stringent than the existing requirements for operating reactors. These commenters believed that the existing § 50.59 criteria are adequate. Several commenters stated that the four proposed constraints contained in § 50.59(e) are somewhat redundant to the proposed requirements in § 50.82; the PSDAR content plus update and the 90-day waiting period envelopes issues addressed by these criteria. These commenters believed that if § 50.59(e) criteria were kept they should be in a regulatory guide and not in a rule. Comments specific to the four criteria and why they should be eliminated follow.

Section 50.59(e)(1)(i) concerning foreclosure of the site for unrestricted release. It was noted that any event that detracts from this effort would be accidental in nature, and that the proposed rule provided no explanation of the types of activities that could result in foreclosing the site for unrestricted use.

Section 50.59(e)(1)(ii) concerning significantly increasing decommissioning costs. It was noted that cost estimate information is required prior to and through the decommissioning process, making this requirement unnecessary. Moreover, it was asserted that there is no logical correlation between the cost of a decommissioning activity and whether a license amendment should be required for that activity and that costs have never been a consideration in determining whether a proposed activity is consistent with the licensing basis for a plant. It was also noted that other regulatory bodies such as Public Utility Commissions and the Federal Energy Regulatory Commission, as well as economic pressure, will force a licensee to perform decommissioning cost effectively. It was recognized that actions taken by a licensee may diminish the decommissioning fund and it was suggested that the wording be changed to deal with actions that would ''significantly inhibit the ability to fund decommissioning costs which would prevent successful decommissioning.''

Section 50.59(e)(1)(iii) concerned environmental impacts not previously reviewed. It was noted that compliance with the operating license, technical specifications, and § 50.59 regarding unreviewed safety questions adequately preclude having significant adverse environmental impact that have not been reviewed. Moreover, the requirement is redundant to the requirement concerning unreviewed environmental impacts required in the content of the PSDAR specified in § 50.82.

Section 50.59(e)(1)(iv) concerned violating the terms of the existing license. It was noted that this requirement is redundant with language in § 50.59(a) that allows licensees to proceed with an activity so long as it does not violate technical specifications or constitute an unreviewed safety question as defined by § 50.59(a)(2). Also, it was noted that a license amendment is required for changes in technical specifications under the current § 50.59(c).

Most commenters who opposed the use of proposed § 50.59 were not in favor of the rule. One commenter stated that the analysis of the dismantlement activities proposed under § 50.59 to determine whether or not the activity generates any unreviewed safety issue should be provided to the NRC, rather than rely on an NRC audit as existing regulations provide. This analysis would also provide this information to the public for examination. Several of the commenters indicated that an after-the-fact review of § 50.59 activities would provide insufficient regulatory protection. Finally, a commenter stated that the presence of an NRC inspector is essential during decommissioning activities.

Response. The Commission concluded that the proposed § 50.59(e)(1)(iv) is redundant and should be eliminated from the final rule. The Commission reconsidered the need for the remaining § 50.59(e)(1) requirements and determined that placing them in § 50.82 would be more appropriate. The Commission also concluded that the requirement ensuring that no major decommissioning activities occur that would significantly increase decommissioning cost could be overly burdensome. Instead, an appropriate constraint would be to prohibit any decommissioning activities that result in there no longer being reasonable assurance that adequate funds will be available for decommissioning. However, the NRC needs to be aware of changes in decommissioning activities that would result in significantly increasing decommissioning costs and would require written notification of such intended actions. The other paragraphs in § 50.59(e) were placed in § 50.82(a) to ensure that they will be considered as overall constraints on the licensee's decommissioning activities, rather than separately for each contemplated activity as proposed in § 50.59(e).

The purpose of retaining these requirements is to ensure that no decommissioning activities can occur that result in: (1) Eliminating the potential for unrestricted release, (2) significant environmental impacts not previously considered in EISs, and (3) there no longer being reasonable assurance that adequate funds will be available for decommissioning. The basis for this final rule permitting the

use of § 50.59 activities to perform decommissioning activities is that environmental impacts have already been considered and that such consideration was for an unrestricted release condition where the licensee has sufficient funds to complete decommissioning (see final generic environmental impact statement (FGEIS), NUREG–0586).[1] The major considerations of licensee decommissioning activities that could significantly affect the environment are at the license termination stage when the licensee submits a license termination plan for approval.

If a licensee contemplates decommissioning activities that would violate these requirements, the licensee may not use the § 50.59 process delineated in this rule to perform the activities. The licensee would then be required to obtain a license amendment to perform the activities.

The final rule prohibits licensees from performing any decommissioning activities that foreclose release of the site for possible unrestricted use, result in significant environmental impacts not previously reviewed, or result in there no longer being reasonable assurance that adequate funds will be available for decommissioning (§ 50.82(a)(6)). Prior to the licensee's use of the § 50.59 process to perform major decommissioning activities, the PSDAR submittal and public information process must be completed. The licensee is required to include a discussion that provides the reasons for concluding that the environmental impacts that might occur during decommissioning activities have already been considered in site-specific or generic environmental impact statements, and to estimate the amount of funds necessary to complete decommissioning (see § 50.82(a)(4)).

The licensee is also required to submit a site-specific cost estimate within 2 years after permanent cessation of operations. Use of decommissioning trust funds are subject to the requirements (in § 50.82(a)(8)) that adequate funds will be available to ultimately release the site and terminate the license. Moreover, the final rule requires the licensee to notify the NRC in writing before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR and states that this notification include consideration of significant increases in decommissioning costs (§ 50.82(a)(7)).

The NRC intends to maintain an active inspection program to provide the requisite level of oversight of licensee activities during decommissioning. The PSDAR and any written notification of changes required of a licensee will be used to schedule NRC inspection resources for significant decommissioning activities.

In addition to continuing requirements that the licensee must comply with, such as 10 CFR part 20, regarding protection of workers and the public from radiation, and appendix B to 10 CFR part 50 regarding quality assurance, the final rule explicitly extends certain technical requirements to cover decommissioning activities (e.g., §§ 50.36, 50.36a, 50.36b, and Appendix I regarding technical specifications for surveillance requirements, administrative controls, control of effluents, and conditions to protect the environment). Thus, there will be a licensing basis appropriate to the activities undertaken using the § 50.59 process during decommissioning. By maintaining certain requirements throughout the decommissioning process, licensees will be able to use the existing § 50.59 process to perform decommissioning activities and thus provide comparable assurance that protection of the public health, safety, and the environment will not be compromised.

Issue 5—Environmental Impact Considerations During the Initial Phase of Decommissioning.

Comments. Many commenters in favor of the rule fully supported the environmental impact considerations delineated in the proposed rule for the PSDAR submittal, with no mandatory ER or subsequent EA requirement. A few commenters suggested that no environmental impacts for decommissioning need be addressed further because the FGEIS for the 1988 decommissioning rule (NUREG–0586, August 1988)[1] and subsequent environmental assessments (for various actual power reactor decommissioning situations) demonstrate that decontamination and dismantlement do not significantly affect the human environment and have beneficial effects in restoring the site to an environmentally acceptable condition. A few commenters suggested that decommissioning should be considered a categorical exclusion as defined in 10 CFR 51.22.

Most of the commenters who were not in favor of the rule believed that the NRC should define decommissioning as a major Federal action requiring an EA or EIS. They further indicated that a generic environmental impact statement cannot substitute for a site-specific EA because the FGEIS does not consider all possibilities. A few of these commenters further stated that the proposed environmental impact consideration process is NRC's attempt to streamline the process for utilities and deregulate NRC current requirements. A few commenters stated that the process outlined in the proposed rule abdicates NRC's responsibility to protect the health and safety of the workers, the public, the environment, and it also undermines citizen's due process.

Response. While the FGEIS (NUREG–O586)[1] for the 1988 decommissioning rule concluded that only minor negative environmental impacts would result from decommissioning in addition to substantial positive environmental impacts, it did not address site-specific situations that could differ from the assumptions used in the FGEIS analysis. However, it is expected that any site impacts will be minor. Any site impact should be bounded by the impacts evaluated by previous applicable GEISs as well as any site-specific EIS. To account for site-specific situations that may occur outside these environmental impact considerations, the final rule prohibits major decommissioning activities that could result in significant environmental impacts not previously reviewed. The review process for the PSDAR and the approval process for the license termination plan requires licensees to review the existing documents and address any discrepancies in their submittals.

The environmental assessment conducted for this rulemaking relied on the FGEIS for the decommissioning rule (NUREG–0586, August 1988)[1] and determined that, insofar as the rule would allow major decommissioning activities (dismantlement) to proceed without an environmental assessment, application of the rule will not have a significant impact on the environment. Although not required by NEPA, NRC has required in this final rule that licensees indicate in the PSDAR the reasons for concluding that the planned activities are bounded by the FGEIS and previous site-specific environmental impact statements. This requirement is consistent with one of the primary goals of the PSDAR process, which is to promote public knowledge and provide an opportunity to hear public views on decommissioning activities before licensees commence decommissioning.

[1] NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities,'' USNRC, August 1988. Copies are available for inspection or copying for a fee from the NRC Public Document Room 2120 L Street NW. (Lower Level), Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555–0001; telephone (202) 634–3273; fax (202) 634–3343.

At the license termination stage, the Commission must make decisions on the licensee-proposed actions described in the license termination plan. The Commission must consider:

(1) The licensee's plan for assuring that adequate funds will be available for final site release,

(2) Radiation release criteria for license termination, and

(3) The adequacy of the final survey required to verify that these release criteria have been met.

Therefore, the NRC has determined that submittal of the license termination plan should be treated as a license amendment. In addition, under 10 CFR part 51, an environmental assessment or impact statement would be required at the time the license is amended. Following resolution of another ongoing NRC rulemaking activity that is considering adoption of radiological release criteria, a categorical exclusion may be adopted that would eliminate the requirement for an environmental assessment or impact analysis, except in the case of a restricted release of a site.

Issue 6—Public Participation.

Comment. Most commenters supporting the rule commented on the public participation aspects of the proposed rule. They believed that the participatory role given to the public was appropriate, excessive, or in need of further clarification. Several questioned the need for expanded public participation on matters of public health and safety because the NRC regulatory framework already provides for such participation (e.g., license amendment process). These commenters also noted that the purpose of the public meeting following the PSDAR submittal was not properly explained and that the final rule should clearly state that the meeting is intended for exchange of information only. Many commenters indicated that the NRC should limit the scope of these meetings and hearings to issues that are related to health and safety during the decommissioning process. These commenters also indicated that the supplementary information should include a clear statement of the purpose and participation guidelines for these meetings and clearly identify NRC's role at these meetings (which should be significant). A comment stated that it is essential that adequate mechanisms be developed for addressing issues of concern raised by members of the public and that, absent such closure, the meeting would only compound frustrations felt by the interested public. Finally, there was a comment that the 90-day waiting period (after the submittal of the PSDAR to the NRC) before allowing licensees to undertake major decommissioning activities may not allow enough time for adequate public participation.

Most commenters who did not favor the rule believed that the public participatory role proposed was inadequate. These commenters stated that NRC should retain the possession-only license amendment (POLA) and decommissioning plan approval required in the current rule to truly enhance public participation. Public meetings were considered helpful, but no substitute for an adjudicatory hearing that includes the rights to discovery, to present evidence, and to cross examine. Along these lines, a commenter stated that a meeting does not afford citizens the level of institutional accountability necessary, given the dangers of environmental-toxic contamination inherent in reactor decommissioning activities and that citizens must have a substantive role in the decommissioning process in order to clarify, negotiate, and protect their community's interest. A few commenters suggested that site-specific advisory boards (SSABs) should be established early in the decommissioning process and that meaningful public involvement should be required at every stage of the decommissioning process, not only at the final termination stage.

Response. As discussed previously, initial decommissioning activities (dismantlement) are not significantly different from routine operational activities such as replacement or refurbishment. Because of the framework of regulatory provisions embodied in the licensing basis for the facility, these activities do not present significant safety issues for which an NRC decision would be warranted. Therefore, it is appropriate that the licensee be permitted to conduct these activities without the need for a license amendment. However, the information meetings will be beneficial in keeping the public informed of the licensee's decommissioning activities. Although the primary purpose of these meetings is to inform the public of the licensee's planned activities, the NRC will consider public health and safety comments raised by the public during the 90-day period before the licensee undertakes decommissioning activities.

A more formal public participation process is appropriate at the termination stage of decommissioning because the final disposition of the site is determined at that time. Under the current rule, the Commission issues an order permitting the reactor to be decommissioned, based on the approved decommissioning plan, which amends the license. NRC administrative procedures, in subpart G of 10 CFR part 2, now provide an opportunity for persons to request a hearing regarding the NRC's decision. A similar procedure will be followed in the final rule for the license termination plan once the licensee has permanently removed fuel from the site. However, the hearing will be less formal because it will follow the procedures in Subpart L of 10 CFR part 2. The role of the SSABs will be evaluated when the rulemaking regarding radiological release criteria for license termination is finalized.

Issue 7—Establishment and Use of the Decommissioning Trust Fund.

Most of the commenters on this issue were in favor of the rule. These commenters requested greater flexibility in what costs can be included in the fund, such as disposal costs of radioactive waste from plant operations, and greater flexibility in the use of the trust funds prior to and during decommissioning. Specific comments that reflect the full range of comments on financial issues are:

Comment a. The proposed § 50.82(a)(7) proposes to regulate a licensee's use of, and rate of withdrawal from, the decommissioning trust fund. While NRC oversight is warranted to ensure that decommissioning activities can be funded, regulating the rate of withdrawal from the trust fund may unnecessarily impede the efficiency of a licensee's decommissioning activities. Because the NRC's generic estimates of decommissioning costs are substantially lower than most recent site-specific cost estimates, licensees would be constrained to withdraw small fractions of an unrealistically low estimate.

Response. Limiting initial withdrawals to 23 percent of the generic cost estimate (using the § 50.75 requirements), until the licensee has submitted a site-specific decommissioning cost estimate, preserves the integrity of the decommissioning trust accounts. The final rule permits licensees to withdraw up to 3 percent of the generic formula amount for planning at any time during the decommissioning planning process, including planning that occurs while a plant is still operating. This amount should be ample based on current planning costs for licensees recently undergoing decommissioning. Likewise, allowing withdrawals of 20 percent of the generic amount for decommissioning activities would allow funding of certain activities before receipt of a site-specific cost estimate. This amount is consistent with costs of large component removal activities undertaken or contemplated by

licensees of shutdown plants (e.g., Yankee-Rowe and Trojan). Once the NRC has received the site-specific decommissioning cost estimate, a licensee would have access to the balance of trust fund monies for the remaining decommissioning activities. Because the timing of the submittal of a site-specific cost estimate is within the control of the licensee, the Commission believes that unwarranted restraints on access to funds are not imposed by the final rule.

Comment b. The scope of decommissioning-related activities that licensees may collect funds for should include disposal of low-level waste generated during operations, maintenance and storage of spent fuel after cessation of operations, costs to maintain an independent spent fuel storage installation, and non-radioactive demolition or ''greenfield.'' State Public Service Commissions and the Federal Energy Regulatory Commission have authorized funding for these activities in some cases because it is in the best interests of the utilities' customers. The NRC regulation should not require segregation of these funds in separate accounts; restrictions on the withdrawal of trust funds in the proposed rule could lead utilities to create separate trust accounts for each nuclear facility funding component (e.g., decommissioning, spent fuel management, and greenfield). Finally, the rule should allow for the prudent and economic use, at the utility's discretion, of decommissioning trust funds during the years of normal plant operation even before end of life.

Response. The NRC's authority is limited to assuring that licensees adequately decommission their facilities with respect to cleanup and removal of radioactive material prior to license termination. Radiological activities that go beyond the scope of decommissioning, as defined in § 50.2, such as waste generated during operations or demolition costs for ''greenfield'' restoration, are not appropriate costs for inclusion in the decommissioning cost estimate. Funds for interim spent fuel storage and maintenance are addressed in § 50.54(bb).

The final rule does not prohibit licensees from having separate sub-accounts for other activities in the decommissioning trust fund if minimum amounts specified in the rule are maintained for radiological decommissioning.

Comment c. Section 50.82(a)(7)(ii) of the proposed rule specifies that a site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee being *permitted* to use any funding in excess of previously stipulated amounts. This could be interpreted to mean that the NRC must approve the additional expenditures. If this paragraph is retained, the intent of this ''permitting'' should be made clear. Expenditures made in accordance with the PSDAR and the decommissioning cost estimate should not require any additional NRC authorization.

Response. The NRC's intent in the proposed rule was not to use a formal approval mechanism for decommissioning expenditures once the licensee submits its site-specific decommissioning cost estimate. The final rule has been modified as suggested by the commenter.

Comment d. More guidance should be provided regarding what constitutes a decommissioning ''planning'' expenditure. Changes in the proposed rule regarding expenditure of funds from the NRC Draft Policy Statement on use of decommissioning funds before decommissioning plan approval (59 FR 5216; February 3, 1994), should be more fully explained.

Response. The term ''planning'' used in § 50.82(a)(8)(ii) specifically means ''paper'' studies, not equipment removal. Percentages are used in the final rule rather than specific dollar amounts, as used in the Draft Policy Statement, to better allow for inflation of costs in the future. Other changes to the Draft Policy Statement are based on the response to comments, developed prior to this rulemaking activity, and presented in the section on the ''Resolution of Comments on the Draft Policy Statement.''

Comment e. If a plant shuts down early, not only will there be insufficient funds to pay for planned decommissioning (because not all payments will have been made), but the actual cost of decommissioning can be 2 to 3 times higher than planned. The NRC should require external funds in the amount necessary to complete decommissioning upfront. Moreover, the NRC does not have a procedure in place for ''replacing'' a reactor licensee that goes bankrupt. Finally, the NRC should specifically allow the total financial approach to be made along the lines of industry self-insurance.

Response. The revised regulations preserve the integrity of the decommissioning funds by tying the rate of expenditure to specific parts of the decommissioning process. At the same time they allow broad flexibility once a licensee submits its site-specific decommissioning cost estimate.

The issue of bankruptcy, as well as the requirement for power reactor licensees to have the total amount of decommissioning funds upfront, was considered during the development of the current rule and found to be adequately addressed in current requirements. Bankruptcy does not necessarily mean that a power reactor licensee will liquidate. To date, the NRC's experience with bankrupt power reactor licensees has been that they file under Chapter 11 of the Bankruptcy Code for reorganization, not liquidation (e.g., Public Service Company of New Hampshire, El Paso Electric Company, and Cajun Electric Cooperative). In these cases, bankrupt licensees have continued to provide adequate funds for safe operation and decommissioning, even as bondholders and stockholders suffered losses that were often severe. Because electric utilities typically provide an essential service in an exclusive franchise area, the NRC staff believes that, even in the unlikely case of a power reactor licensee liquidating, its service territory and obligations, including those for decommissioning, would revert to another entity without direct NRC intervention. However, the NRC believes that with electric utility deregulation becoming more likely, it may need to require additional decommissioning funding assurance for those licensees that are no longer able to collect full decommissioning costs in rates or set their own rates. Thus, the NRC proposed a rulemaking plan to, in part, evaluate these developments in SECY–95–223 (September 1, 1995).

Issue 8—Court decision.

Comment. Most commenters who were in favor of the rule indicated that the proposed rule did not conflict with the recent court decision regarding the Yankee Rowe decommissioning (*Citizens Awareness Network, Inc.* v. *NRC,* 59 F.3d 284 (1st Cir. 1995)). Most of the commenters who were not in favor of the rule believed that the proposed rule violated the court's decision, or the spirit of the decision, regarding Yankee Rowe.

Response. A significant basis for the court's decision was that it perceived that the Commission had not adequately provided the reasoning for the NRC decision to allow decommissioning activities before NRC approval of a licensee-submitted decommissioning plan (59 F.3d at 291–292), a decision that the court considered to be a modification of the Commission's decommissioning regulations. The court noted that the Commission had failed to provide either a rulemaking proceeding or a hearing to address what the court perceived to be NRC approvals of licensee decommissioning activities (59 F.3d at 291–92, 294–95). By initiation of

a notice of proposed rulemaking and solicitation of comment (July 20, 1995; 60 FR 37374), the Commission addressed the reasoning underlying the proposed decommissioning process and allowed public review and comment on that reasoning.

The final rule includes a public notice and meeting process, prompted by the licensee's submission of a report describing planned decommissioning activities, to hear public views before the licensee undertakes major decommissioning activities. This process specifically provides that licensees may not begin major decommissioning activities until after they have submitted a PSDAR. The PSDAR will be made available to the public for written comment and a public meeting will be held to hear public views. Finally, the licensee is required to submit a license termination plan before release of the site. The final rule specifies that the license termination plan be approved by the NRC through the license amendment process. This process provides the public with hearing opportunities and ensures that any hearing on that plan must be completed prior to release of the site. This procedural framework assures that those citizens living near the site, potentially for years or decades after the facility is shut down, will be provided with information regarding the licensee's planned decommissioning activities, have an opportunity to ask questions regarding those activities at a public meeting early in the process, and have timely input into the decision to release the site.

In its decision, the court also specifically addressed a concern about decommissioning activities taking place prior to any NEPA analysis (59 F.3d at 292–93). The final rule addresses this issue in several respects. First, the final rule explicitly prohibits the licensee from performing any major decommissioning activity that results in significant environmental impacts not previously reviewed or forecloses possible unrestricted release of the site.

Also, when the licensee submits the PSDAR, the licensee must specifically include a section discussing how the planned activities fit within the envelope of environmental effects included in either the FGEIS (NUREG–0586, August 1988) [1] or the facility's site-specific environmental impact statement. Moreover, the licensee must provide written notification if the intended decommissioning activities are inconsistent with the PSDAR. This requirement helps ensure that, after submittal and public comment on the PSDAR, any changes to the planned decommissioning activities continue to be enveloped by the assessment of environmental impacts in prior environmental reviews. Any activities not meeting the environmental criteria would require the licensee to file an application for amendment to the license and a supplement to its environmental report under 10 CFR part 51. Finally, the rule requires a formal license termination plan by the licensee. The activities in the licensee's plan which do not meet the environmental criteria must be approved by the NRC by a license amendment that follows NRC procedures for amendments, including applicable hearing rights (under either subpart L or subpart G of 10 CFR part 2, as specified in the rule) and the preparation of environmental assessments.

The court perceived that the agency ''approval'' of the expenditure of funds from the decommissioning funds may be a basis for triggering both NEPA reviews and hearing rights (59 F3d at 292–95). The final rule addresses this issue by providing generic guidance as to what expenditures can be made out of the decommissioning fund for decommissioning activities before submittal of a site-specific cost estimate. The revised regulations use generic criteria for expenditures from the decommissioning funds and do not require prior NRC approval of site-specific expenditures meeting the generic criteria (see § 50.82(a)(7)). These new provisions specifically require licensees to maintain sufficient funds for release of the site and termination of the license. The licensee will have to also include an updated, site-specific analysis of remaining costs in the license termination plan submittal.

In publishing this final rule, the Commission has explained the rationale for the new decommissioning process, and has concluded that nothing in the court decision dictates that the Commission take a specific approach to this issue or otherwise raises questions concerning the validity of the approach adopted in this rulemaking.

Issue 9—Definitions.

Comment. Regarding the definitions in § 50.2, a few commenters indicated that the definition of decommissioning should include the concept of restricted release to accommodate the proposed rulemaking on acceptable residual radioactive criteria for decommissioning. Several commenters noted that the definitions of ''major radioactive components'' and ''major decommissioning activities'' were unnecessary because the use of the existing § 50.59 process does not require these considerations and is adequate to deal with decommissioning activities. However, if a definition of ''major radioactive components'' must be kept, the definition should only be relevant to any components, that when dismantled for shipment, contain greater than class C waste. During decommissioning activities, these waste disposals have the greatest significance regarding environmental impacts and adequate funding and are unrelated to the physical size of components.

Response. When the residual radiation criteria rule is final, the definition of decommissioning in § 50.2 will address use of the restricted release. It is necessary to have definitions of ''major radioactive components'' and ''major decommissioning activities'' to clarify what decommissioning activities may not occur before the end of the 90-day waiting period. However, the definition of ''major radioactive components'' in the final rule has been clarified so that large components, other than those named, are not prohibited § 50.59 activities if they contain small amounts of radioactivity. Dismantlement of these components is considered part of routine operating nuclear power reactor activities.

Issue 10—Modifications to Specific Technical Requirements.

Comment. Most of the commenters addressing this issue were in favor of the rule and indicated that there should be additional elimination or modification of requirements beyond those presented in the proposed rule. There was a spectrum of views on this issue: if a risk analysis were performed, it would demonstrate that the proposed rule would impose unnecessary burden on NRC licensees and NRC resources without commensurate benefit to health and safety; appropriate technical specifications for decommissioning would be for those activities for which there is a significant hazard; the final rule should include a discussion of the logic (i.e., philosophy) in making conforming revisions to part 50, especially with respect to provisions that did not change (e.g., §§ 50.55a, 50.63, 50.72, and 50.73 applicability); the study and survey by the NRC concerning additional amendments for non-applicability should be completed before this rule is finalized (one commenter); and that the proposed rule appears geared to permanently shut down reactors with fuel onsite and does not differentiate among the aspects that apply once fuel is removed from the site, and the rule should consider such situations. Finally, one commenter requested that environmental qualifications remain in place for equipment important to safety

pertaining to spent fuel management and storage.

Response. This rulemaking is primarily directed toward the procedural process for decommissioning, with particular emphasis on premature closure situations. The modifications to technical requirements in the final rule are based on a consequence analysis that either leads to elimination of the requirement or extends its applicability to decommissioning.

The modifications to the technical requirements in the final rule are incomplete, as noted in the proposed rule, and as the information base continues to develop, additional rulemaking actions to modify other requirements will be conducted. In the interim, licensees that no longer have fuel onsite may continue to request exemption for specific requirements on a case-by-case basis. The information base will address the storage of high-density packaging of hot spent fuel in the spent fuel pool with special consideration given to potential radiological consequences that could occur from loss of coolant in the pool. Consideration for amending rule requirements is also being given to situations in which the fuel is in dry storage at an Independent Spent Fuel Storage Installation (ISFSI).

Comments on specific amendments were:

Comment: Part 26. The final rule should explicitly state that the fitness for duty program does not apply to a permanently shut down and defueled facility. If it must apply, then it should apply to persons with unescorted access to the fuel storage building or buildings containing equipment necessary for the safe storage and handling of spent fuel.

Response. Consideration of this issue is ongoing and may result in future rulemaking. However, until a decision is made, part 26 continues to be applicable.

Comment: Section 50.36. Criteria are needed to ensure that technical specifications are appropriate for the conditions of a plant in a defueled state. The four criteria specified in § 50.59(e) would be appropriate additional guidance.

Response. Consideration will be given at a later time to the development of additional guidance in the form of standardized technical specifications for decommissioning. However, licensees may apply for modification of their technical specifications on a case-by-case basis.

Comment: Section 50.36 (c)(6) and (e). These requirements, which appear to imply that a new set of technical specifications will be developed for the plant decommissioning phase, are redundant and should be eliminated because § 50.51(b)(2), the requirement to conduct activities in accordance with the specific part 50 license for the facility, is sufficient to ensure effectiveness of the technical specifications.

Response. As a reactor facility transitions from operational to decommissioning status, numerous changes to technical specifications are expected. The regulatory experience with revisions to the technical specifications during this transition period has entailed case-specific evaluations of individual licensee requests. This has resulted in some inconsistency and variability of expectations among shutdown reactor facility license requirements. This revision provides the basis for developing a consistent framework for the development of ''standardized technical specifications for decommissioning,'' as well as addresses the uncertainty regarding the applicability of the existing regulation to permanently shutdown reactors. Section 50.51 specifically addresses the continued effectiveness of expired licenses and limitation of licensee actions during any continued effectiveness period. As such, § 50.51 does not, nor is it intended to, provide specific license conditions and requirements. Section 50.36 addresses this issue.

Comment: Section 50.36a(a)(1). This requirement should be clarified and revised because radioactive waste systems will have to be removed prior to license termination, and the present wording appears to require that these systems be used and maintained. Moreover, temporary systems are typically used for effluent treatment and the rule should be modified to describe only those systems that are appropriate.

Response. Section 50.36a(a)(1) is intended to ensure that operating procedures for any waste treatment systems used to control effluents be maintained and used to existing release criteria, and not that the systems be used and maintained when no longer necessary. However, in response to the comment, § 50.36a(a)(1) has been modified from the proposed rule so that systems that are no longer necessary can be eliminated from compliance requirements.

Comment: Section 50.47. A defueled plant that has ceased operation warrants a material reduction in the scope of its offsite emergency planning requirements because the credibility of any offsite consequences are reduced. Beyond the spent fuel pool, there is not sufficient source term to justify emergency plans. This also pertains to appendix E to part 50 and the requirements in § 50.54(t) concerning periodic review (frequency and scope) of the licensee's emergency preparedness program.

Response. Consideration of the potential radiological consequences of hot, high-density packaged fuel in the spent fuel pool is still ongoing. Modifications to this requirement, if made, will be developed at a later time.

Comment: Section 50.48. While some commenters agreed with the concept of a fire protection plan through the end of decommissioning, one found the proposed language overly restrictive, vague, and ambiguous. This commenter stated that once the permanently removed spent fuel is certified to no longer be a fire protection concern, an industrial fire protection program could be adequate in most cases. Several other commenters noted that there are other ongoing NRC activities to improve current fire protection regulations, and if actions are taken now, they should only be based on ''significant hazards'' considerations.

Response. These modified requirements have been coordinated with ongoing NRC activities regarding the improvement of fire protection regulations. Also, see the response to § 50.47 regarding spent fuel considerations. As presently configured, fire protection regulations apply only to operating reactor facilities. The need for an ongoing fire protection program, albeit a modified one, remains after the facility has ceased reactor operations. The final rule provides a performance-based program that can readily be modified during the decommissioning process to address residual hazards.

Comment: Section 50.49. Electric equipment required for protection of spent fuel outside the reactor does not meet the definition of equipment defined by § 50.49(b). The discussion in the final rule should be corrected to note that the environmental qualifications regulations apply to selected safety and non-safety related equipment as described in § 50.49(b).

Response. No modifications to the proposed rule are necessary. However, the environmental qualifications regulations apply to selected safety and non-safety related equipment as described in § 50.49(b).

Comment : Section 50.51. Section 50.51(b) should be deleted because it is redundant. If it is kept, the requirements on the continuation of a license should be clarified to affirm that other operating reactors would be unaffected

when the operating license of one reactor has been terminated at a multi-reactor site. Section 50.51(b)(1) should be clarified to indicate that, at sites that have an intervening reuse but do not require decontamination to unrestricted release, decontamination would not need to occur until the end of the reuse period.

Response. Section 50.51(b) is not redundant and will not be deleted. This section in the final rule has been modified to clarify that an expired license for a nuclear reactor facility that has permanently ceased operations is not terminated until the Commission terminates it. This provision further clarifies what conditions prevail under such circumstances. At a multi-reactor site, each reactor is individually licensed and actions are applied accordingly. The final rule addressing the radiological criteria for decommissioning will address the issue of restricted release options. Under the proposed rule, such restrictions would have to ensure that members of the public, in the event the restrictions fail, would not receive a dose in excess of 100 mrem per year. Unless the facility remained under license, individuals having access to the facility would be considered members of the public.

Comment: Section 50.54(g). The antitrust law requirements for a reactor that has permanently ceased operations and permanently defueled should be reevaluated for applicability.

Response. Section 50.54(g) simply provides that the issuance of an NRC license does not relieve the licensee from compliance with the antitrust laws specified in Section 105 of the Atomic Energy Act, and that the NRC may take appropriate action, including suspension or revocation of the license, if a court finds the licensee to have violated any provisions of such antitrust laws. This subsection of the regulation is sufficiently flexible that there is no reason to modify or delete it with respect to a facility that has ceased operations or is permanently defueled.

Comment: Paragraphs (k), (l), and (m) of § 50.54. The requirement for licensed operators should be eliminated or reduced because reactivity changes can only occur during the initial stages of decommissioning in connection with repositioning fuel assemblies in the spent fuel pool. With reference to § 50.54(i), the scope of the operator requalification program and limitations on a licensee's freedom to modify it should be reduced at facilities undergoing decommissioning.

Response. Consideration of these issues is ongoing and may result in future rulemaking.

Comment: Section 50.54(w). Onsite property damage insurance for a facility undergoing decommissioning should be eliminated or substantially modified.

Response. Consideration of the potential radiological consequences of hot, high-density packaged fuel in the spent fuel pool is still ongoing. Modifications to this requirement, if made, will be developed at a later time.

Comment: Section 50.55a. Pertaining to codes and standards requirements, it should be noted that §§ 50.55a (a), (f), and (g), inservice testing requirements, do not apply to permanently defueled reactors because the plant is not operating and there is no need to apply the regulation.

Response. No change is necessary because these requirements provide assurance that relevant portions of the facility are maintained functional or operational to adequate standards so they are operationally capable.

Comment: Section 50.63. The requirements on the loss of all ac power should not apply to decommissioning because the potential for significant radiological consequences is very low (there is a low probability of incident and long recovery time).

Response. Consideration of the potential radiological consequences of hot, high-density packaged fuel in the spent fuel pool is still ongoing. Modifications to this requirement, if made, will be developed at a later time.

Comment: Section 50.65. Monitoring maintenance for a permanently shutdown and defueled facility on any of its structures, systems, or components (SSC) to levels required by the current maintenance rule is unnecessary. Permanently shutdown and defueled facilities can no longer experience the levels of mechanical stresses associated with an operating plant. Therefore, the industry interprets the proposed rule to mean that the maintenance program only applies to the safe storage of fuel. The relative risks from a shutdown plant allow requirements in existing technical specifications and other administrative programs to provide adequate assurance for safe fuel storage.

Response. The maintenance rule, § 50.65, requires that the performance or condition of all structures, systems, and components (SSCs) described in § 50.65(b) be included in the scope of the rule. Under the current rule, licensees are permitted flexibility in the goals that are established and the monitoring that is performed for these SSCs. The NRC agrees that the stresses on most SSCs in an operating plant are greater than those associated with a shutdown and defueled plant. The final rule allows the scope to be limited to those SSCs associated with the storage, control, and maintenance of spent fuel in a safe condition in a manner that provides reasonable assurance that the SSCs are capable of performing their intended function.

Comment: Section 50.72. The immediate notification requirements for operating nuclear power reactors should not apply to permanently defueled reactors or, if applicable, should be significantly modified. Regarding § 50.72(a)(i), there should be no requirement to use the Emergency Notification System or Emergency Response Data Systems.

Response. The NRC did not adopt this comment. Notification requirements for events such as abnormal releases and overexposures are examples of required reports that are necessary.

Comment: Section 50.111. Criminal penalties should not be imposed for decommissioning activities because they are not so important to public health and safety that licensees need be subject to them. Decommissioning activities for reactor licensees should not be treated any differently than for other radioactive material licensees.

Response. The Commission believes that certain actions are essential in initiating the decommissioning process (e.g., certifying to permanent cessation of operation and permanent removal of fuel from the reactor vessel, and submitting a PSDAR) and should, therefore, be treated as substantive with respect to the criminal penalty provisions of the Atomic Energy Act. Decommissioning actions, when initiated improperly, have a potential for significant consequences regarding health, safety, and the environment. Willful violations of, attempted violations of, or conspiracy to violate, § 50.82 would, therefore, be a matter of significant concern to the NRC. Thus, the NRC is retaining the addition of § 50.82 to the list of regulations to which criminal sanctions apply.

Comment: Section 140.11. Concerning Price Anderson financial protection, permanently shutdown and defueled facility licensees should be permitted to withdraw from the secondary financial protection layer, and single units should be given a reduction in the primary level of coverage (e.g., $100,000,000).

Response. Consideration of the potential radiological consequences of hot, high-density packaged fuel in the spent fuel pool is still ongoing. Modifications to this requirement, if made, will be developed at a later time, as will considerations of fuel stored in an ISFSI.

Issue 10—Termination of License Requirements.

Most of the commenters in favor of the rule supported the decommissioning requirements for termination of the license in the proposed rule. However, several of these commenters stated that approval of the license termination plan should not require an amendment or opportunity for a hearing. They believe that if the plan is made available for public comment, existing regulations provide ample opportunity for public participation and the AEA does not require a hearing. Another commenter noted that once the spent fuel is off the site, the hazard is reduced so there is no safety, technical, or legal basis for NRC approval of a detailed decommissioning plan or PSDAR. A commenter pointed out that the use of the proposed § 50.59, which includes the four criteria (§ 50.59(e)), addresses the unique circumstances associated with the decommissioning activities. If some activities do not satisfy the requirements of § 50.59 and a license amendment is required, interested parties would have an opportunity to request a hearing. The approval of the plan by amendment and the opportunity for a hearing are not for reasons of health and safety; moreover, any interested party could always petition for a hearing under § 2.206. Another commenter made similar comments and went even further in stating that if standards for radioactive release are clear, meeting the objective of terminating the license should be easily demonstrated without the need for approval of a plan or license amendment; and that the plan should be available to the NRC for information only.

Response. The requirement for submittal of a termination plan is retained in the final rule because the NRC must make decisions, required in the current rule on the decommissioning plan, regarding (1) the licensee's plan for assuring that adequate funds will be available for final site release; (2) radiation release criteria for license termination, and (3) adequacy of the final survey required to verify that these release criteria have been met. A public meeting is considered necessary at the license termination stage to inform the public about the licensee's proposed termination activities and to provide an opportunity for public comment on those proposed activities. The NRC has also made the determination that license termination is an action of sufficient significance as to warrant an opportunity for a public hearing on NRC's decision regarding the licensee's proposed termination activities.

Specific comments concerning the license termination plan were provided by several commenters.

Comment a. The timing of the license termination plan is not explicit in the proposed rule, § 50.82(a)(8), and it is not clear whether the rule permits dismantlement activities before submittal or approval of the license termination plan.

Response. The final rule permits dismantlement activities 90 days after PSDAR submittal unless the NRC interposes an objection. The license termination plan must be submitted within 2 years of the licensee's expected date of license termination (the date specified in the PSDAR or supplement).

Comment b. The NRC does not explain or support the need for the elements of the plan, discussed in proposed § 50.82(a)(8)(ii) (A)–(G). The current rule, under § 50.82(d), simply requires updated, detailed plans before the start of decommissioning.

Response. The final rule permits major decommissioning activities (dismantlement) to be performed using the § 50.59 process. Because a decommissioning plan is no longer required, the requirements for the license termination plan are less complex than those that are currently required for a decommissioning plan. The license termination plan provides documentation on the remaining activities necessary to terminate the license and includes consideration of remediation aspects that could involve license termination under either unrestricted or restricted release conditions (once the rulemaking on acceptable residual release criteria is final). The site characterization, description of the remaining dismantlement activities and plans for site remediation are necessary for the NRC to be sure that the licensee will have adequate funds to complete decommissioning and that the appropriate actions will be completed by the licensee to ensure that the public health and safety will be protected. The language of § 50.82(8)(a)(ii) (B) and (F) in the proposed rule, now § 50.82(a)(9)(ii) (B) and (F) in the final rule, has been changed to more clearly reflect the intent of these requirements. Thus, element (A) now requires *identification* of remaining dismantlement activities, and element (F) now requires an updated site-specific *estimate* of remaining decommissioning costs.

Comment c. One commenter questioned how multiple sites will be addressed. Another commenter stated that a single license termination plan should be encouraged for multi-reactor sites.

Response. Reactors at a multi-reactor site are individually licensed and licensing actions are applied to the individual licenses. A licensee would not be prohibited from submitting a single license termination plan for the multi-reactor site, but the NRC would address terminating each license separately.

Issue 11—License Termination: Additional comments.

Comment. A commenter stated that the need for a hearing when the licensee submits the license termination plan for approval should be reconsidered. If the licensee meets the requirements of the termination plan and applicable regulations, there would be no issues to adjudicate. Another commenter stated that, concerning the subpart L proceedings, the NRC should issue a clear statement of policy to eliminate the potential for significant litigation. Several commenters stated that if subpart L is to be used for hearings, it appears necessary to change the title of subpart L to include Part 50 licensees. Finally, a commenter stated that the applicability of Subpart L hearings should be incorporated into § 2.700 as well as § 2.1201.

Response. With respect to the termination plan, the Commission recognizes that ongoing rulemaking proceedings may result in establishing criteria for the restricted release of sites. Even if a hearing is not legally mandated at the termination stage as argued by some commenters, the Commission views it as appropriate to use the amendment process for approval of termination plans, including the associated opportunity for a hearing, to allow public participation on the specific actions required for license termination. In particular, the Commission has determined that, if a hearing is requested on the termination plan, the hearing must be completed before release of the site. This action will help ensure meaningful public input on any proposal for restricted release of the site. Given that a lengthy period (up to 60 years) may pass between the PSDAR stage and the termination stage, and given that final release criteria are still being developed that may include restricted release of a site, the Commission views a license amendment process as appropriate, along with the associated opportunity for a hearing, whether or not such hearings are mandated by legislation. Finally, the changes proposed by the commenters concerning the change of title of subpart L to include part 50 licensees and the incorporation of

subpart L applicability into §§ 2.700 and 2.1201 are unnecessary because the rule already addresses these considerations.

Comment. Many commenters expressed confusion on when a subpart L or subpart G hearing would be appropriate. One commenter noted that once fuel is out of the reactor vessel and in dry storage, there is no difference between storage on or off site and that reference to the subpart G hearing should be deleted. Another commenter wanted a clarification of what is meant by removing fuel from the site (i.e., under a part 72 license). Another commenter suggested that the wording to § 2.1201(a)(3) be clarified concerning permanent removal of fuel from the site to an authorized facility. One commenter inquired as to whether a license could be terminated if the licensee removed the fuel to an onsite ISFSI.

Response. The final rule clearly indicates that once the fuel is removed from the licensed part 50 facility the power reactor facility can be treated as a materials facility where a subpart L hearing is appropriate. If fuel remains at the facility, a subpart G hearing is appropriate. If the fuel is in an ISFSI, that part of the affected site is regulated under a part 72 license and would no longer be regulated under the part 50 license. The wording in § 2.1201(a)(3) has been changed to ''removal of fuel from the part 50 facility,'' rather than ''from the site,'' and means either removal offsite to an authorized facility or to an onsite facility (ISFSI) not under the part 50 license.

Comment. Many commenters did not see the need for an environmental review at the license termination stage, and one suggested that it be considered a categorical exclusion. Another commenter stated that if there were to be an environmental review, its scope should be restricted to whether the licensee's controls and methods for mitigation of radiation will meet the standards adopted in § 20.1405 of the proposed residual radiation criteria rule.

Response. At the license termination stage, an environmental assessment or impact statement will be required when the license is amended. Following resolution of another ongoing NRC rulemaking activity that is considering adoption of radiological release criteria, a categorical exclusion may be adopted that would eliminate the requirement for an environmental assessment or impact analysis, except in the case of a restricted release of a site.

Comment. A few comments addressed proposed changes to § 51.53 concerning requirements for environmental impact considerations. One commenter stated that the first sentence of the first paragraph of § 51.53(b) should be deleted to be consistent with the concept that ''a license amendment authorizing decommissioning activities'' is no longer required. Revised wording should begin with ''each applicant for a license amendment approving a license termination plan or decommissioning plan.'' Another commenter stated that § 51.53 should be revised to reflect the fact that the proposed rule, if adopted, would not require an amendment that authorizes the conduct of decommissioning activities, because neither the existing nor the proposed decommissioning process requires a license amendment to approve a decommissioning plan. Therefore the first paragraph of this section should be reworded as ''[E]ach applicant for license termination upon submittal of the license termination plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site, * * * shall submit * * *'' A similar change was stated to be needed in § 51.95 for the same reasons. Finally, a commenter noted that § 51.53(b) as well as § 51.95(b) refer to ''applicants * * * for a utilization facility,'' which does not seem to be an element of the proposed rule and should be deleted; also, § 51.95(b) does not mention approval of a license amendment for license termination or a decommissioning plan, which is an omission and should be consistent with § 51.53(b).

Response. No change was made to this section because the non-power reactor facilities are still required to submit a decommissioning plan. For non-power reactors, the current rule remains essentially unchanged and requires submittal of a decommissioning plan that is approved through license amendment. The non-power reactor licensee must also submit an appropriate supplemental environmental report and the NRC must do an EA as part of the decommissioning plan approval process.

Comment. Most of the commenters who were not in favor of the rule supported the license termination phase requirements but believe that these requirements were not timely and should be implemented in some manner at the initiation phase of decommissioning.

Response. During the initial phase of decommissioning, the requirements in the final rule are designed to provide oversight commensurate with the level of safety concerns experienced in decommissioning, while providing additional opportunity for public comment on the licensee's proposed activities. The final rule requirements are based on NRC's experience with licensees' use of the § 50.59 process during operations and consideration of the types of activities that licensees would undertake during the decommissioning process. Where appropriate, licensing requirements are continued through decommissioning and the NRC is informed of each licensee's planned decommissioning activities. (Additional discussion can be found in the response to Comment 5).

Issue 12—Regulatory Guides.

Comment. Several commenters requested regulatory guidance in the form of regulatory guides. These requests pertained to a standard format and content for the PSDAR and license termination plan as well as to transition guidance for licensees who are shut down and choose to adopt the new process. Additional guidance was also requested for a regulatory guide that dealt with the decommissioning process, such as a revision to Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors,'' that would include such topics as the objective and implementation aspects of public meeting and hearings, guidance on issues the NRC would consider in not giving negative consent approval to the PSDAR after the 90-day waiting period, guidance on interpretation and development of technical rule requirements, and guidance, on the particulars of ''grandfathering.'' Additionally, several commenters requested additional financial guidance, through a regulatory guide, on the development and use of the decommissioning trust fund.

Response. The NRC intends to issue regulatory guidance on the initial phase of decommissioning. Guidance on the standard format and content of the PSDAR will be issued after the final rule is published. Other guidance on the license termination phase is also being developed.

Issue 13—Elimination of the Possession-only License Amendment (POLA).

Comment. Generally, commenters in favor of the rule agreed with eliminating the POLA. Objections to POLA elimination from other commenters were that distinct categories between reactor operation and cessation of operation should be maintained and that eliminating the POLA process would eliminate a hearing opportunity prior to reactor decommissioning. Reflecting the views of many commenters against POLA elimination, a State commenter said that by deleting

the POLA the NRC would eliminate the amendment process that expressly provides for State consultation (§ 50.91(b)) and that no subpart G hearing process would occur that would allow for discovery by parties to the proceeding and provide a mechanism for intervention. The State commenter held that the proposed rule delays the need for amendment to the license termination stage when it is too late; it is needed before major decommissioning activities are undertaken. Moreover, at the license termination stage, only a subpart L hearing is proposed (no discovery). Finally, a few commenters asked why non-power reactors, which are less hazardous facilities (smaller and less contaminated), can still request a POLA and still require decommissioning plan approval while power reactors no longer have this option or requirement.

Response. If fuel is removed from the licensed part 50 facility, the activities undertaken during decommissioning are more like the kinds of activities undertaken at a typical materials facility where the subpart L process applies. The final rule requires that certain procedures be satisfied before a licensee can perform major decommissioning activities. These procedures include requiring a PSDAR submittal, conducting a public meeting, and allowing a specified time period for NRC review of the licensee's intended actions. Other final rule requirements prohibit the licensee from performing any major decommissioning activity that could result in significant environmental impacts not previously reviewed or foreclose the release of the site for unrestricted use. Written notification to the NRC is required for licensee decommissioning activities that are inconsistent with those described in the PSDAR, including significant changes in decommissioning costs. Finally, the final rule extends certain regulatory requirements to decommissioning. Thus, licensee activities that would require approval under a POLA are no longer necessary. The affected State(s) will be notified about the public information meeting as well as consulted on the licensee's planned decommissioning activities by the NRC prior to the public meeting. The final rule requires that a copy of the PSDAR and any written notification of inconsistent PSDAR activities be sent to the affected State(s). In response to the comment concerning why non-power reactors are still given the option of submitting a POLA and still require a decommissioning plan, it is noted that such reactors are required to immediately dismantle, except for extenuating circumstances, and are not permitted a storage period (because there is no significant health, safety or environmental reason for delay—see FGEIS, NUREG 0586).[1]

Issue 14—''Grandfathering'' Considerations.

Comment. There were several commenters who were concerned that the proposed rule did not significantly address nor provide necessary guidance for ''grandfathering'' issues. Specific comments in this area were that recognition should be given to those plants whose decommissioning plans have been approved on a case-by-case basis; that if existing facilities are grandfathered from any part of the proposed rule, it should clearly identify this; that the proposed rule does not adequately implement the grandfathering option because the current § 50.82 would disappear from the rule and no explicit provisions would exist to rely on. It is suggested that the NRC keep the old provision as well as an applicable alternative and; that for grandfathering, an implementation provision should be added to the rule in a fashion similar to § 20.1008. Several commenters also noted that guidance needs to be given to those licensees who are in various aspects of decommissioning based on the current rule requirements and wish to switch to the proposed rule requirements.

Response. The Commission has reconsidered the issue of ''grandfathering'' and modified the language in the final rule to provide more specific guidance for nuclear power reactor licensees whose facilities are currently at certain stages of decommissioning. The Commission has decided to eliminate the provision in the proposed rule that would give those licensees that have an NRC approved decommissioning plan, before the date when a final rule became effective, the option of either complying with the final rule requirements or continuing with the requirements of the currently existing rule. All licensees will be required to comply with the decommissioning procedures specified in the provisions of the final rule, when it becomes effective. The final rule addresses the process for converting from the existing rule requirements to those in the final rule for those nuclear power reactor licensees whose facilities are already at certain stages of decommissioning.

For power reactor licensees who, before the effective date of this final rule, either submitted a decommissioning plan for approval or possess an approved plan, the plan will be considered as the PSDAR submittal and the licensee will be required to perform decommissioning in conformance with these final rule requirements. However, for power reactor licensees who are involved in subpart G hearings of 10 CFR part 2, conversion to the new rule will not be permitted until the hearing process is completed. The public meeting and 90-day hold on decommissioning activities required in § 50.82(a) (4)(ii) and (5) will not apply. Those licensees will be subject to any orders arising from these subpart G hearings, absent any orders from the Commission.

For nuclear power reactor facility licensees whose licenses have been modified, before the effective date of this rule, to allow possession but not operation of the facility, the certifications required in § 50.82(a)(1) will be considered to have been submitted.

With regard to extending current rule requirements for ''grandfathering'' considerations, no current rule requirements need be retained because the ''grandfathering'' provision in the proposed rule has been eliminated in the final rule. The final rule covers conversion from the existing requirements for approval of a submitted or approved decommissioning plan, as described above, and is specific to existing licensee decommissioning plan situations.

Issue 15—Miscellaneous Comments.

Comment. Several commenters stated that the backfit rule, § 50.109, should apply to decommissioning because a proper reading of the intent of that rule should cover rulemaking dealing with decommissioning. Otherwise, additional requirements could be imposed without a benefit cost analysis.

Response. The Commission has concluded that the provisions addressed in this rulemaking do not involve a backfit because they address only reactors that have permanently ceased operations and § 50.109 only applies to design, construction and operation of a facility. These regulations are primarily procedural in nature and, to the extent they address nonprocedural matters, they are a codification of existing process.

Comment. A few commenters noted that the regulatory analysis for the proposed rule did not evaluate the alternatives to the proposed new regulatory requirements and existing requirements do not require a license termination plan or a license amendment to approve a license termination plan. The regulatory

analysis does not accomplish the objective of ensuring that all regulatory burdens are needed, justified, and minimal.

Response. The regulatory analysis did evaluate the alternatives to the proposed new regulatory requirements. The license termination plan is not a new requirement because, under the existing rule, licensees are required to submit a proposed decommissioning plan for approval within 2 years of permanent shutdown. Currently, licensees who plan to delay decommissioning by including a period of storage must submit a final decommissioning plan for approval before starting decommissioning. Current NRC policy is to approve the decommissioning plan by license amendment. Because the proposed rule would permit the licensee use of the § 50.59 process to perform major dismantlement activities, the license termination plan is less complex than a decommissioning plan and covers the remainder of activities requiring completion to terminate the license, other than dismantlement activities. The changes adopted in the rulemaking primarily provide additional flexibility to licensees that reduces burden without reducing safety by allowing licensees to undertake the majority of decommissioning activities without first obtaining NRC approval.

Comment. Several commenters wanted the option of entombment to be allowed because restricted release will be allowed when the residual radiation criteria rule is final. Aside from the difficulty of disposal, the money not spent on LLW burial is substantial. The interest on this money would be more than adequate to provide for the maintenance and surveillance required for the entombment option. The public, including local communities, may be interested in not transporting waste across state boundaries and in keeping funds that would otherwise be spent on disposal within the community.

Response. The issue of entombment was not addressed in this rule. The NRC position on entombment is the same as in the current rule. Entombment would only be permitted for very special circumstances but would involve a continued license on a case-by-case basis. The concept of restricted release included in the proposed rule on residual radiation criteria would involve termination of the license with restrictions in place to limit the use of the facility by the public, but certain radiological criteria for restricted release would have to be met.

Comment. Several individual commenters wanted to know whether NRC rules allow the optional period of storage of the reactor facility to be longer than 60 years and does the 60-year completion date for decommissioning specified in the current rule consider storage of fuel in an ISFSI. One commenter stressed that spent fuel should not be separated from any of the phases of decommissioning because this is a piecemeal approach and inappropriate. Another commenter stated that the licensee should be required to maintain capability to handle the fuel for dry cask storage.

Response. The primary considerations of the proposed rule were procedural, with emphasis on the issue of premature closure. Other aspects of the existing rule were unchanged. A 60-year period for completion of decommissioning is still imposed, subject to other considerations delineated in the current rule requirements. The existing rule, as well as the proposed rule, consider the storage and maintenance of spent fuel as an operational consideration and provide separate part 50 requirements for this purpose. Regarding maintaining the capability to handle the fuel for dry cask storage, these requirements are maintained in 10 CFR part 72.

Comment. Several commenters noted that the requirements of this proposed rule and the proposed residual radiological criteria rule should be coordinated to avoid redundancy.

Response. The two rules will be coordinated.

Comment. A few commenters noted that a complete site characterization should be included at the initiation of decommissioning activities and that mandatory site radiological surveys should be required before issuing a new license to establish background conditions.

Response. These considerations are being addressed during finalization of the residual radiological criteria rule.

Comment. Finally, several commenters requested that the NRC consider the impacts of the proposed ''safeguards for nuclear fuel or high level radioactive waste'' rule (60 FR 42079; August 15, 1995) (which affects parts 60, 72, 73, and 75) on this rule when that proposed rule is issued in final form.

Response. This rule is primarily directed toward the procedural requirements necessary for power reactor decommissionings. Therefore, the requirements imposed by this rule can be treated independently from the other ''safeguards'' rule under development. That rule, when final, may modify some of the technical requirements imposed by this final rule.

Resolution of Comments on the Draft Policy Statement

On February 3, 1994 (59 FR 5216), the NRC published in the Federal Register a draft policy statement and accompanying criteria relating to power reactor licensee use of decommissioning trust funds before NRC approval of licensees' decommissioning plans. The proposed rulemaking to amend the procedural aspects of decommissioning (60 FR 2210; July 20, 1995) codified the position embodied in the draft policy statement. Based on the NRC's resolution of comments on the proposed rule and incorporated into this final rule, the criteria in the draft policy statement have been modified. No final policy statement will be issued. Other changes in the final rule pertaining to licensee use of decommissioning trust funds were discussed earlier in the section on Response to Comments.

The NRC received comments on the draft policy statement from the following individuals or organizations:

1. Michigan Department of Commerce
2. Citizens Awareness Network
3. Mary P. Sinclair
4. Detroit Edison Company
5. Committee for a Safe Energy Future
6. Jon Block
7. Nuclear Energy Institute
8. Yankee Atomic Electric Company
9. Virginia Power Company
10. New England Coalition on Nuclear Pollution
11. Winston & Strawn
12. Consolidated Edison Company
13. Maryland Department of the Environment
14. TU Electric Company

The public interest group, individual commenters, and one State oppose allowing any withdrawals from decommissioning trust funds before the NRC approves a licensee's decommissioning plan, a procedure that this final rule has discontinued. The other commenters generally supported the draft policy statement, although they disagreed with certain provisions or took issue with the need for it. Specific comments and observations, and the NRC analysis of and response to them, are discussed below.

Specific Comments

Comment 1. The trust agreements may need to be modified to include low-level radioactive waste storage and disposal (LLW) and interim spent fuel storage as allowable decommissioning costs when these costs are incurred as part of additional, temporary facilities at particular sites. LLW disposal costs, in particular, should be able to be paid from the decommissioning waste fund

without waiting 60 days for NRC approval. Provisions should be included for decommissioning nonradioactive structures associated with the reactor (Commenters 1 and 4).

Response. The policy statement and this rule were not intended to address this issue. This issue is being addressed separately (see SECY 95–223; September 1, 1995). As provided in 10 CFR 50.75, financial assurance for decommissioning includes the cost of disposal of LLW associated with reactor decommissioning. If a temporary facility is built to store LLW under the Part 50 reactor license, the trust agreement should have been structured to include these costs. Although the NRC definition of decommissioning excludes interim storage of spent reactor fuel, a licensee is required to provide for the cost of interim spent fuel storage under 10 CFR 50.54(bb).

With respect to the issue of waiving the 60-day NRC approval period for withdrawals to pay for LLW shipments, this final rule eliminates the procedure to which this comment referred.

Comment 2. The NRC should not allow decommissioning trust fund withdrawals before an environmental assessment is performed while the reactor licensee has a possession-only license because: (1) It will allow large-scale decommissioning activities without a resident NRC inspector on-site during the removal of irradiated components; (2) it is inconsistent with the mandate of the NRC, which is to implement a submitted, reviewed, publicly evaluated, and approved decommissioning plan before large-scale decommissioning activities begin; (3) health and safety of the workers and the public can not be adequately served by the experimental process of the component removal process, and (4) existing NRC regulations state that a licensee may only conduct limited activities prior to approval of the decommissioning plan (e.g., decontamination, minor component disassembly, shipment and storage of spent fuel). Reasonable interpretation of the rules does not require expansion of 10 CFR 50.59 and/or activities permitted under a license (Commenters 2, 3, 5, 6, and 10).

There could be insufficient financial resources remaining to decommission Nuclear Power Plants thus, creating a potential burden on the State and, serious impairment of radioactive material licensee's ability to complete decommissioning. Most existing decommissioning 'certifications and funding plans' are generally acknowledged by the NRC to already be severely UNDERFUNDED. This rule would exacerbate that situation (Commenter 13).

Response. This final rule addresses the process that licensees are to use for post-shutdown decommissioning activities, as well as the limits on the amounts to be withdrawn from decommissioning trust funds.

By permitting a licensee to perform certain decommissioning activities and to withdraw funds for those activities through use of the PSDAR submittal process required in the final rule will allow the licensee to reduce its overall decommissioning costs by taking advantage of lower low-level radioactive waste disposal costs. This will benefit the licensee and its ratepayers without adversely affecting public health and safety.

Comment 3. The NRC should develop a similar policy for operating plants and should allow licensees to withdraw decommissioning trust funds to dispose of structures and equipment no longer being used for operating plants (Commenters 7, 8 (by reference), and 14).

Footnote 2 of the policy statement should be revised to clarify that the policy statement does not apply ''to licensee withdrawals from decommissioning funds for operating plants'' rather than stating that the policy statement does not apply ''to licensees with operating nuclear reactors'' (Commenter 11).

Response. The NRC has concluded that allowing decommissioning trust fund withdrawals for disposals by nuclear power plants that continue to operate is not warranted. These activities are more appropriately considered operating activities and should be financed in that way.

Footnote 2 is not included in this final rule.

Comment 4. The policy statement may become obsolete if the NRC adopts a new definition of decommissioning as proposed on February 2, 1994 (59 FR 4868). This definition states, ''Decommissioning means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits use of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and termination of the license.'' To avoid obsolescence of the policy statement as a result of changes in the definition of decommissioning, the commenters recommend replacing all references to release of the site for unrestricted use with ''decommissioning of the site consistent with the definition in § 50.2'' (Commenters 7, 8 (by reference), and 11).

Response. The NRC agrees with this recommendation and has changed this final rule accordingly.

Comment 5. Two commenters disagree with a statement in the draft policy statement, ''If a licensee of a permanently shut down facility spends decommissioning trust funds on legitimate decommissioning activities, the timing of these expenditures, either before *or after* NRC approves a licensee's decommissioning plan, should not adversely affect public health and safety, provided adequate funds are maintained to restore the facility to a safe storage configuration in case decommissioning activities are interrupted unexpectedly'' (Commenter 7's emphasis). The commenters state that maintaining a viable SAFSTOR option beyond plan approval should not be required for cases where another option has been approved by NRC (Commenters 7 and 8).

The draft policy statement misuses the term ''SAFSTOR'' to mean maintenance of a site in a safe storage condition prior to receipt of Decommissioning Plan approval and commencement of decommissioning rather than a specific decommissioning alternative defined in NRC regulations (Commenters 11 and 14).

Response. Commenter 7 has misinterpreted the intent of this statement. First, this part of the policy statement was drafted to make the point that any expenditures for decommissioning activities normally viewed as necessary would not be detrimental to public health and safety, notwithstanding the timing of these expenditures, unless they were large enough to prevent the licensee from returning its facility to a safe storage configuration if the decommissioning process were to go awry. This is not the same as requiring a licensee to switch from DECON (immediate dismantlement) to SAFSTOR after the NRC has approved the licensee's decommissioning plan.

This final rule modifies use of the above-referenced criterion for decommissioning trust fund withdrawals. However, the rule corrects any references to SAFSTOR when it means to address the general ability of a licensee to return its reactor to safe storage while awaiting further decommissioning.

Comment 6. Criterion 4 is redundant of the other criteria (Commenters 7 and 8). At a minimum, the statement should indicate that items (c) and (d) of criterion 4 do not require NRC approval before a licensee undertakes the proposed activities (Commenter 8). Redundancies can be eliminated by

factoring the first three criteria into criterion 4. However, issuance of the policy statement based on criterion 4 (or the other criteria) is premature in that the NRC is currently considering more definitive guidance on acceptable pre-plan-approval decommissioning activities (Commenter 11).

Response. The NRC agrees that some confusion may have arisen by including criterion 4 in the policy statement. The NRC included this criterion to provide guidance on the allowed decommissioning activities as opposed to the use of decommissioning trust funds for those activities. Criterion 4 is a quote from Commission guidance in the SRM of January 14, 1993, and, to some degree, overlaps the other criteria of the policy statement. The NRC has removed criterion 4 as a separate criterion in this final rule.

Comment 7. The ''ancillary issue'' in the draft policy statement should be expanded to include a number of expenses that are paid out of decommissioning trusts by *operating* plants well in advance of licensee preparation and submission of the decommissioning plan. These expenses include, but are not limited to, trust fees, investment manager fees, income taxes, and periodic site-specific studies (Commenters 7, 8 (by reference), 11, and 14).

The policy statement should be revised to state specifically that if a licensee determines that it meets the criteria for de minimis withdrawals, it need not request permission from the NRC to use these funds (Commenter 8).

* * * The section dealing with 'de minimis' withdrawals for developing the decommissioning plan also seems to be outside the original intent for use of these funds. These withdrawals may seem to be a minor portion of funds allocated for decommissioning, but it starts a process that would allow utilities to tap these funds, if they can fit activities into the definition of decommissioning or simply request to use these funds for other purposes * * * Other uses are unacceptable, even if they are subject to prior regulator approval (Commenter 13).

Response. The intent of the ancillary issue was to allow de minimis withdrawals from decommissioning trust funds of up to $5 million for decommissioning-related administrative and other expenses without prior NRC consent notwithstanding the operating status of the plant. The final rule has changed this withdrawal amount to up to 3 percent of the generic amount specified in § 50.75(c). This withdrawal amount is for purposes of planning for decommissioning (paper studies) and pertains to licensees of operating as well as permanently shut down plants. Permission from the NRC to use these funds in de minimis amounts is unnecessary as long as the amount and purpose of the withdrawal is documented.

With respect to Commenter 13's concerns, the NRC has specified a maximum limit for de minimis withdrawals. If a licensee were to exceed this limit or use funds for non-decommissioning purposes, it would be subject to NRC enforcement action.

Comment 8. ''* * * The NRC has neither articulated the reasons why this detailed level of oversight (discussed in the policy statement) is needed, nor has the NRC provided specific examples of potential waste and misuse of funds that would warrant their proposed oversight * * * Absent an appropriate justification for the implementation of this policy statement, * * * this policy statement represents regulation without benefit (and that NRC concerns expressed in the policy statement) are not tangible for decommissioning.'' Thus, the policy statement should not be issued (Commenter 9).

Also, ''the draft policy statement provides no basis for the NRC's conclusion that prior NRC review of pre-plan-approval decommissioning fund expenditures should be required.'' The draft policy statement may satisfy the Commission's directive to the NRC staff to develop a policy without including an approval mechanism (Commenter 11).

The draft policy statement is not clear as to the purpose of the NRC review of decommissioning expenditures before decommissioning plan approval. The only reason for the review, given in the statement of policy, is to ensure the health and safety of the general public. There are other regulatory mechanisms for evaluating the activity for which the funds are withdrawn without reviewing the actual withdrawal from the fund. The expenditure of decommissioning trust funds for legitimate decommissioning activities is an economic and not a safety concern (Commenter 14).

Response. Although the NRC did not include specific examples of waste and misuse of funds in the policy statement, as with any industrial process, costly mistakes can conceivably occur in decommissioning. The NRC also disagrees that codifying decommissioning trust fund withdrawals represents regulation without benefit. The NRC has specifically promulgated decommissioning requirements in 10 CFR 50.82 that include licensee PSDAR submittal process that is intended for keeping the NRC and public informed of the licensee's planned decommissioning activities. The intent of the regulations is to require licensees to maintain the entire amount of funds needed for decommissioning in a specified assurance mechanism until the funds are used for their intended decommissioning activities.

The PSDAR is closely tied to a licensee's provision of assurance to fund the decommissioning activities adequately. Without any NRC criteria for expenditures before the PSDAR submittal process is completed, the decommissioning trust fund could become a shell and thus defeat the purpose of NRC decommissioning funding assurance regulations. Because of the safety implications of inadequate decommissioning funds, the NRC believes it has responsibility for specifying withdrawal rates, notwithstanding the reviews that rate regulators may perform.

Comment 9. Trust fund withdrawals should also be permitted for early decommissioning-related activities that, although not themselves directly reducing radioactivity at the site, will significantly facilitate such activities when they subsequently occur (Commenters 11 and 12).

Response. In this final rule, withdrawals for planning activities are allowed before completion of the PSDAR process.

Comment 10. The NRC should clarify footnote 2 to indicate that it applies to licensees of multi-unit sites. ''So long as usage of trust withdrawals is identifiable with the shut down reactor and does not diminish decontamination funding subsequently available for reactors which are continuing to operate, there is no reason why multi-reactor licensees should be treated differently than single-reactor licensees for purposes of this policy statement'' (Commenter 12).

Response. The NRC agrees with this statement. However, footnote 2 is not included in this final rule.

Comment 11. ''If the NRC believes that NRC review and approval of pre-plan-approval decommissioning expenditures is necessary, it should act through rulemaking rather than policy * * * Since prior NRC review of decommissioning fund withdrawals is not currently required, if the NRC wishes to impose such a requirement, it should initiate rulemaking to revise its decommissioning regulations accordingly'' (Commenter 11).

Response. This final rule codifies criteria for decommissioning trust fund withdrawals. Thus, this commenter's concerns have been addressed.

Comment 12. ''The 'tacit consent' approach for reviewing licensee expenditure plans is inappropriate'' and unsupported by the reasons the NRC stated for its policy. By expressly preserving the possibility that it would take action to prevent a fund withdrawal, the NRC blurs its asserted distinction between review and approval. Also, it is not clear that ''tacit consent'' and ''approval'' are legally distinguishable for purposes of determining whether the NRC is engaged in a ''licensing action'' that could involve public participation and environmental review (Commenter 11).

Response. The NRC does not use ''tacit consent'' in this final rule. Thus, the concerns expressed in this comment should be assuaged.

Comment 13. ''Criterion 1 * * * should be revised to eliminate the provision that withdrawals must be for activities 'that would necessarily occur under most reasonable decommissioning scenarios.''' This phrase adds nothing to the preceding provision that the withdrawal must be for ''legitimate decommissioning activities.'' Because licensees may face decommissioning expenditures for activities that are within the NRC's definition of decommissioning but nonetheless unique to their plant(s), the proposed provision is inappropriately restrictive (Commenter 11).

Criterion 1 is overly restrictive and burdensome * * * If the NRC wants to prevent activities that preclude release of the site for (un)restricted use or are not in support of decommissioning efforts it should require review of the activity itself through any of the other available mechanisms such as 10 CFR 50.59 or special rulemaking * * * The basic premise is that in the event that there are circumstances or conditions which delay or preclude proceeding with the decommissioning effort there will be funds available to place the plant in a storage condition until the event or circumstance is resolved. Thus, as long as the value of the fund does not fall below the regulatory required amount in effect at the time of the request the withdrawal should be allowed. Thus, the only requirement should be that the utility document that [the] activity was a legitimate decommissioning activity and the expenditure was reasonable (Commenter 14).

Response. The NRC did not mean to imply that decommissioning activities unique to one site would not be eligible for early trust fund withdrawals. However, because we agree that the phrase, ''legitimate decommissioning activities,'' is sufficient, the NRC has eliminated the phrase from this final rule.

Comment 14. ''* * * The explicit characterization as a decommissioning 'contingency' of the funding 'necessary to maintain the status quo' could be construed inappropriately to require that licensees include funding for that purpose in their decommissioning funds * * * If this criterion is retained, the language regarding provisions for this contingency should be deleted from the policy statement'' (Commenter 11).

Response. This terminology has been eliminated in this final rule.

Comment 15. ''It does not seem necessary that NRC approve requests for the 'withdrawal of decommissioning funds for early equipment removal, prior to approval of the utilities['] decommissioning plans. This does not seem in concert with the intent of the sample statement under Background '* * * the fund trustee should only release funds upon certification that decommissioning is proceeding pursuant to an NRC-approved plan' '' (Commenter 13).

Response. This final rule does not continue the language in question.

Comment 16. ''* * * This ruling may be judged as an item of Compatibility (for Agreement States). Because Maryland regulations, policies, etc., are expected to closely follow Federal rules and procedures, we would be forced to adopt and allow our licensees to use the same principle'' (Commenter 13).

Response. The NRC does not believe that this is an issue of State compatibility because this final rule only applies to power reactor licensees, which are exclusively NRC licensees.

Summary of Changes in the Final Rule

Based on the response to comments, a few changes were made in the final rule. Otherwise, the final rule provisions are the same as those presented in the ''background'' section under the section titled proposed amendments. Specific changes made to the proposed rule in the final rule are summarized as follows:

(1) Section 50.2. The definition of ''major radioactive components'' has been clarified.

(2) Section 50.36a(a)(1). The amendment has been changed to exclude systems that are no longer necessary for compliance.

(3) Section 50.59. Proposed § 50.59(e) was eliminated. However, three of the proposed rule requirements contained in § 50.59(e) were moved to § 50.82(a)(6) and (7). Placing these requirements in § 50.82 as overall constraints, rather than specific requirements for each § 50.59 activity, required modification of the constraint that the decommissioning activities not result in significantly increasing decommissioning costs. Thus, the final rule (§ 50.82(a)(6)(iii)) prohibits decommissioning activities that would result in there no longer being reasonable assurance that adequate funds will be available to complete decommissioning. In addition, the final rule requires in § 50.82(a)(7) that changes from those specified in the PSDAR that would result in significantly increasing decommissioning costs require written notification to the NRC. The fourth requirement that the terms of the existing license not be violated was eliminated. The requirement to consider environmental impact in the PSDAR, § 50.82(a)(4) was modified to explicitly require the reasons for concluding that any environmental impacts will be bounded by existing analysis.

(4) Section 50.71. Section 50.71(e)(4) was revised to permit nuclear power reactor licensees that have submitted the certifications required under § 50.82(a)(1) to update the FSAR every 24-months.

(5) Sections 50.82(a)(4)(i) and (6). The licensee is required to send a copy of the PSDAR and written notification of departure from the PSDAR to the NRC and affected State(s).

(6) Section 50.82(a)(8)(ii). The phrase ''being permitted to use'' was removed from this section to avoid any incorrect interpretation that the NRC must explicitly approve decommissioning funding expenditures.

(7) Section 50.82. Specifies that once the rule is effective, all power reactor licensees must comply with it. Power reactor licensees that possess an approved plan as well as licensees that applied for plan approval before the rule took effect would have the plan considered a PSDAR submittal, and licensees would be permitted to perform decommissioning activities in accordance with § 50.82. However, for power reactor licensees who are involved in subpart G hearings of 10 CFR part 2, conversion to the new rule will not be permitted until the hearing process is completed and those licensees will be subject to any orders arising from these hearings absent any orders from the Commission.

(8) Section 50.82(a)(1)(iii). Specifies that once the rule is effective, power reactor licensees whose licenses have been modified, before the effective date of this rule, to possess but not operate the facility, will be considered to have submitted the certifications required in § 50.82(a)(1).

(9) To improve clarity, the first sentence in § 2.1205(d)(1) has been rewritten from that proposed to that found in the existing regulation.

(10) To improve clarity and maintain parallelism of requirements, the last

sentence of § 51.53(b) has been rewritten from that found in the proposed rule to correspond with the language found in § 51.95(b) of the proposed (and existing) rule.

(11) To improve clarity, § 50.82(a)(9)(ii) (B) and (F) have been rewritten.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The final rule clarifies current decommissioning requirements for nuclear power reactors in 10 CFR Part 50 and presents a more efficient, uniform, and understandable process. The Commission has analyzed the major environmental impacts associated with decommissioning in the Generic Environmental Impact Statement (GEIS), NUREG–0586, August 1988,[1] published in conjunction with the Commission's final decommissioning rule (53 FR 24018; June 27, 1988).

Insofar as this rule would allow major decommissioning (dismantlement) to proceed without an environmental assessment, the environmental impacts of this rule are within the scope of the prior GEIS. The environmental assessment for the final rule and finding of no significant impact on which this determination is based are available for inspection and photocopying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Carl Feldman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–6194.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Because the rule will relax existing information collection requirements, the public burden for this collection of information is expected to be decreased by 12,202 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for further reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, or by Internet electronic mail to BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this final rule. The analysis qualitatively examines the costs and benefits of the alternatives considered by the NRC. In the response to comments, the NRC concluded that only some minor changes to the draft regulatory analysis were necessary, corresponding to some minor procedural changes in the final rule. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555–0001. Single copies of the analysis may be obtained from Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6194.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule modifies requirements for timely decommissioning of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities as given in the Regulatory Flexibility Act or the Small Business Size Standards promulgated in regulations issued by the Small Business Administration (13 CFR Part 121). This discussion constitutes the analysis for the regulatory flexibility certification requirement.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, OMB

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to these final amendments, and therefore, a backfit analysis has not been prepared for this rule. The scope of the backfit provision in 10 CFR 50.109 is limited to construction and operation of reactors. These final amendments would only apply to reactors that have permanently ceased operations and, as such, would not constitute backfits under 10 CFR 50.109.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 50, and 51.

PART 2— RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409

(42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780, also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85 256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et. seq.).

2. Section 2.1201, paragraph (a)(3) is added to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(3) The amendment of a Part 50 license following permanent removal of fuel from the Part 50 facility to an authorized facility for licensees that have previously made declarations related to permanent cessation of operations and permanent removal of fuel from the reactor in accordance with § 50.82(a)(1). Subpart L hearings for the license termination plan amendment, if conducted, must be completed before license termination.

* * * * *

3. Section 2.1203, paragraph (e) is revised to read as follows:

§ 2.1203 Docket; filing; service.

* * * * *

(e) A request for a hearing or petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205(f) and (R). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

4. Section 2.1205, paragraphs (c) through (n) are redesignated as paragraphs (d) through (o), a new paragraph (c) is added, and newly designated paragraphs (d), (e)(2), (e)(4), the introductory text of paragraph (h), (i), the introductory text of paragraph (j), the introductory text of paragraph (k), (k)(3), the introductory text of paragraphs (l)(1) and (l)(2) are revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(c) For amendments of Part 50 licenses under § 2.1201(a)(3), a notice of receipt of the application, with reference to the opportunity for a hearing under the procedures set forth in this subpart, must be published in the Federal Register at least 30 days prior to issuance of the requested amendment by the Commission.

(d) A person, other than an applicant, shall file a request for a hearing within—

(1) Thirty days of the agency's publication in the Federal Register of a notice referring or relating to an application or the licensing action requested by an application, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart. With respect to an amendment described in § 2.1201(a)(3), other than the one to terminate the license, the Commission, prior to issuance of the requested amendment, will follow the procedures in § 50.91 and § 50.92(c) to the extent necessary to make a determination on whether the amendment involves a significant hazards consideration. If the Commission finds there are significant hazards considerations involved in the requested amendment, the amendment will not be issued until any hearings under this paragraph are completed.

(2) If a Federal Register notice is not published in accordance with paragraph (d)(1), the earliest of—

(i) Thirty days after the requester receives actual notice of a pending application, or

(ii) Thirty days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty days after agency action granting an application in whole or in part.

(e) * * *

(2) How the interests may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (h) of this section;

* * * * *

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (d) of this section.

* * * * *

(h) In ruling on a request for a hearing filed under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors—

* * * * *

(i) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) or (d) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the NRC staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(j) If a request for hearing is granted and a notice of the kind described in paragraph (d)(1) previously has not been published in the Federal Register, a notice of hearing must be published in the Federal Register stating—

* * * * *

(k) Any petition for leave to intervene must be filed within 30 days of the date of publication of the notice of hearing. The petition must set forth the information required under paragraph (e) of this section.

* * * * *

(3) Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the matters set forth in paragraph (h) of this section.

* * * * *

(l)(1) A request for a hearing or a petition for leave to intervene found by the presiding officer to be untimely under paragraph (d) or (k) of this section will be entertained only upon determination by the Commission or the presiding officer that the requestor or petitioner has established that—

* * * * *

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained on the paragraph (l)(1) of this section, the request or petition will be treated as a

petition under § 2.206 and referred for appropriate disposition.

* * * * *

5. Section 2.1211, paragraph (b) is revised to read as follows:

§ 2.1211 Participation by a person not a party.

* * * * *

(b) Within 30 days of an order granting a request for a hearing made under § 2.1205 (b)–(d) or, in instances when it is published, within 30 days of notice of hearing issued under § 2.1205(j), the representative of the interested State, county, municipality, or an agency thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requestor's areas of concern, the presiding officer shall afford the representative a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this subsection may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

* * * * *

6. Section 2.1213 is revised to read as follows:

§ 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(b), the NRC staff shall be a party to the proceeding. If a hearing request is filed under § 2.1205 (c) or (d), within 10 days of the designation of a presiding officer pursuant to § 2.1207, the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. In addition, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by the staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

7. Section 2.1233, paragraph (c) is revised to read as follows:

§ 2.1233 Written presentations; written questions.

* * * * *

(c) In a hearing initiated under § 2.1205(d), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application, with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular sections or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.

* * * * *

8. Section 2.1263 is revised to read as follows:

§ 2.1263 Stays of NRC staff licensing actions or of decisions of a presiding officer or the Commission pending hearing or review.

Applications for a stay of any decision or action of the Commission, a presiding officer, or any action by the NRC staff in issuing a license in accordance with § 2.1205(m) are governed by § 2.788, except that any request for a stay of staff licensing action pending completion of an adjudication under this subpart must be filed at the time a request for a hearing or petition to intervene is filed or within 10 days of the staff's action, whichever is later. A request for a stay of a staff licensing action must be filed with the adjudicatory decisionmaker before which the licensing proceeding is pending.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

9. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

10. Section 50.2, the terms ''Certified fuel handler,'' ''Major decommissioning activity,'' ''Major radioactive components,'' ''Permanent cessation of operations,'' and ''Permanent fuel removal,'' are added to read as follows:

§ 50.2 Definitions.

* * * * *

Certified fuel handler means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.

* * * * *

Major decommissioning activity means, for a nuclear power reactor facility, any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, or results in dismantling components for shipment containing greater than class C waste in accordance with § 61.55 of this chapter.

Major radioactive components means, for a nuclear power reactor facility, the reactor vessel and internals, steam generators, pressurizers, large bore reactor coolant system piping, and other large components that are radioactive to a comparable degree.

* * * * *

Permanent cessation of operation(s) means, for a nuclear power reactor facility, a certification by a licensee to the NRC that it has permanently ceased or will permanently cease reactor operation(s), or a final legally effective order to permanently cease operation(s) has come into effect.

Permanent fuel removal means, for a nuclear power reactor facility, a certification by the licensee to the NRC that it has permanently removed all fuel assemblies from the reactor vessel.

* * * * *

11. Section 50.4, paragraphs (b)(8) and (b)(9) are added to read as follows:

§ 50.4 Written communications.

* * * * *

(b) * * *

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations, pursuant to § 50.82(a)(1), must state the date on which operations have ceased or will cease, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555–0001.

(9) *Certification of permanent fuel removal.* The licensee's certification of

permanent fuel removal, pursuant to § 50.82(a)(1), must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and the signed and notarized original must be submitted to: The Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555–0001.

* * * * *

12. Section 50.36, paragraphs (c)(6) and (c)(7) are redesignated as (c)(7) and (c)(8) and new paragraphs (c)(6) and (e) are added to read as follows:

§ 50.36 Technical specifications.

* * * * *

(c) * * *

(6) *Decommissioning.* This paragraph applies only to nuclear power reactor facilities that have submitted the certifications required by § 50.82(a)(1) and to non-power reactor facilities which are not authorized to operate. Technical specifications involving safety limits, limiting safety system settings, and limiting control system settings; limiting conditions for operation; surveillance requirements; design features; and administrative controls will be developed on a case-by-case basis.

* * * * *

(e) The provisions of this section apply to each nuclear reactor licensee whose authority to operate the reactor has been removed by license amendment, order, or regulation.

13. Section 50.36a is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) In order to keep releases of radioactive materials to unrestricted areas during normal conditions, including expected occurrences, as low as is reasonably achievable, each licensee of a nuclear power reactor will include technical specifications that, in addition to requiring compliance with applicable provisions of § 20.1301 of this chapter, require that:

(1) Operating procedures developed pursuant to § 50.34a(c) for the control of effluents be established and followed and that the radioactive waste system, pursuant to § 50.34a, be maintained and used. The licensee shall retain the operating procedures in effect as a record until the Commission terminates the license and shall retain each superseded revision of the procedures for 3 years from the date it was superseded.

(2) Each licensee shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

(b) In establishing and implementing the operating procedures described in paragraph (a) of this section, the licensee shall be guided by the following considerations: Experience with the design, construction, and operation of nuclear power reactors indicates that compliance with the technical specifications described in this section will keep average annual releases of radioactive material in effluents and their resultant committed effective dose equivalents at small percentages of the dose limits specified in § 20.1301 and in the license. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual conditions which may temporarily result in releases higher than such small percentages, but still within the limits specified in § 20.1301 of this chapter and in the license. It is expected that in using this flexibility under unusual conditions, the licensee will exert its best efforts to keep levels of radioactive material in effluents as low as is reasonably achievable. The guides set out in appendix I, provide numerical guidance on limiting conditions for operation for light-water cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable.

14. Section 50.36b is revised to read as follows:

§ 50.36b Environmental conditions.

Each license authorizing operation of a production or utilization facility, and each license for a nuclear power reactor facility for which the certification of permanent cessation of operations required under § 50.82(a)(1) has been submitted, which is of a type described in § 50.21(b) (2) or (3) or § 50.22 or is a testing facility, may include conditions to protect the environment to be set out in an attachment to the license which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report and the supplement to the environmental report submitted pursuant to §§ 51.50 and 51.53 of this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

15. Section 50.44, paragraph (a), is revised to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA) by—

(1) Metal-water reaction involving the fuel cladding and the reactor coolant,

(2) Radiolytic decomposition of the reactor coolant, and

(3) Corrosion of metals.

This section does not apply to a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

16. Section 50.46, paragraph (a)(1)(i) is revised to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors.

(a)(1)(i) Each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the

most severe postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a loss-of-coolant accident. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II Required Documentation, sets forth the documentation requirements for each evaluation model. This section does not apply to a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

17. Section § 50.48, paragraph (f) is added to read as follows:

§ 50.48 Fire protection.

* * * * *

(f) Licensees that have submitted the certifications required under § 50.82(a)(1) shall maintain a fire protection program to address the potential for fires which could cause the release or spread of radioactive materials (i.e., which could result in a radiological hazard).

(1) The objectives of the fire protection program are to—

(i) Reasonably prevent such fires from occurring;

(ii) Rapidly detect, control, and extinguish those fires which do occur and which could result in a radiological hazard; and

(iii) Ensure that the risk of fire-induced radiological hazards to the public, environment and plant personnel is minimized.

(2) The fire protection program must be assessed by the licensee on a regular basis and revised as appropriate throughout the various stages of facility decommissioning.

(3) The licensee may make changes to the fire protection program without NRC approval if these changes do not reduce the effectiveness of fire protection for facilities, systems, and equipment which could result in a radiological hazard, taking into account the decommissioning plant conditions and activities.

18. Section 50.49, paragraph (a) is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

(a) Each holder of or an applicant for a license for a nuclear power plant, other than a nuclear power plant for which the certifications required under § 50.82(a)(1) have been submitted, shall establish a program for qualifying the electric equipment defined in paragraph (b) of this section.

* * * * *

19. Section 50.51, the section heading is revised, the existing paragraph is designated paragraph (a), and new paragraph (b) is added to read as follows:

* * * * *

§ 50.51 Continuation of license.

* * * * *

(b) Each license for a facility that has permanently ceased operations, continues in effect beyond the expiration date to authorize ownership and possession of the production or utilization facility, until the Commission notifies the licensee in writing that the license is terminated. During such period of continued effectiveness the licensee shall—

(1) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including, where applicable, the storage, control and maintenance of the spent fuel, in a safe condition, and

(2) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC regulations and the provisions of the specific 10 CFR part 50 license for the facility.

20. Section 50.54, paragraphs (o) and (y) are revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(o) Primary reactor containments for water cooled power reactors, other than facilities for which the certifications required under § 50.82(a)(1) have been submitted, shall be subject to the requirements set forth in appendix J to this part.

* * * * *

(y) Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator, or, at a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, by either a licensed senior operator or a certified fuel handler, prior to taking the action.

* * * * *

21. Section 50.59, paragraphs (d) and (e) are added to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(d) The provisions of this section apply to each nuclear power reactor licensee that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1)(i).

(e) The provisions of paragraphs (a) through (c) of this section apply to each non-power reactor licensee whose license no longer authorizes operation of the reactor.

22. Section 50.60, paragraph (a) is revised to read as follows:

§ 50.60 Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation.

(a) Except as provided in paragraph (b) of this section, all light-water nuclear power reactors, other than reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted, must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to this part.

* * * * *

23. Section 50.61, paragraph (b)(1) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) Requirements.

(1) For each pressurized water nuclear power reactor for which an operating license has been issued, other than a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, the licensee shall have projected values of RT_{PTS}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [2] change in projected values of RT_{PTS}, or

[2] Changes to RT_{PTS} values are considered significant if either the previous value or the current value, or both values, exceed the screening criterion prior to the expiration of the operating license, including any renewed term, if applicable for the plant.

upon request for a change in the expiration date for operation of the facility.

* * * * *

24. Section 50.62, paragraph (a) is revised to read as follows:

§ 50.62 Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants.

(a) *Applicability.* The requirements of this section apply to all commercial light-water-cooled nuclear power plants, other than nuclear power reactor facilities for which the certifications required under § 50.82(a)(1) have been submitted.

* * * * *

25. Section 50.65, paragraph (a)(1) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

(a)(1) Each holder of a license to operate a nuclear power plant under §§ 50.21(b) or 50.22 shall monitor the performance or condition of structures, systems, or components, against licensee-established goals, in a manner sufficient to provide reasonable assurance that such structures, systems, and components, as defined in paragraph (b), are capable of fulfilling their intended functions. Such goals shall be established commensurate with safety and, where practical, take into account industry-wide operating experience. When the performance or condition of a structure, system, or component does not meet established goals, appropriate corrective action shall be taken. For a nuclear power plant for which the licensee has submitted the certifications specified in § 50.82(a)(1), this section only shall apply to the extent that the licensee shall monitor the performance or condition of all structures, systems, or components associated with the storage, control, and maintenance of spent fuel in a safe condition, in a manner sufficient to provide reasonable assurance that such structures, systems, and components are capable of fulfilling their intended functions.

* * * * *

26. Section 50.71, paragraph (e)(4) is revised and paragraph (f) is added to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) * * *

(4) Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filling. For nuclear power reactor facilities that have submitted the certifications required by § 50.82(a)(1), subsequent revisions must be filed every 24 months.

* * * * *

(f) The provisions of this section apply to nuclear power reactor licensees that have submitted the certification of permanent cessation of operations required under § 50.82(a)(1)(i). The provisions of paragraphs (a), (c), and (d) of this section also apply to non-power reactor licensees that are no longer authorized to operate.

27. Section 50.75, paragraph (f) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(f)(1) Each power reactor licensee shall at or about 5 years prior to the projected end of operations submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost to decommission.

(2) Each non-power reactor licensee shall at or about 2 years prior to the projected end of operations submit a preliminary decommissioning plan containing a cost estimate for decommissioning and an up-to-date assessment of the major factors that could affect planning for decommissioning. Factors to be considered in submitting this preliminary plan information include—

(i) The decommissioning alternative anticipated to be used. The requirements of § 50.82(b)(4)(i) must be considered at this time;

(ii) Major technical actions necessary to carry out decommissioning safely;

(iii) The current situation with regard to disposal of high-level and low-level radioactive waste;

(iv) Residual radioactivity criteria;

(v) Other site specific factors which could affect decommissioning planning and cost.

(3) If necessary, the cost estimate, for power and non-power reactors, shall also include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

* * * * *

28. Section 50.82 is revised to read as follows:

§ 50.82 Termination of license.

For power reactor licensees who, before the effective date of this rule, either submitted a decommissioning plan for approval or possess an approved decommissioning plan, the plan is considered to be the PSDAR submittal required under paragraph (a)(4) of this section and the provisions of this section apply accordingly. For power reactor licensees whose decommissioning plan approval activities have been relegated to notice of opportunity for a hearing under subpart G of 10 CFR part 2, the public meeting convened and 90-day delay of major decommissioning activities required in paragraphs (a)(4)(ii) and (a)(5) of this section shall not apply, and any orders arising from proceedings under subpart G of 10 CFR part 2 shall continue and remain in effect absent any orders from the Commission.

(a) For power reactor licensees—

(1) (i) When a licensee has determined to permanently cease operations the licensee shall, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 50.4(b)(8);

(ii) Once fuel has been permanently removed from the reactor vessel, the licensee shall submit a written certification to the NRC that meets the requirements of § 50.4(b)(9) and;

(iii) For licensees whose licenses have been permanently modified to allow possession but not operation of the facility, before the effective date of this rule, the certifications required in paragraphs (a)(1) (i)–(ii) of this section shall be deemed to have been submitted.

(2) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come into effect, the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(3) Decommissioning will be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the Commission only when necessary to protect public health and safety. Factors that will be considered by the Commission in evaluating an alternative that provides for completion of decommissioning beyond 60 years of permanent cessation of operations include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(4) (i) Prior to or within 2 years following permanent cessation of operations, the licensee shall submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, and a copy to the affected State(s). The report must include a description of the planned decommissioning activities along with a schedule for their accomplishment, an estimate of expected costs, and a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements.

(ii) The NRC shall notice receipt of the PSDAR and make the PSDAR available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the PSDAR. The NRC shall publish a notice in the Federal Register and in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(5) Licensees shall not perform any major decommissioning activities, as defined in § 50.2, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under § 50.82(a)(1), have been submitted.

(6) Licensees shall not perform any decommissioning activities, as defined in § 50.2, that—

(i) Foreclose release of the site for possible unrestricted use;

(ii) Result in significant environmental impacts not previously reviewed; or

(iii) Result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.

(7) In taking actions permitted under § 50.59 following submittal of the PSDAR, the licensee shall notify the NRC, in writing and send a copy to the affected State(s), before performing any decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR, including changes that significantly increase the decommissioning cost.

(8)(i) Decommissioning trust funds may be used by licensees if—

(A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2;

(B) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;

(C) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(ii) Initially, 3 percent of the generic amount specified in § 50.75 may be used for decommissioning planning. For licensees that have submitted the certifications required under § 50.82(a)(1) and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee using any funding in excess of these amounts.

(iii) Within 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.

(iv) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

(9) All power reactor licensees must submit an application for termination of license. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

(i) The license termination plan must be a supplement to the FSAR or equivalent and must be submitted at least 2 years before termination of the license date.

(ii) The license termination plan must include—

(A) A site characterization;

(B) Identification of remaining dismantlement activities;

(C) Plans for site remediation;

(D) Detailed plans for the final radiation survey;

(E) A description of the end use of the site, if restricted;

(F) An updated site-specific estimate of remaining decommissioning costs; and

(G) A supplement to the environmental report, pursuant to § 51.53, describing any new information or significant environmental change associated with the licensee's proposed termination activities.

(iii) The NRC shall notice receipt of the license termination plan and make the license termination plan available for public comment. The NRC shall also schedule a public meeting in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC shall publish a notice in the Federal Register and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time and location of the meeting, along with a brief description of the purpose of the meeting.

(10) If the license termination plan demonstrates that the remainder of decommissioning activities will be performed in accordance with the regulations in this chapter, will not be inimical to the common defense and security or to the health and safety of the public, and will not have a significant effect on the quality of the environment and after notice to interested persons, the Commission shall approve the plan, by license amendment, subject to such conditions and limitations as it deems appropriate and necessary and authorize implementation of the license termination plan.

(11) The Commission shall terminate the license if it determines that—

(i) The remaining dismantlement has been performed in accordance with the approved license termination plan, and

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release.

(b) For non-power reactor licensees—

(1) A licensee that permanently ceases operations must make application for license termination within 2 years following permanent cessation of operations, and in no case later than 1 year prior to expiration of the operating license. Each application for termination of a license must be accompanied or preceded by a proposed decommissioning plan. The contents of the decommissioning plan are specified in paragraph (b)(4) of this section.

(2) For decommissioning plans in which the major dismantlement activities are delayed by first placing the facility in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(3) For decommissioning plans that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide that—

(i) Funds needed to complete decommissioning be placed into an account segregated from the licensee's assets and outside the licensee's

administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e); and

(ii) Means be included for adjusting cost estimates and associated funding levels over the storage or surveillance period.

(4) The proposed decommissioning plan must include—

(i) The choice of the alternative for decommissioning with a description of activities involved. An alternative is acceptable if it provides for completion of decommissioning without significant delay. Consideration will be given to an alternative which provides for delayed completion of decommissioning only when necessary to protect the public health and safety. Factors to be considered in evaluating an alternative which provides for delayed completion of decommissioning include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including the presence of other nuclear facilities at the site.

(ii) A description of the controls and limits on procedures and equipment to protect occupational and public health and safety;

(iii) A description of the planned final radiation survey;

(iv) An updated cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning; and

(v) A description of technical specifications, quality assurance provisions and physical security plan provisions in place during decommissioning.

(5) If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve, by amendment, the plan subject to such conditions and limitations as it deems appropriate and necessary. The approved decommissioning plan will be a supplement to the Safety Analysis report or equivalent.

(6) The Commission will terminate the license if it determines that—

(i) The decommissioning has been performed in accordance with the approved decommissioning plan, and

(ii) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release.

(c) For a facility that has permanently ceased operation before the expiration of its license, the collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each licensee.

29. Section 50.91, the introductory text is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility, except for amendments subject to hearings governed by §§ 2.1201–2.1263 of this chapter. For amendments subject to §§ 2.1201–2.1263 of this chapter, the following procedures will apply only to the extent specifically referenced in § 2.1205 (c) and (d) of this chapter:

* * * * *

30. Section 50.111, paragraph (b) is revised to read as follows:

§ 50.111 Criminal penalties.

* * * * *

(b) The regulations in 10 CFR Part 50 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 50.1, 50.2, 50.3, 50.4, 50.8, 50.11, 50.12, 50.13, 50.20, 50.21, 50.22, 50.23, 50.30, 50.31, 50.32, 50.33, 50.34a, 50.35, 50.36b, 50.37, 50.38, 50.39, 50.40, 50.41, 50.42, 50.43, 50.45, 50.50, 50.51, 50.52, 50.53, 50.56, 50.57, 50.58, 50.81, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103, 50.109, 50.110, 50.111.

31. Appendix I to 10 CFR part 50 is amended by revising Section (I), the introductory text of Section (IV), and Section (IV)(C) to read as follows:

Appendix I to Part 50—Numerical Guides for Design Objectives and Limiting Conditions of Operation to Meet the Criterion ''As Low As Is Reasonably Achievable'' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents

SECTION I. *Introduction.* Section 50.34a provides that an application for a permit to construct a nuclear power reactor shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal conditions, including expected occurrences. In the case of an application filed on or after January 2, 1971, the application must also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable.

Section 50.36a contains provisions designed to assure that releases of radioactive material from nuclear power reactors to unrestricted areas during normal conditions, including expected occurrences, are kept as low as practicable.

* * * * *

SEC. IV. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR part 50.* The guides on limiting conditions for operation for light-water-cooled nuclear power reactors set forth below may be used by an applicant for a license to operate a light-water-cooled nuclear power reactor or a licensee who has submitted a certification of permanent cessation of operations under § 50.82(a)(1) as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as is reasonably achievable.

Section 50.36a(b) provides that licensees shall be guided by certain considerations in establishing and implementing operating procedures specified in technical specifications that take into account the need for operating flexibility and at the same time assure that the licensee will exert his best effort to keep levels of radioactive material in effluents as low as is reasonably achievable. The guidance set forth below provides additional and more specific guidance to licensees in this respect.

Through the use of the guides set forth in this section it is expected that the annual release of radioactive material in effluents from light-water-cooled nuclear power reactors can generally be maintained within the levels set forth as numerical guides for design objectives in Section II.

At the same time, the licensee is permitted the flexibility of operations, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual conditions which may temporarily result in releases higher than numerical guides for design objectives but still within levels that assure that the average population exposure is equivalent to small fractions of doses from natural background radiation. It is expected that in using this operational flexibility under unusual conditions, the licensee will exert his best efforts to keep levels of radioactive material in effluents within the numerical guides for design objectives.

* * * * *

C. If the data developed in the surveillance and monitoring program described in paragraph B of Section III or from other monitoring programs show that the relationship between the quantities of radioactive material released in liquid and gaseous effluents and the dose to individuals in unrestricted areas is significantly different from that assumed in the calculations used to determine design objectives pursuant to Sections II and III, the Commission may modify the quantities in the technical

specifications defining the limiting conditions in a license to operate a light-water-cooled nuclear power reactor or a license whose holder has submitted a certification of permanent cessation of operations under § 50.82(a)(1).

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

32. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

* * * * *

33. Section 51.53, paragraph (b) is revised to read as follows:

§ 51.53 Supplement to environmental report.

* * * * *

(b) *Post operating license stage.* Each applicant for a license amendment authorizing decommissioning activities for a production or utilization facility either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license amendment approving a license termination plan or decommissioning plan under § 50.82 of this chapter either for unrestricted use or based on continuing use restrictions applicable to the site; and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled ''Supplement to Applicant's Environmental Report—Post Operating License Stage,'' which will update ''Applicant's Environmental Report—Operating License Stage,'' as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The ''Supplement to Applicant's Environmental Report—Post Operating License Stage'' may incorporate by reference any information contained in ''Applicant's Environmental Report—Construction Permit Stage,'' ''Supplement to Applicant's Environmental Report—Operating License Stage,'' final environmental impact statement, supplement to final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility.

* * * * *

34. Section 51.95, paragraph (b) is revised to read as follows:

§ 51.95 Supplement to final environmental impact statement.

* * * * *

(b) *Post operating license stage.* In connection with the amendment of an operating license authorizing decommissioning activities at a production or utilization facility covered by § 51.20, either for unrestricted use or based on continuing use restrictions applicable to the site, or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

Dated at Rockville, MD, this 19th day of July, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–19031 Filed 7–26–96; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Government Contracting Assistance; Correction

AGENCY: Small Business Administration.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to a final rule published by the Small Business Administration (SBA) in the Federal Register on Wednesday, January 31, 1996 (61 FR 3310). The regulation related to small business prime contractor's performance. The correction is needed to ensure consistency with other provisions contained in SBA's regulations.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Sadowski, Acting Assistant Administrator, Office of Industrial Assistance, (202) 205–6475.

SUPPLEMENTARY INFORMATION: On January 31, 1996, SBA published in the Federal Register (61 FR 3310) a complete revision to the regulations pertaining to SBA's procurement assistance programs. Included within this final rule was a new section (§ 125.6) entitled ''Prime contractor performance requirements (limitations on subcontracting).'' 61 FR 3315. As published, the final regulation contains two errors that may be misleading and need to be changed. First, § 125.6(a)(2) uses the term ''regular dealer.'' However, the definition of ''regular dealer'' was abolished by section 7201 of the Federal Acquisition Streamlining Act of 1994 (FASA). Specifically, FASA repealed the ''regular dealer'' or ''manufacturer'' eligibility requirements imposed by the Walsh-Healey Public Contracts Act. Without a current definition for the term ''regular dealer,'' SBA believes that its use in this

regulation would be confusing. As such, this correction rule substitutes the term ''non-manufacturer'' for ''regular dealer'' in § 125.6(a)(2) to ensure consistency with other sections of 13 CFR Part 125 and to remove the ambiguity created by the use of the term ''regular dealer.''

Second, as set forth in the January 31, 1996 final rule, § 125.6(c) stated that compliance with the Prime Contractor Performance Requirements would be determined as of the date the bid was submitted in a sealed bid procurement, and as of the date the concern submits its best and final offer in a negotiated procurement. This provision is inconsistent with the general responsibility requirements. In determining an offeror's responsibility to perform a specific contract as part of a Certificate of Competency review, SBA determines whether the offeror is capable of performing the contract at the time of award. The offeror can make changes to demonstrate that it can perform the contract up until the time of award. Because the Prime Contractor Performance Requirements are now to be considered an issue of responsibility, compliance with them also should be able to be demonstrated up until the time of award. Thus, this correction rule eliminates § 125.6(c) for internal consistency, and redesignates paragraphs (d), (e), (f), and (g) as paragraphs (c), (d), (e), and (f), respectively.

Correction of Publication

Accordingly, the publication on January 31, 1996, of the final regulations that were the subject of FR Doc. 96–1157, is corrected as follows:

§ 125.6 [Corrected]

1. On page 3315 in the third column, § 125.6(a)(2), remove the words ''regular dealer'' and add in their place the word ''non-manufacturer''.

2. On page 3316, in the first column, section 125.6, remove paragraph (c) in its entirety and redesignate paragraphs (d) through (g) as (c) through (f), respectively.

Dated: July 16, 1996.

Ginger Lew,

Deputy Administrator.

[FR Doc. 96–19171 Filed 7–26–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–123; Special Conditions No. 25–ANM–118]

Special Conditions: Embraer (Brazil) Aircraft Corporation Model EMB–145 Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model EMB–145 airplane. This new airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Gerry Lakin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (206) 227–1187; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 1989, Embraer Aircraft Corporation, Caixa Postal 343, 12227–901 Sao Jose dos Campos, Sao Paulo SP Brasil, applied for a new type certificate in the transport airplane category for the Model EMB–145 airplane. The EMB–145 is a T–tail, low swept wing, small transport airplane powered by two Allison GMA–3007A turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 7,040 pounds thrust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to 50 passengers, and a maximum takeoff weight of 42,328 pounds.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model EMB–145 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the certification basis for the Model EMB–145 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Embraer Model EMB–145 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model EMB–145 incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air Data System, Attitude and Heading Reference System (AHRS), Navigation and Communication System, Autopilot System, and a Full Authority Digital Engine Control (FADEC) system that controls critical engine parameters. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by

the regulations incorporated by reference, special conditions are issued for the Embraer Model EMB–145, which would require that new technology electrical and electronic systems, such as the EFIS, FADEC, AHRS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below.

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system test and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to the Embraer Model EMB–145. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of proposed special conditions No. SC–96–2–NM was published in the Federal Register on April 3, 1996 (61 FR 14684). One commenter responded to the request for comments and concurs with the special conditions as proposed.

Conclusion

This action affects only certain design features on the Embraer Model EMB–145 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model EMB–145 series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 12, 1996.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–19107 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–267–AD; Amendment 39–9703; AD 96–16–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–200 series airplanes, that requires modification of the shock absorber sub-assembly of the main landing gear (MLG). This amendment is prompted by reports of internal damage to the shock absorber sub-assembly due to loose screws in the upper bearing dowels. The actions specified by this AD are intended to prevent such damage, which could result in the overextension of the shock absorber and failure of the torque link. This situation may lead to the inability of the MLG to retract and subsequent collapse of the MLG.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

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

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–200 series airplanes was published in the Federal Register on April 29, 1996 (61 FR 18704). That action proposed to require modification of the shock absorber sub-assembly of the main landing gear (MLG).

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the three comments received.

All three commenters support the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $165,600, or $1,440 per airplane.

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

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–16–03 Airbus Industries: Amendment 39–9703. Docket 95–NM–267–AD.

Applicability: Model A320–200 series airplanes on which Airbus Modification 24594 (reference Airbus Service Bulletin A320–32–1144) has not been installed, 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the internal area of the shock absorber sub-assembly, which could cause an overextension of the shock absorber and failure of the torque link, accomplish the following:

(a) Prior to the accumulation of 6,000 total landings since the shock absorber of the main landing gear (MLG) was removed, built, or overhauled; or within 6 months after the effective date of this AD; whichever occurs later: Modify the shock absorber assembly of the MLG, in accordance with Airbus Service Bulletin A320–32–1144, dated December 8, 1994.

Note 2: Airbus Service Bulletin A320–32–1144 references Dowty Aerospace Service Bulletin 200–32–215, dated July 7, 1994, and Dowty Aerospace Service Bulletin 200–32–216, Revision 1, dated November 18, 1994, as additional sources of service information for modification of the shock absorber.

(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 3: 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 modification shall be done in accordance with Airbus Service Bulletin A320–32–1144, dated December 8, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on July 22, 1996.

S.R Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19013 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–218–AD; Amendment 39–9698; AD 96–15–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With BFGoodrich Evacuation Slide/Rafts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires modification of door 5 evacuation slide/rafts. This amendment is prompted by reports that the door 5 evacuation slide/raft failed to deploy properly due to adverse loads caused by the geometry of this evacuation slide/raft. The actions specified by this AD are intended to prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the Federal Register on April 29, 1996 (61 FR 18705). That action proposed to require modification of the door 5 evacuation slide/rafts.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 150 BFGoodrich evacuation slide/rafts installed on 75 Boeing Model 747–400 series airplanes (2 slides per airplane) of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per slide to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $84 per slide. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $21,600, or $144 per slide.

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

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–15–08 Boeing: Amendment 39–9698. Docket 95–NM–218–AD.

Applicability: Model 747–400 series airplanes equipped with BFGoodrich Evacuation Slide/Rafts at door 5; having slide/raft assembly part number 7A1469–1, –2, –3, –4, –7, –8, –9, –10, –11, or –12 (all unit serial numbers); 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the door 5 evacuation slide/raft to deploy properly, which could contribute to injury of passengers on the slide and could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the door 5 evacuation slide/rafts in accordance with BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995.

Note 2: Modification previous to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3096, which references BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 1995, is considered acceptable for compliance with the modification requirements of paragraph (a) of this AD.

(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, Los Angeles Aircraft Certification Office (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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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 modification shall be done in accordance with BFGoodrich Service Bulletin 7A1469–25–283, dated November 6, 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 BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on July 18, 1996.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–18786 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–18; Amendment 39–9697; AD 96–15–04]

Airworthiness Directives; Hartzell Propeller Inc. HC–B3TN, HC–B5MP, HC–E4A, and HC–D4N Series Propellers

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 propeller blades, identified by serial number, installed on Hartzell Propeller Inc. HC–B3TN, HC–B5MP, HC–E4A, and HC–D4N series propellers. This action requires, within specified hours time in service after the effective date of this AD, a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks, and replacement of defective propeller blades with serviceable parts. In addition, this action requires this inspection prior to further flight for propellers that experience sudden or unusual vibration. This amendment is prompted by a report of an inflight propeller blade separation. The actions specified in this AD are intended to prevent propeller blade separation caused by propeller blade shank cracks emanating from forging flaws, which could result in loss of control of the aircraft.

DATES: Effective July 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 27, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–18, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. in the subject line of the comment.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (513) 778–4388, fax (513) 778–4321. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of an inflight blade separation of a Hartzell Propeller Inc. Model HC–D4N–5C/D9327K propeller installed on a Short Brothers plc S–312 Tucano military aircraft in the United Kingdom. The investigation revealed that the propeller blade separation resulted from a crack emanating from a forging flaw in the propeller blade. This condition, if not corrected, could result in propeller blade separation caused by propeller blade shank cracks emanating from forging flaws, which could result in loss of control of the aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–220, dated July 8, 1996, that contains a list of affected propellers by model and serial number, and describes procedures for a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks. The propeller blades identified by serial numbers are limited to those manufactured between March 1992 and June 1996, and represent a group of aluminum propeller blade designs, which are: D9327(), D9512A(), LT10673(), LT10673()−2Q, M10282()+6, M10876(), LT10876()−2Q, and E10477K.

Since an unsafe condition has been identified that is likely to exist or develop on other propeller blades manufactured from the same forging die and same forging process, this AD is being issued to prevent propeller blade separation due to propeller blade shank cracks emanating from forging flaws, which could result in loss of control of the aircraft. This AD requires a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks, and replacement of flawed propeller blades with serviceable parts. For propellers installed on agricultural or acrobatic aircraft, such as certain Air Tractor, Inc., Ayres Corporation, Norman, Pilatus Aircraft Ltd., PZL, and Short Brothers Ltd. aircraft, compliance is required within 10 hours TIS after the effective date of this AD. These agricultural and acrobatic aircraft operate in an environment that subjects the propeller to high loads. For all other propellers, regardless of aircraft installation, compliance is required within 60 hours TIS after the effective date of this AD. In addition, this AD requires the fluorescent dye penetrant inspection prior to further flight for propellers that have not been inspected in accordance with this AD, which experience a sudden or unusual vibration. This compliance prior to further flight is necessary because a timely investigation of such conditions can prevent propeller failure. The actions are required to be accomplished in accordance with the ASB described previously.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–18.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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), 40113, 44701.

§ 39.13 [Amended]

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

96–15–04 Hartzell Propeller Inc.: Amendment 39–9697. Docket 96–ANE–18.

Applicability: Hartzell Propeller Inc. HC–B3TN, HC–B5MP, HC–E4A, and HC–D4N series propellers, equipped with propeller blades identified by serial number in Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–220, dated July 8, 1996. The propeller blades identified by serial numbers are limited to those manufactured between March 1992 and June 1996, and represent a group of aluminum propeller blade designs, which are: D9327(), D9512A(), LT10673(), LT10673()−2Q, M10282()+6, M10876(), LT10876()−2Q, and E10477K. These propellers are installed on but not limited to the following aircraft:

Aerospatiale Nord 262 series (STC modified),
Air Tractor, Inc. AT–502, AT–503, and AT–802 series,
Antonov AN–28 series,
Ayres S2R series,
McDonnell Douglas DC–3 series (STC modified),
Norman Aeroplane NAC 6 series,
Pilatus Aircraft Ltd. PC–7 mk II, PC–9, and PC–12 series,
PZL PZL–M18,
Short Brothers plc S–312 Tucano (military), SD3, and C–23 (military) series.
Twin Commander Aircraft Corp. 690 and 695 series (STC modified).

Note 1: The above is not an exhaustive list of aircraft which may contain the affected Hartzell Propeller Inc. Models HC–B3TN, HC–B5MP, HC–E4A, and HC–D4N series propellers because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 ''Major Repair and Alteration.'' It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Note 2: This airworthiness directive (AD) applies to each propeller 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 propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade separation caused by propeller blade shank cracks emanating from forging flaws, which could result in loss of control of the aircraft, accomplish the following:

(a) For propellers installed on agricultural or acrobatic aircraft, such as Air Tractor, Inc., AT–502A, AT–503, AT–802; Ayres Corporation S2R–T65, S2RHG–265; Norman Aeroplane NAC 6; Pilatus Aircraft Ltd. PC–7 mk II, PC–9; PZL PZL–M18, and Short Brothers Ltd. S–312 Tucano (military) aircraft, accomplish the following:

(1) Within 10 hours TIS after the effective date of this AD, disassemble the propeller and perform a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks, in accordance with Hartzell Propeller Inc. ASB No. HC–ASB–61–220, dated July 8, 1996.

(2) Prior to further flight, remove from service propeller blades exhibiting forging flaws or cracks and replace with serviceable parts.

(b) For all other propellers, regardless of aircraft installation, accomplish the following:

(1) Within 60 hours TIS after the effective date of this AD, disassemble the propeller and perform a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks in accordance with Hartzell Propeller Inc. ASB No. HC–ASB–61–220, dated July 8, 1996.

(2) Prior to further flight, remove from service propeller blades exhibiting forging flaws or cracks and replace with serviceable parts.

(c) For propellers that have not been inspected in accordance with this AD, which experience a sudden or unusual vibration, accomplish the following:

(1) Prior to further flight, disassemble the propeller and perform a one-time fluorescent dye penetrant inspection of a twelve-inch long area on both the face and camber sides of propeller blade shanks for forging flaws or cracks in accordance with Hartzell Propeller Inc. ASB No. HC–ASB–61–220, dated July 8, 1996.

(2) Prior to further flight, remove from service propeller blades exhibiting forging flaws or cracks and replace with serviceable parts.

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

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

(e) Except for propellers subject to paragraph (c) of this AD, 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.

(f) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. service document:

Document No.	Pages	Date
ASB No. HC–ASB–61–220. Total pages: 24.	1–24	July 8, 1996.

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 Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4388, fax (513) 778–4321. 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.

(g) This amendment becomes effective on July 29, 1996.

Issued in Burlington, Massachusetts, on July 17, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–18765 Filed 7–24–96; 4:53 pm]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–171–AD; Amendment 39–9700; AD 96–15–10]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 and 0070 series airplanes, that requires modification of the wheel brake assembly on the main landing gear. This amendment is prompted by reports of aluminum brake pistons that have ballooned and failed. The actions specified by this AD are intended to prevent such failure of the pistons, which could result in leakage of the hydraulic fluid, resultant loss of braking capability, and a possible brake fire.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 and 0070 series airplanes was published in the Federal Register on April 10, 1996 (61 FR 15908). That action proposed to require modification of the wheel brake assembly on the main landing gear (MLG).

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

Support for the Proposal

One commenter supports the proposal.

Request To Withdraw the Proposal

The Air Transport Association (ATA) of America, on behalf of its member operators, has no technical objection to the proposal, but requests that the FAA withdraw the proposal if the entire affected U.S. fleet has been modified already. The ATA states that its one member operator affected by the proposal will accomplish the modification on all of its fleet within a short time. Consequently, the ATA questions the need for an AD when the fleet will be in compliance with the AD by the time the final rule is adopted.

The FAA does not concur with the commenter's request to withdraw the proposal. Even if the current U.S.-registered fleet may be in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that any affected airplane that is imported and placed on the U.S. register in the future will be required to be in compliance as well. The manufacturer has advised the FAA that not all of the affected airplanes, worldwide, have been modified; therefore, the possibility exists that an unmodified airplane could be imported to the U.S. at some future time. Issuance of this AD will ensure that the airplane is modified prior to the time it is permitted to operate in the U.S.

Conclusion

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

Cost Impact

The FAA estimates that 122 airplanes of U.S. registry will be affected by this AD.

The replacement of the brake pistons, if accomplished, will take approximately 9 work hours per airplane (when accomplished as part of a normal brake overhaul), at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement action on U.S. operators is estimated to be $540 per airplane.

The installation of the cylinder sleeve kit, if accomplished, will take approximately 9 work hours per airplane (when accomplished as part of a normal brake overhaul), at an average labor rate of $60 per work hour. Required parts will cost approximately $4,400 per airplane. Based on these figures, the cost impact of this installation action on U.S. operators is estimated to be $4,940 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that at least 40 affected airplanes already have been modified in accordance with the requirements of this AD; therefore, the future cost impact of the AD on U.S. operators is reduced by that amount.

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–15–10 Fokker: Amendment 39–9700. Docket 95–NM–171–AD.

Applicability: Model F28 Mark 0100 and 0070 series airplanes; equipped with Aircraft Braking Systems Corporation (ABSC) brake assemblies having part number (P/N) 5008132–2, –3, –4, –5, –6, or –7, all serial numbers; 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of braking capability and possible brake fire due to failure of the brake pistons, accomplish the following:

(a) Within 9 months after the effective date of this AD, or at the next scheduled or unscheduled brake overhaul, whichever occurs first: Modify ABSC wheel brake assemblies having P/N 5008132–2, –3, –4, –5, –6, or –7, all serial numbers, by accomplishing either paragraph (a)(1) or (a)(2) of this AD.

(1) Replace the brake assemblies with modified units having stainless steel pistons, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–092, dated January 11, 1995. Or

(2) Install a cylinder sleeve kit in accordance with Aircraft Braking Systems Service Bulletin Fo100–32–63, dated January 13, 1995.

(b) As of the effective date of this AD, no person shall install an ABSC brake assembly having part number 5008132–2, –3, –4, –5, –6, or –7, on any airplane unless it has been modified in accordance with Fokker Service Bulletin SBF100–32–092, dated January 11, 1995, or Aircraft Braking Systems Service Bulletin Fo100–32–63, dated January 13, 1995.

(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.

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–092, dated January 11, 1995; and Aircraft Braking Systems Service Bulletin Fo100–32–63, dated January 13, 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on July 18, 1996.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–18772 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–39–AD; Amendment 39–9701; AD 96–16–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10 and DC–10–15 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10 and DC–10–15 series airplanes, that requires an inspection for evidence of missing chrome and for corrosion on the chrome surfaces, or verification that the forward trunnion bolts have been chrome plated in a specific manner; and rework or replacement of the bolts, if necessary. This amendment is prompted by a report of chrome flaking on the bearing surface of the trunnion bolts due to improper cleaning of the base material prior to chrome plating. The actions specified by this AD are intended to prevent premature failure of the trunnion bolts and subsequent collapse of the main landing gear (MLG) as a result of chrome flaking and severe corrosion on the bearing surface and in the mechanical fuse.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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: Maureen Moreland or Ron Atmur, Aerospace Engineers, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5238 or (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10 and DC–10–15 series airplanes was published in the Federal Register on April 10, 1996 (61 FR 15904). That action proposed to require a visual inspection for evidence of missing chrome and for corrosion on the chrome surfaces, or verification that the forward trunnion bolts have been chrome plated in a specific manner; and rework or replacement of the bolts, if necessary.

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

Both commenters support the proposed rule.

Conclusion

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

Cost Impact

There are approximately 139 McDonnell Douglas Model DC–10–10 and DC–10–15 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,260, or $60 per airplane.

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

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–16–01 McDonnell Douglas: Amendment 39–9701. Docket 96–NM–39–AD.

Applicability: Model DC–10–10 and DC–10–15 series airplanes, as listed in McDonnell Douglas Service Bulletin DC10–32–241, dated December 13, 1995; 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent premature failure of the trunnion bolts and subsequent collapse of the main landing gear (MLG), accomplish the following:

(a) For airplanes on which the forward trunnion bolts, part number (P/N) ARG7557–501, installed on the left and right MLG's, have accumulated 6,000 or more total flight hours, or 2,000 or more total flight cycles, as of the date of the inspection or verification required by paragraph (a)(1) or (a)(2), respectively, of this AD: Within 18 months after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC10–32–241, dated December 13, 1995.

(1) Remove the bolts and perform a visual inspection for evidence of missing chrome and for corrosion on the chrome surfaces, in accordance with the service bulletin.

(i) If no evidence of missing chrome and no corrosion on the chrome surfaces are found, no further action is required by this AD.

(ii) If any evidence of missing chrome or any corrosion on the chrome surfaces is found, prior to further flight, accomplish either paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD.

(A) Remove the chrome plating on the trunnion bolt in accordance with the service bulletin; replace the plating in accordance with the Component Maintenance Manual (CMM), Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas Designated Engineering Representative (DER) who has been given a special delegation by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, to make such a finding; and reinstall the reworked bolt in accordance with the service bulletin.

(B) Replace the trunnion bolt with a serviceable part in accordance with the service bulletin.

(2) Verify whether the forward trunnion bolts, P/N ARG7557–501, installed on the left and right MLG's, have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding.

(i) If the bolts have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding: No further action is required by this AD.

(ii) If any bolt has not been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a

McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding: Prior to further flight, accomplish the requirements of either paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD in accordance with the service bulletin.

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 18 months after the effective date of this AD, verify whether the forward trunnion bolts, P/N ARG7557–501, installed on the left and right MLG's, have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding.

(1) If the bolts have been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding: No further action is required by this AD.

(2) If any bolt has not been chrome plated since original manufacture, in accordance with the CMM, Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas DER who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding: Prior to further flight, accomplish the requirements of either paragraph (b)(2)(i) or (b)(2)(ii) of this AD in accordance with McDonnell Douglas Service Bulletin DC10–32–241, dated December 13, 1995.

(i) Remove the chrome plating on the trunnion bolt in accordance with the service bulletin; replace the plating in accordance with the Component Maintenance Manual (CMM), Chapter 20–10–02, Revision 31, dated September 1, 1991, or in accordance with a method approved by a McDonnell Douglas Designated Engineering Representative (DER) who has been given a special delegation by the Manager, Los Angeles ACO, to make such a finding; and reinstall the reworked bolt in accordance with the service bulletin. Or

(ii) Replace the trunnion bolt with a serviceable part in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. 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 Service Bulletin DC10–32–241, dated December 13, 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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 September 3, 1996.

Issued in Renton, Washington, on July 22, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19012 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–211–AD; Amendment 39–9702; AD 96–16–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires either replacement or modification of the inboard and outboard flap actuators. This amendment is prompted by a report of failure of the piston rod of the inboard flap actuator due to a manufacturing process error. The actions specified by this AD are intended to prevent failure of the piston rod, which could result in uncommanded flap extension and could lead to an asymmetric flap configuration, which could reduce controllability of the airplane.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

ADDRESSES: 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 Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5338; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the Federal Register on April 19, 1996 (61 FR 17259). That action proposed to require either the replacement or modification of the inboard and outboard flap actuators.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 143 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD.

To accomplish the required actions associated with Option 1 (replacement of flap actuators) will take approximately 9 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 1 required by this AD on U.S. operators is estimated to be $540 per airplane.

To accomplish the required actions associated with Option 2 (modification

and reidentification of the inboard and outboard flap actuators) will take approximately 25 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 2 required by this AD on U.S. operators is estimated to be $1,500 per airplane.

To accomplish the required actions associated with Option 3 (modification and reidentification of the inboard flap inboard actuator, the inboard flap outboard actuator, and the outboard flap actuators) will take approximately 27 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of Option 3 required by this AD on U.S. operators is estimated to be $1,620 per airplane.

Based in the figures discussed above, the cost impact of this AD action on U.S. operators is estimated to be between $28,080 and $82,240 for the affected fleet. These cost impact figures are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–16–02 McDonnell Douglas: Amendment 39–9702. Docket 95–NM–211–AD.

Applicability: Model MD–11 series airplanes, manufacturer's fuselage numbers 0447 through 0589 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the piston rod, which could result in uncommanded flap extension and resultant asymmetric flap configuration, which could reduce controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish either paragraph (a)(1), (a)(2), or (a)(3) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–27A057, dated August 31, 1995.

(1) Accomplish the actions specified as Option 1 (replacement of the inboard and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin; or

(2) Accomplish the actions specified as Option 2 (modification and reidentification of the inboard and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin; or

(3) Accomplish the actions specified as Option 3 (modification and reidentification of the inboard flap inboard actuator, inboard flap outboard actuator, and outboard flap actuators) in the Accomplishment Instructions of the alert service bulletin.

(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, Los Angeles Aircraft Certification Office (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.

(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 actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–27A057, dated August 31, 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on July 22, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19011 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–208–AD; Amendment 39–9699; AD 96–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that requires repetitive high

frequency eddy current inspections to detect cracks around the fasteners of the lower forward corners of the sliding window frames, and repair, if necessary. This amendment also requires the installation of a modification for each affected fastener hole, which terminates the repetitive inspections. This amendment is prompted by the results of full- scale fatigue tests which indicated that fatigue cracking occurred on the lower forward corner of the sliding window frames at frame 4. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in rapid depressurization of the airplane.

DATES: Effective September 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 3, 1996.

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

FOR FURTHER INFORMATION CONTACT: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes was published in the Federal Register on March 28, 1996 (61 FR 13789). That action proposed to require repetitive high frequency eddy current inspections to detect cracks around the fasteners of the lower forward corners of the sliding window frames, and repair, if necessary. That action also proposed to require the installation of a modification for each affected fastener hole, which would terminate the repetitive inspections.

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

Support for the Proposal

One commenter supports the proposal.

Request To Revise Proposed Compliance Time

One commenter requests that the compliance time for the inspection specified in proposed paragraph (a) be revised. The commenter points out that the proposal specifies that the initial inspection is to be accomplished prior to the accumulation of 15,000 total landings, or within 3 months after the effective date of the final rule, whichever occurs first. ''The commenter requests that this compliance time be changed to ''* * * whichever occurs later.'' Since the threshold for the proposed action is at 15,000 total flight cycles, the 3-month ''grace period'' should follow rather than precede the threshold.

The FAA concurs. The compliance language that appeared in the proposal was in error; it should have contained the phrase ''* * * whichever occurs later,'' rather than ''* * * whichever occurs first.'' The FAA has revised the final rule accordingly.

Conclusion

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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection requirements of this AD on U.S. operators is estimated to be $6,300, or $300 per airplane, per inspection cycle.

The modification will take approximately 10 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $311 per airplane. Based on these figures, the cost impact of the modification requirements of this AD on U.S. operators is estimated to be $19,131, or $911 per airplane.

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

Regulatory Impact

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), 40113, 44701.

§ 39.13 [Amended]

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

96–15–09 Airbus Industrie: Amendment 39–9699. Docket 95–NM–208–AD.

Applicability: Model A320–111, –211, and –231 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, and 080 through 098 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on the lower forward corner of the sliding window frames at frame 4, which could result in rapid depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings, or within 3 months after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection to detect cracks around the 5 fasteners of the lower forward corners of the sliding window frames at frame 4, in accordance with the procedures of Airbus Service Bulletin A320–53–1082, Revision 1, dated November 9, 1994.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 15,000 landings.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 30,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish Airbus Modification 23685P3199 for each fastener hole, in accordance with Airbus Service Bulletin A320–53–1044, dated February 8, 1994. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(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. 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.

(e) The inspection shall be done in accordance with Airbus Service Bulletin A320–53–1082, Revision 1, dated November 9, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	1	November 9, 1994.
2, 4–19	Original	February 8, 1994.

The modification shall be done in accordance with Airbus Service Bulletin A320–53–1044, dated February 8, 1994. The incorporation by reference of these documents 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.

(f) This amendment becomes effective on September 3, 1996.

Issued in Renton, Washington, on July 18, 1996.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–18771 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANM–22]

Establishment of Class E Airspace; Colstrip, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Colstrip, Montana, Class E airspace to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Colstrip Airport.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 95–ANM–22, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On May 22, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Colstrip, Montana, to accommodate a new GPS SIAP to the Colstrip Airport (61 FR 25600). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Colstrip, Montana. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E5 Colstrip, MT [New]

Colstrip Airport, Colstrip, MT
(Lat. 45°51′10″ N., long. 106°42′34″ W.)
Billings Logan International Airport, MT
(Lat. 45°48′30″ N., long. 108°32′38″ W.)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by the south edge of V–2, on the east by the west edge of V–254, on the south along lat. 45°30′00″ N., and on the west by the 60-mile arc centered on Billings Logan International Airport; excluding the Forsyth and Miles City, MT Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on July 11, 1996.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–19225 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–011]

Amendment of Class E Airspace; Baker City, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Baker City, Oregon, Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at the Baker City Municipal Airport. Additionally, this action corrects the airport name and referenced navigational aid which were incorrectly stated in the previous legal description of the Class E airspace area.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–011, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On May 20, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Baker City, Oregon to provide additional controlled airspace for IFR operations at Baker City Municipal Airport (61 FR 25157). A minor correction is also being made to the airport name and navigational aid name which were incorrectly referenced in the previous legal description of the Class E airspace area. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Baker City, Oregon. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM OR E5 Baker City, OR [Revised]

Baker City Municipal Airport, OR
(Lat. 44°50′17″ N., long. 117°48′35″ W.)
Baker City VOR/DME
(Lat. 44°50′26″ N., long. 117°48°28″ W.)

That airspace extending upward from 1,200 feet above the surface within 7 miles northeast and 5.3 miles southwest of the Baker City VOR/DME 138° and 317° radials extending from 12.2 miles southeast to 14 miles northwest of the VOR/DME, and within 8.7 miles west and 4.3 miles east of the Baker City VOR/DME 345° radial extending from the VOR/DME to the south edge of V–298, and that airspace east of Baker City VOR/DME bounded on the north by the south edge of V–121, on the southeast by the northwest edge of V–269, and on the southwest by the northeast edge of V–4–444; excluding the Boise, ID, Enroute Domestic Airspace Area.

* * * * *

Issued in Seattle, Washington, on July 8, 1996.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–19226 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2415]

Visas: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, State.

ACTION: Interim rule with request for comments.

SUMMARY: Section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended, extends the Visa Waiver Pilot Program (VWPP) to nationals of all countries that qualify

under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. The interim rule extends the Visa Waiver Pilot Program to Australia which the Department has determined has met all of the requirements for participation in the Program.

DATES: This interim rule is effective July 29, 1996. Written comments are invited and must be received on or before August 28, 1996.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113 (202) 663–1204.

SUPPLEMENTARY INFORMATION: This interim rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, as amended by Public Law 103–415, 108 Stat. 4299, October 25, 1994 and Public Law 103–416, 108 Stat. 4305, October 25, 1994. Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, added section 217 to the INA. Section 217, 8 U.S.C. 1187, established the nonimmigrant Visa Waiver Pilot Program which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. That original provision authorized the participation of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly. These original qualifying countries included: France; the Federal Republic of Germany; Italy; Japan, the Netherlands; Sweden; Switzerland; and the United Kingdom. (See Federal Register publications 53 FR 24903–24904, June 30, 1988; 53 FR 50161–50162, December 13, 1988; and 54 FR 27120–27121, June 27, 1989.)

Public Law 103–415 amended section 217 of the INA to extend the Visa Waiver Pilot Program through September 30, 1995. Public Law 103–416 amended section 217 of the INA to extend the Visa Waiver Pilot Program to September 30, 1996, and to create a new probationary status for certain countries which meet the requirements for that status under the Visa Waiver Pilot Program and which are designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement.

On November 29, 1990, the President approved the Immigration Act of 1990 (Pub. L. 101–649, 104 Stat. 4978) [IA]). Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended its provisions to all countries that meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. (See 56 FR 46716–46717, September 13, 1991.) Brunei was designated as a participant in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an interim rule published at 58 FR 40581–40586 of the Federal Register of July 26, 1993. On March 28, 1995 the interim rule published at 59 FR 15872–15873 added Ireland as a Visa Waiver Pilot Program country with probationary status. Argentina was added as a Visa Waiver Pilot Program country on July 8, 1996 (see 61 FR 35628–35629).

Each of the above rules amended 22 CFR 41.2. This interim rule, with request for comments, further amends Part 41, Title 22 to include Australia as a Visa Waiver Pilot Program country.

For a country to qualify as a participant in the Visa Waiver Pilot Program, the country must agree to waive the visa requirement for nationals of the United States entering for ninety (90) days or less, must meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; must meet statutorily prescribed limits on rates of exclusion at port of entry and on overstay limits, and must have a machine readable passport program. The Department has determined that Australia has met these requirements, and Australia, therefore, is added effective (enter date of publication in the Federal Register) as a participating country in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the Federal Register.)

Interim Rule

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(B) and 553(d)(3). Because this rule will facilitate U.S. tourist and business travel to Australia, pre-promulgation public comment would be contrary to the public interest. This rule will, therefore, become effective upon publication in the Federal Register.

In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a ''significant adverse economic impact'' on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under section 217 of the INA, as amended.

The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988 and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, 22 CFR Part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104, 66 Stat. 174; 8 U.S.C. 1187, 108 Stat. 4312 and 4313.

2. In § 41.2 the last sentence of paragraph (l)(2) is amended by removing the period and adding the following text at the end of the sentence:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) * * * (2) * * * ''; and Australia effective July 29, 1996.''

* * * * *

Dated: July 23, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–19172 Filed 7–26–96; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF–383; Ref: T.D. ATF–363 and Notice No. 807]

RIN 1512–AB35

Implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994—Importation of Ammunition Feeding Devices With a Capacity of More Than 10 Rounds (94F–022P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule amends the regulations by providing that ammunition feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, the date of enactment of Public Law 103–322, are eligible for importation into the United States for general commercial sale. The temporary rule also provides guidance on acceptable evidence that magazines sought to be imported were manufactured on or before September 13, 1994. The temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective on July 29, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1994, Public Law 103–322 (108 Stat. 1796) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). The provisions of Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (hereafter, ''the Act''), became effective upon the date of enactment.

On April 6, 1995, ATF published in the Federal Register a temporary rule (T.D. ATF–363, 60 FR 17446) implementing the provisions of the Act. These regulations implement the law by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices. Except as otherwise provided, the temporary regulations became effective upon the date of publication in the Federal Register.

On April 6, 1995, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 807, 60 FR 17494). The comment period for Notice No. 807 closed on July 5, 1995.

Large Capacity Ammunition Feeding Devices

The Act amended the GCA to create a new class of regulated items termed ''large capacity ammunition feeding device.'' The Act defines the term ''large capacity ammunition feeding device'' to mean:

> [A] magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the [Act] that has the capacity of, or that can be readily restored or converted to accept more than 10 rounds of ammunition.

18 U.S.C. 921(a)(31).

The Act placed two new controls on these devices. First, it amended 18 U.S.C. 922 to make it unlawful, with certain exceptions, to transfer or possess a large capacity ammunition feeding device. 18 U.S.C. 922(w)(1). Second, the Act imposed a requirement on manufacturers and importers of the devices that they be marked with a serial number that clearly shows that the devices were manufactured after the date of enactment, and such other information as the Secretary may require by regulations. 18 U.S.C. 923(i).

There are two exceptions to the general prohibition on transfer and possession. The first is a ''grandfather clause'' that excepts the possession or transfer of large capacity ammunition feeding devices lawfully possessed on or before the date of enactment. 18 U.S.C. 922(w)(2). The second provides for, inter alia, the manufacture for, transfer to, or possession by governmental entities and law enforcement officers employed by such entities. 18 U.S.C. 922(w)(3)(A). Finally, the statute establishes rules for prosecuting a person charged with an unlawful transfer or possession of a device. If a person so charged asserts that one of the two exceptions applies, the statute places the burden of proof on the Government and provides that the lack of a serial number is a presumption that the device is excepted. 18 U.S.C. 922(w)(4).

There are no exceptions to the marking requirements of section 923(i). The purpose of these temporary rules is to further implement the marking requirements of section 923(i). These temporary regulations are designed to ensure that only those imported devices manufactured after the date of enactment are subject to the marking requirements.

Importation of Devices Under Current Regulations

The current temporary regulations generally prohibit the importation of feeding devices with a capacity of more than 10 rounds after the date of enactment. ATF has to date interpreted the ''grandfather clause'' as applying only to such devices lawfully possessed in the United States on or before enactment. Thus, the only devices allowed to be imported were under the governmental use exception of section 922(w)(3). The current regulations require all devices imported after the date of enactment to be marked ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY''. 27 CFR 178.92.

This interpretation failed to account for the date in the statutory definition of ''large capacity ammunition feeding device.'' The definition by its terms covers only devices manufactured after the date of enactment. Consequently, a device manufactured on or before the date of enactment is not a ''large capacity ammunition feeding device'' within the meaning of the statute, regardless of its size or capacity. Therefore, these pre-enactment items are simply not subject to the marking requirements or prohibition on transfer and possession.

Notice No. 807—Analysis of Comments—Large Capacity Ammunition Feeding Device Issue

ATF received 129 comments in response to Notice No. 807. Comments were submitted by Federal firearms licensees, nonlicensees, the medical profession, religious groups and other organizations (e.g., Presbyterian Church (USA), Violence Policy Center, Coalition to Stop Gun Violence, Handgun Control, Inc., and the National Rifle Association of America), and members of Congress.

Fifty-two commenters, representing 40 percent of the total comments received, objected to ATF's interpretation of the law as restricting

the importation of large capacity ammunition feeding devices after September 13, 1994, regardless of the date of manufacture of such devices. They also contended that the marking requirements prescribed in § 178.92(c) only apply to large capacity ammunition feeding devices manufactured after the effective date of the statute. Similar objections and arguments were raised in litigation challenging ATF's interpretation of the law.

Amendment of Regulations Concerning Imported Magazines

The difficulty ATF faces in enforcing the marking requirements of the statute is to identify those magazines manufactured after September 13, 1994, that are subject to the requirements. Although it is possible in some cases to determine the date of manufacture based on physical characteristics of particular magazines, in many cases pre-enactment magazines are physically identical to post-enactment magazines. It is impractical for the Government to conduct investigations abroad to determine the date of manufacture of these foreign magazines.

After analyzing the comments received and in light of the above-mentioned litigation, ATF has re-examined the Act and determined that feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, are not subject to the restrictions of the law. However, in order to facilitate the importation of such devices, the regulations will require importers to provide certain evidence with their import applications. The applications must state that the devices are being imported for sale to government agencies or qualified law enforcement officers or present reasonable evidence that the devices were manufactured on or before September 13, 1994. Examples of acceptable evidence are listed in the regulations and include (1) permanent markings on the magazines or physical characteristics indicating the date of manufacture; and (2) certifications from the importer concerning the date of manufacture of the magazines, supported by reasonable documentary evidence, such as commercial records. Any one of these examples, which are not meant to be exhaustive, may be sufficient to establish the time of manufacture. Recognizing the legitimate business needs of the firearms industry in prompt action by ATF on import applications, the regulations will require the Director to act expeditiously on applications to import ammunition feeding devices.

ATF's authority to require importers to obtain import permits for ammunition feeding devices that were manufactured on or before September 13, 1994, and to require importers to submit evidence of the date of manufacture with the application for the import permit is based on 18 U.S.C. 926(a). This section provides that the Secretary may issue regulations necessary to carry out the provisions of the GCA.

The marking requirements of § 178.92(c) are also being revised to impose the marking requirements on persons who manufacture or import any large capacity ammunition feeding device manufactured after September 13, 1994. As indicated, the regulation currently imposes the marking requirements on all devices imported after September 13, 1994, regardless of the date of manufacture.

Finally, ATF is amending § 178.116 to provide for the conditional importation of an ammunition feeding device with a capacity of more than 10 rounds for the purpose of examining and testing such device in connection with the Bureau's determination as to whether the importation of such device will be authorized.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512–0017, 1512–0018, and 1512–0019. The estimated average annual burden associated with the collections of information in this regulation is 6 minutes per respondent. For further information concerning the collections of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR Part 178—COMMERCE IN FIREARMS AND AMMUNITION is amended as follows:

Paragraph 1. The authority citation for 27 CFR part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

§ 178.40a [Amended]

Par. 2. Section 178.40a(b)(1) is amended by removing the words ''in the United States''.

§ 178.57 [Amended]

Par. 3. Section 178.57(c) is amended by removing the words ''or imported''.

§ 178.92 [Amended]

Par. 4. Section 178.92 is amended by removing the words ''or imported'' in paragraphs (c)(1) and (c)(1)(iii).

Par. 5. Section 178.116 is revised to read as follows:

§ 178.116 Conditional importation.

The Director shall permit the conditional importation or bringing into the United States or any possession thereof of any firearm, firearm barrel, ammunition, or ammunition feeding

device as defined in § 178.119(b) for the purpose of examining and testing the firearm, firearm barrel, ammunition, or ammunition feeding device in connection with making a determination as to whether the importation or bringing in of such firearm, firearm barrel, ammunition, or ammunition feeding device will be authorized under this part. An application on ATF Form 6 for such conditional importation shall be filed, in duplicate, with the Director. The Director may impose conditions upon any importation under this section including a requirement that the firearm, firearm barrel, ammunition, or ammunition feeding device be shipped directly from Customs custody to the Director and that the person importing or bringing in the firearm, firearm barrel, ammunition, or ammunition feeding device must agree to either export the firearm, firearm barrel, ammunition, or ammunition feeding device or destroy same if a determination is made that the firearm, firearm barrel, ammunition, or ammunition feeding device may not be imported or brought in under this part. A firearm, firearm barrel, ammunition, or ammunition feeding device imported or brought into the United States or any possession thereof under the provisions of this section shall be released from Customs custody upon the payment of customs duties, if applicable, and in the manner prescribed in the conditional authorization issued by the Director.

Par. 6. Section 178.119 is revised to read as follows:

§ 178.119 Importation of ammunition feeding devices.

(a) No ammunition feeding device shall be imported or brought into the United States unless the Director has authorized the importation of such device.

(b) For purposes of this section, an ''ammunition feeding device'' is a magazine, belt, drum, feed strip, or similar device for a firearm that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition, or a fixed device for a manually operated firearm, or a fixed device for a firearm listed in 18 U.S.C. 922, Appendix A.

(c) An application for a permit, ATF Form 6, to import or bring an ammunition feeding device into the United States or a possession thereof under this section shall be filed, in triplicate, with the Director. The application shall contain:

(1) The name and address of the person importing the device,

(2) A description of the device to be imported, including type and cartridge capacity, model and caliber of firearm for which the device was made, country of manufacture, and name of the manufacturer if known,

(3) The unit cost of the device to be imported,

(4) The country from which to be imported,

(5) The name and address of the foreign seller and the foreign shipper,

(6) Verification that such device will be marked as required by this part, and

(7) A statement by the importer that the device is being imported for sale to purchasers specified in § 178.40a(b) or physical or reasonable documentary evidence establishing that the magazine was manufactured on or before September 13, 1994. Any one of the following examples, which are not meant to be exhaustive, may be sufficient to establish the time of manufacture:

(i) Permanent markings or physical characteristics which establish that the magazine was manufactured on or before September 13, 1994;

(ii) A certification from the importer, under penalty of perjury, that the importer maintained continuous custody beginning on a date prior to September 14, 1994, and continuing until the date of the certification. Such certification shall also be supported by reasonable documentary evidence, such as commercial records;

(iii) A certification from the importer, under penalty of perjury, that the magazines sought to be imported were in the custody and control of a foreign Government on or before September 13, 1994, along with reasonable documentary evidence to support the certification; or

(iv) A certification from the importer, under penalty of perjury, that the magazine was in the possession of a foreign arms supplier on or before September 13, 1994, along with reasonable documentary evidence to support the certification.

(d) The Director shall act upon applications to import ammunition feeding devices as expeditiously as possible. If the Director approves the application, such approved application shall serve as the permit to import the device described therein, and importation of such devices may continue to be made by the person importing such devices under the approved application (permit) during the period specified thereon. The Director shall furnish the approved application (permit) to the applicant and retain two copies thereof for administrative use. If the Director disapproves the application, the person importing such devices shall be notified of the basis for the disapproval.

(e) An ammunition feeding device imported or brought into the United States by a person importing such a device may be released from Customs custody to the person importing such a device upon showing that such person has obtained a permit from the Director for the importation of the device to be released. In obtaining the release from Customs custody of such a device authorized by this section to be imported through use of a permit, the person importing such a device shall prepare ATF Form 6A, in duplicate, and furnish the original ATF Form 6A to the Customs officer releasing the device. The Customs officer shall, after certification, forward the ATF Form 6A to the address specified on the form. The ATF Form 6A shall show the name and address of the person importing the device, the name of the manufacturer of the device, the country of manufacture, the type, model, caliber, size, and the number of devices released.

(f) Within 15 days of the date of release from Customs custody, the person importing such a device shall:

(1) Forward to the address specified on the form a copy of ATF Form 6A on which shall be reported any error or discrepancy appearing on the ATF Form 6A certified by Customs, and

(2) Pursuant to § 178.92, place all required identification data on each imported device manufactured after September 13, 1994, if same did not bear such identification data at the time of its release from Customs custody.

(g) The Director may authorize the conditional importation of an ammunition feeding device as provided in § 178.116.

(Paragraphs (a), (c), and (d) approved by the Office of Management and Budget under control numbers 1512–0017 and 1512–0018; paragraphs (e) and (f) approved by the Office of Management and Budget under control number 1512–0019)

Signed: March 18, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 19, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–19189 Filed 7–26–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[A.G. Order No. 2043–96]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014–AA18

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board), the Department of Justice, and the Department of Transportation are extending the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) from July 26, 1996 to July 26, 1998. The Access Board has established an advisory committee to conduct a comprehensive review of ADAAG, including the detectable warning requirements, and plans to initiate rulemaking to revise and update ADAAG after the advisory committee issues a final report with its recommendations. The suspension of the detectable warning requirements is extended so that the Access Board can consider the advisory committee's recommendations and address the detectable warning requirements in the rulemaking to revise and update ADAAG.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 extension 16 or (800) 872–2253 extension 16 (voice), and (202) 272–5449 (TTY) or (800) 993–2822 (TTY). Electronic mail address: raggio@access-board.gov.

Department of Justice: John L. Wodatch, the ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530. Telephone (800) 514–0301 (voice) or (800) 514–0383 (TTY).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Alternate Formats

Copies of this final rule are available in the following formats: standard print, large print, Braille, audio cassette tape, and computer disk. Single copies may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434 or (800) 872–2253, pressing 1 on the telephone keypad, then 1 again and requesting publication DW2 (Detectable Warnings Joint Final Rule). Persons using a TTY should call (202) 272–5449 or (800) 993–2822. Please give your name, address, and telephone number when ordering publications. Persons who want a copy in large print, Braille, audio cassette tape, or computer disk should specify the type of format they want.

The final rule is available on electronic bulletin board at (202) 272–5448 (Access Board) and (202) 514–6193 (Department of Justice). These telephone numbers are not toll-free numbers.

The final rule is also available on the Internet. It can be accessed with World Wide Web software (http://www.usdoj.gov).

Background

On April 12, 1996, the Access Board, the Department of Justice, and the Department of Transportation published a joint notice of proposed rulemaking (NPRM) to extend the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools in ADAAG from July 26, 1996 to July 26, 1998.[1] 61 FR 16232. As explained in the NPRM, the requirements were suspended initially in April 1994 to allow the agencies to consider the results of a research project conducted by Virginia Polytechnic Institute and State University on the need for detectable warnings at vehicular-pedestrian intersections. The research project showed that vehicular-pedestrian intersections are very complex environments and that pedestrians who are blind or visually impaired use a combination of cues to detect and cross intersections. The research project found that detectable warnings helped some pedestrians who are blind or visually impaired locate and identify curb ramps. However, the detectable warnings had only a modest impact on overall performance because, in their absence, pedestrians who are blind or visually impaired used whatever other cues were available to detect and cross the intersection. The research project indicated that there may be a need for additional cues at some types of intersections. The research project did not identify the specific conditions where such cues should be provided. The research project suggested that other technologies be explored for providing information about intersections, which may be less costly and equally or more effective than detectable warnings.

The Access Board subsequently established an advisory committee to conduct a comprehensive review of ADAAG, including the detectable warning requirements. The advisory committee is scheduled to issue a final report with its recommendations in September 1996. The Access Board plans to initiate rulemaking to revise and update ADAAG after the advisory committee issues its report, and to address the requirements for detectable warnings in that rulemaking. In the NPRM, the Access Board, the Department of Justice, and the Department of Transportation proposed to extend the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools from July 26, 1996 to July 26, 1998 so that the Access Board can consider the advisory committee's recommendations and address the requirements in the rulemaking to update and revise ADAAG.

Six comments were received in response to the NPRM. Five supported extending the suspension and one opposed the action. The Council of American Building Officials (CABO), the Illinois Department of Transportation, the Airports Council International-North America (ACI–NA), the Paralyzed Veterans of America (PVA), and the Eastern Paralyzed Veterans Association (EPVA) submitted

[1] The Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered facilities under the Americans with Disabilities Act (ADA). The Access Board issued ADAAG initially in 1991 (36 CFR part 1191, appendix A). The Department of Justice and the Department of Transportation have adopted sections 1 through 10 of ADAAG as the accessibility standards for the ADA (28 CFR part 36, appendix A; 49 CFR part 37, appendix A).

comments in support of the extension. CABO and EPVA are members of the advisory committee that is reviewing ADAAG and agreed that the suspension should be extended so that the Access Board can consider the advisory committee's recommendations and address the detectable warning requirements in the rulemaking to update and revise ADAAG. The Illinois Department of Transportation and ACI–NA recommended that research be done on alternative technologies. PVA expressed concerns that sufficient research has not been done on the durability and maintenance of detectable warnings.

The comment in opposition to extending the suspension was submitted on behalf of a manufacturer of detectable warnings. The commenter believed that detectable warnings are critical to the safety of individuals who are blind or visually impaired and that additional research is not necessary. The commenter also noted that there have been no reported accidents in this country as a result of detectable warnings and that studies conducted by manufacturers have demonstrated that their products can withstand various climatic conditions without undue damage.

The Access Board, the Department of Justice, and the Department of Transportation have decided to extend the suspension to July 26, 1998. The agencies believe that the detectable warning requirements should be addressed in the rulemaking to revise and update ADAAG. Extending the suspension will allow the Access Board to consider the advisory committee's recommendations, as well as available research data, and to determine whether any changes in the detectable warning requirements are warranted when ADAAG is revised and updated.

The requirements for detectable warnings at transit platform edges in section 10 of ADAAG are not included in the suspension. Those requirements remain in effect.

Pursuant to 5 U.S.C. 553(d)(3), the Access Board, the Department of Justice, and the Department of Transportation find that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register. The current suspension expires on July 26, 1996. The rule is effective July 26, 1996 so that there will be no interruption in the suspension period. The rule does not require entities covered by the ADA to take any action.

Regulatory Process Matters

The Access Board, the Department of Justice, and the Department of Transportation have determined independently that this rule is not a significant regulatory action under Executive Order 12866. It is a significant rule under the Department of Transportation's regulatory policies and procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

Executive Order 12875 prohibits agencies from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless certain conditions are met. This rule creates no new mandate. Consistent with the spirit of Executive Order 12875, this rule continues the suspension of an existing regulatory requirement to allow for further review of the requirement.

The Access Board, the Department of Justice, and the Department of Transportation independently certify under section 605(b) of the Regulatory Flexibility Act that this rule is not expected to have a significant economic impact on a substantial number of small entities because it continues the suspension of an existing regulatory requirement and does not impose any new requirement.

Text of Final Common Rule

The text of the common rule is revised to read as follows:

§ _____._____ Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in §§ 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 1998.

Adoption of Final Common Rule

The agency specific proposals to adopt the final common rule, which appears at the end of the common preamble, are set forth below.

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, HIV/AIDS, Individuals with disabilities, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186, and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

§ 36.407 [Revised]

2. Section 36.407 is revised to read as set forth at the end of the common preamble.

Dated: July 17, 1996.

Janet Reno,

Attorney General.

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

§ 1191.2 [Revised]

2. Section 1191.2 is revised to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on May 15, 1996.

Judith E. Heumann,

Chair, Architectural and Transportation Barriers Compliance Board.

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: The Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

§ 37.15 [Revised]

2. Section 37.15 is revised to read as set forth at the end of the common preamble.

Dated: July 23, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–19198 Filed 7–24–96; 4:41 pm]

BILLING CODE 4410–01–P; 8150–01–P; 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 96–036]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between April 1, 1996 and June 30, 1996, which were not published in the Federal Register. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the Federal Register was not possible.

DATES: This document lists temporary Coast Guard regulations that became effective and were terminated between April 1, 1996 and June 30, 1996, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Stephen J. Darmody, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the Federal Register is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, Federal Register notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the Federal Register notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the Federal Register. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1996 and June 30, 1996, unless otherwise indicated.

Dated: July 23, 1996.

Stephen J. Darmody,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Huntington 96–007	Ohio River, M. 249 to M. 251	Safety Zone	5/19/96
LA/Long Beach 96–012	San Pedro Bay, CA	Safety Zone	6/12/96
Miami 96–030	Fort Lauderdale, FL	Safety Zone	4/11/96
Philadelphia 96–016	Salem River, NJ	Safety Zone	4/5/96
San Diego 96–004	San Diego Bay, CA	Safety Zone	5/7/96
San Diego 96–005	San Diego Bay, CA	Safety Zone	6/4/96
San Diego 96–006	San Diego Bay, CA	Safety Zone	7/18/96
San Francisco 96–001	San Francisco Bay, CA	Safety Zone	4/21/96
Savannah 96–029	Savannah, GA	Safety Zone	4/26/96
Savannah 96–035	Savannah, GA	Safety Zone	5/12/96
Tampa 96–027	Tampa, FL	Safety Zone	4/9/96
01–96–027	Norwalk, CT	Safety Zone	5/4/96
01–96–029	Upper New York Bay, NY and NJ	Safety Zone	6/25/96
01–96–031	Boston, MA	Security Zone	4/19/96
01–96–032	New London, CT	Security Zone	9/11/96
01–96–036	Liberty State Park, NJ	Security Zone	5/7/96
01–96–038	Queens, NY	Security Zone	5/21/96
01–96–039	Hudson River, NY	Security Zone	5/22/96
01–96–040	Boston, MA	Safety Zone	6/1/96
01–96–042	Boston, MA	Reg Nav Area	6/10/96
01–96–043	Hull, MA	Safety Zone	6/1/96

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
01–96–044	Boston, MA	Safety Zone	6/2/96
01–96–052	Southampton, NY	Safety Zone	6/29/96
01–96–060	East River, NY	Security Zone	6/24/96
01–96–061	Branford, CT	Safety Zone	6/29/96
01–96–062	Bridgeport, CT	Safety Zone	6/28/96
02–96–005	Illinois River, M. 162.5	Special Local	6/1/96
02–96–007	Ohio River, M. 461 to M. 462	Reg Nav Area	6/11/96
02–96–009	Ohio River, M. 603.5 to M. 604.5	Special Local	6/15/96
02–96–011	Mississippi River, M. 583 to M. 579.3	Special Local	6/14/96/
02–96–012	Illinois River, M. 179.5 to M. 180.5	Special Local	6/23/96
02–96–013	Mississippi River, M. 415.5 to M. 416	Special Local	6/8/96
02–96–014	Missouri River, M. 737 to M. 733	Special Local	6/21/96
02–96–015	Tennessee River, M. 463.5 to M. 464.5	Special Local	6/1/96
05–96–020	Salem River, NJ	Safety Zone	4/24/96
05–96–022	Salem River, NJ	Safety Zone	4/22/96
5–96–023	Delaware River, DE	Safety Zone	4/26/96
05–96–024	Salem River, NJ	Safety Zone	5/2/96
05–96–027	Salem River, NJ	Safety Zone	5/13/96
5–96–029	Delaware Bay, Delaware River, DE	Safety Zone	5/15/96
05–96–035	Atlantic City, NY	Safety Zone	5/24/96
05–96–036	Salem River, NJ	Safety Zone	5/28/96
05–96–037	Chester, PA	Safety Zone	6/1/96
05–96–039	James River, VA	Safety Zone	6/18/96
05–96–040	Salem River, NJ	Safety Zone	6/6/96
05–96–044	Chincoteague, VA	Special Local	6/22/96
05–96–047	James River, VA	Safety Zone	6/27/96
07–96–033	Fort Lauderdale, FL	Special Local	5/9/96
07–96–036	Fajardo, PR	Special Local	5/19/96
07–96–037	Key West, FL	Special Local	5/19/96
07–96–038	Old San Juan, PR	Special Local	5/26/96
07–96–040	Fort Myers Beach, FL	Special Local	6/1/96
08–96–013	Cape Girardeau, MO	Special Local	6/15/96
09–96–004	Milwaukee River, Milwaukee, WI	Safety Zone	5/23/96
13–96–013	Portland, OR	Safety Zone	5/3/96
13–96–016	Portland, OR	Safety Zone	5/31/96
13–96–017	North Bend, OR	Safety Zone	6/12/96

[FR Doc. 96–19215 Filed 7–26–96; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–113–6768a; TN–122–6767a; TN–133–6568a; TN–138–6766a; TN–163–9625a; TN–170–9630a; FRL–5529–5]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP Regarding Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC) which add a new chapter to the Nashville/Davidson County and the State portion of the Tennessee SIP for the control of nitrogen oxide (NO_X) emissions. Only the portions of the Tennessee NO_X rule necessary for the approval of Tennessee's ozone redesignation request are being approved in this notice. EPA is granting an exemption to the area under 182(f) of the Clean Air Act (CAA) from NO_X Reasonably Available Control Technology (RACT) requirements in a separate action. The only sources which will be subject to this rule are tangentially-fired coal burning boilers which have a heat input capacity in excess of 600 million BTU per hour in the five county Nashville ozone nonattainment area.

DATES: This final rule is effective September 27, 1996 unless adverse or critical comments are received by August 28, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN113–01–6768, TN122–01–6767, TN133–01–6568, TN138–01–6766, TN163–01–9625, and TN170–01–9630. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman 404/347–3555, extension 4208.

SUPPLEMENTARY INFORMATION: Tennessee submitted the State's NO_X chapter (1200–3–27) for incorporation into the State's portion of the Tennessee SIP in submittals dated June 14, 1993, (reference file TN113–01–6768) and May 26, 1994, (reference file TN133–01–6568). The State then submitted revisions to chapter 1200–3–27 on July 29, 1994, (reference file TN138–01–6766), February 23, 1996, (reference file TN163–01–9625), and April 29, 1996, (reference file TN170–01–9630). Tennessee submitted the NO_X chapter (Regulation Number 14) for the Nashville/Davidson County portion of the Tennessee SIP on September 28, 1993, (reference file TN122–01–6767). EPA is acting only on the portions of these submittals necessary for the approval of the Nashville ozone redesignation request. EPA is granting an exemption from NO_X RACT requirements for the five county nonattainment area under 182(f) of the CAA. It is necessary for approval of the Nashville ozone redesignation request to approve control measures into the SIP for tangentially-fired coal burning boilers since some NO_X reductions were obtained from these sources prior to the attainment of the ozone standard in the area. The rules are being approved into the SIP as discussed below.

State of Tennessee NO_X Chapter: Chapter 1200–3–27 ''Nitrogen Oxides''

1200–3–27–.01 ''Definitions'': This section contains the definitions for facility and nitrogen oxides and states that the definitions in the Volatile Organic Compound chapter will apply to terms not defined in chapter 1200–3–27. This section is being approved into the Tennessee SIP.

1200–3–27–.02 ''General Provisions and Applicability'': This rule contains six paragraphs. Paragraph (1) states that the standards and requirements of rule 1200–3–27 will apply to certain sources of nitrogen oxides. Paragraph (2) states that a more stringent emission limit than otherwise specified may be established. Paragraph (3) states that nothing in this chapter shall be used to exempt sources from meeting other applicable requirements. Paragraph (4) prevents sources from concealing emissions. Paragraph (5) requires sources to pay costs associated with publishing required legal notices for source specific compliance requests. EPA is approving the above paragraphs into the Tennessee SIP. Paragraph (6) contains the emissions statement requirement for NO_X. In an amendment dated February 23, 1996, the State proposed to remove Knox county from the emissions statement requirement. Since Knox county applied for redesignation to attainment for ozone prior to November 14, 1992, and since the State demonstrated that the elimination of this requirement will not adversely affect the area's maintenance of the ozone standard, EPA is approving the emissions statement without Knox County in the applicability portion.

1200–3–27–.03 ''Standards and Requirements'': Paragraph (1) gives the applicability requirements for NO_X emission standards. Subparagraph (1)(a) requires all sources located in the five county ozone nonattainment area which have the potential to emit 100 tons per year (tpy) or more of NO_X to apply RACT. EPA is not approving subparagraph (1)(a) into the Tennessee SIP. Subparagraph (1)(b) requires all tangentially-fired coal burning boilers located in the five county ozone nonattainment area with a heat input capacity in excess of 600 million BTU per hour to not allow emissions of NO_X from that boiler in excess of 0.45 pounds per million BTU on a 30-day rolling average. EPA is approving paragraph (1) and subparagraph (1)(b) of this section into the Tennessee SIP.

Paragraph (2) states that for the purpose of determining applicability to paragraph (1)(a), the NO_X emissions from all process emission sources and fuel burning equipment shall be totaled. Paragraph (2) is not being approved into the Tennessee SIP because it applies only to those sources subject to subparagraph (1)(a), which is also not being approved into the SIP.

Paragraph (3) determines the compliance schedules for sources subject to this chapter. Subparagraph (3)(a) contains the compliance schedule for tangentially-fired coal burning boilers and is therefore being approved into the Tennessee SIP. Subparagraph (3)(b) contains the compliance schedule for the other sources subject to this rule and is not being approved into the Tennessee SIP.

Paragraph (4) exempts certain sources from the requirements of chapter 1200–3–27. This does not affect those sources subject to rule 1200–3–27–.03(1)(b) which are being approved into the SIP. Therefore, EPA is not approving paragraph (4) into the SIP.

Nashville/Davidson County NO_X Rule: Regulation Number 14—''Regulation for the Control of Nitrogen Oxides''

Section 14–1 ''Definitions'': This section gives definitions for terms used in this chapter and states that the definitions in Chapter 10.56.010 which is the definitions section of the Nashville/Davidson County Air Pollution Control Chapter shall be used to define terms not defined in this section. EPA is approving this section into the Nashville/Davidson County portion of the Tennessee SIP.

Section 14–2 ''Emission Standards'': Paragraph (b) requires tangentially-fired coal burning boilers in excess of 600 million BTU per hour to not allow emissions from that boiler to exceed 0.45 pounds per million BTU on a 30-day rolling average. EPA is approving this paragraph (b) of this section into the SIP. The other paragraphs of this section contain requirements for other sources and at this time are not necessary to be SIP approved. Therefore, EPA is not approving the other paragraphs into the SIP at this time.

Section 14–3 ''Procedure for Determining RACT'': Since EPA is granting an exemption for Davidson County from NO_X RACT requirements in a separate action, this section is not being approved into the SIP.

Section 14–4 ''Recordkeeping and Reporting Requirements'': This section gives the recordkeeping and reporting requirements for this regulation. EPA is approving this section into the SIP.

Section 14–5 ''Compliance Schedule'': This section contains the compliance schedule for sources subject to this rule. EPA is approving this section into the SIP.

As stated in the approval of the NO_X RACT exemption request, until the five county middle Tennessee ozone nonattainment area is designated attainment, the continuation of the section 182(f) exemption granted is contingent upon continued monitoring and continued maintenance of the O_3 NAAQS in the entire Middle Tennessee nonattainment area. If there is a violation of the O_3 NAAQS in any portion of the Middle Tennessee nonattainment area, the exemption will no longer be applicable as of the date of any such determination. A determination that the NO_X exemption no longer applies would mean that the NO_X RACT requirement is immediately applicable to the affected area. EPA believes some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirement time to purchase, install, and operate any required controls.

Accordingly, the State may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_X RACT requirement is necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months. The approval of this exemption from federal NO_X requirements in no way exempts sources from any NO_X controls required by the State.

Final Action

The EPA is approving the aforementioned revisions to the Tennessee SIP because they are consistent with the CAA and EPA policy. This rule making is being published without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 27, 1996 unless, by August 28, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 27, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(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.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

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 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

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

Dated: June 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding (c)(139) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(139) Addition of a new chapter 1200–3–27 ''Nitrogen Oxides'' submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on June 14, 1993, September 28, 1993, May 26, 1994, July 29, 1994, February 23, 1996.

(i) Incorporation by reference.

(A) Regulation 1200–3–27 ''Nitrogen Oxides'', 1200–3–27–.01; 1200–3–27–.02; 1200–3–27–.03 (1) introductory sentence, (1)(b), (3) introductory sentence, (3)(a), effective as of October 28, 1995.

(B) Nashville/Davidson County regulation number 14 ''Regulation for the Control of Nitrogen Oxides'', Section 14–1; Section 14–2 (b); Section 14–4; Section 14–5; adopted on August 10, 1993.

(ii) Other material. None.

[FR Doc. 96–19143 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI67–01–7276a; FRL–5539–1]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: This action approves a State Implementation Plan (SIP) revision for the State of Wisconsin which was submitted pursuant to the EPA general conformity rules set forth at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Section 51.851(a) of the general conformity rules requires each State to submit to EPA a revision to its applicable SIP which contains criteria and procedures for assessing conformity of Federal actions to applicable SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, are repeated at 40 CFR part 93, subpart B. Wisconsin's SIP revision incorporates verbatim the criteria and procedures set forth at 40 CFR part 93, subpart B. This general conformity SIP revision will enable the State of Wisconsin to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State and local level.

This approval is limited only to the general conformity SIP revision submitted pursuant to 40 CFR part 51, subpart W. SIP revisions submitted under 40 CFR part 51, subpart T, relating to conformity of Federal transportation actions funded or approved under Title 23 U.S.C. or the Federal Transit Act, will be addressed in a separate document. This action provides the rationale for the proposed approval and other information.

DATES: This ''direct final'' rule is effective September 27, 1996 unless EPA receives adverse or critical comments by August 28, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (Act), 42 U.S.C. 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP that has been approved or promulgated pursuant to the Act. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions to applicable SIPs. Criteria and procedures for determining conformity of Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act are set forth at 40 CFR part 51, subpart T. The criteria and procedures for determining conformity of other Federal actions, the ''general conformity'' rules, were published in the November 30, 1993, Federal Register and codified at 40 CFR part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the EPA not later than November 30, 1994.

II. Evaluation of the State's Submittal

Pursuant to the requirements under section 176(c)(4)(C) of the Act the Wisconsin Department of Natural Resources (WDNR) submitted a supplement to its November 30, 1994 general conformity SIP revision to the EPA on October 18, 1995. In its submittal, the State provided ch. NR 489, Wis. Adm. Code which adopts the EPA general conformity rule (40 CFR part 93, subpart B) verbatim. For the time period between the original submittal and the supplemental submittal, the State of Wisconsin was required to comply with 40 CFR part 93, subpart B.

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Wisconsin currently has 11 counties designated ozone nonattainment: Door, Keewaunee, Manitowoc, Sheboygan, Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha. The cities of Green Bay, Madison, and Milwaukee are sulfur dioxide (SO^2) maintenance areas. Four other areas: Rhinelander, Rib Mountain, Rothchild, and Weston are SO^2 nonattainment areas.

The WDNR held a public hearing on the general conformity submittal on March 29, 1995. No substantive comments were made during the public comment period and therefore, no modifications were made to the final adopted rule.

III. EPA Criteria on Submittal

The State's SIP revision must contain criteria and procedures that are no less stringent than the Federal rule. The revision incorporated the provisions of the following sections of 40 CFR part 93, subpart B in essentially verbatim form: Sections 93.150, 93.152, 93.153, 93.154, 93.155, 93.156, 93.157, 93.158, 93.159, 93.160. These sections represent the Federal rule in total. Therefore the ch. NR 489, Wis. Adm. Code meets the above requirement.

IV. EPA Action

The EPA is approving the general conformity SIP revision for the State of

Wisconsin. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules set forth at 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision. Because EPA considers this action to be noncontroversial and routine, EPA is approving it without prior proposal. This action will become effective on September 27, 1996. However, if EPA receives adverse comments by August 28, 1996, EPA will publish a document that withdraws this action.

V. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

This action has been classified as a Table 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 has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

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

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids 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).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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 may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Ozone, Volatile organic compounds.

Dated: June 24, 1996.

David A. Ullrich,

Acting Regional Administrator.

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 YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(92) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(92) On October 18, 1995, the Wisconsin Department of Natural Resources submitted a revision to the State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Wisconsin to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(i) Incorporation by reference.

(A) NR 489, as created and published in the (Wisconsin) Register, September, 1995, number 477, effective October 1, 1995.

[FR Doc. 96–19141 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MI47–01–7250; FRL–5541–1]

Approval and Promulgation to State Implementation Plan; Michigan; 182(f) SIP Revision

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is revising the Code of Federal Regulations to acknowledge the fact that on the date that the Detroit-Ann Arbor area was redesignated to attainment for ozone, the NO_X requirements found in the area's maintenance plan would now apply and the NO_X exemption that was granted on March 7, 1995 no longer applies.

DATES: This final rule is effective on August 28, 1996.

ADDRESSES: Copies of the Detroit-Ann Arbor area NO_X exemption request and the Detroit-Ann Arbor redesignation request, public comments and EPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, Telephone Number (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Action

On November 12, 1993 the State of Michigan submitted a petition to the U.S. EPA requesting that the Detroit-Ann Arbor ozone nonattainment area be exempted from the requirement to implement NO_X controls pursuant to section 182(f) of the Act. The exemption request was based on monitoring data which demonstrate that the average number of exceedances of the ozone standard in the Detroit-Ann Arbor area during the most recent 3 year period, 1991 through 1993, was fewer than one.

On March 7, 1995, a final rule was published in the Federal Register approving Michigan's request for a NO_X waiver for the Detroit-Ann Arbor area. This final rule stated that on November 12, 1993, the State of Michigan also submitted an ozone redesignation request for the Detroit-Ann Arbor area. Section 107(d)(3)(E) of the Act requires submittal and full approval of a section 175(A) maintenance plan for areas that are redesignating to attainment. This maintenance plan must contain contingency measures that would be implemented if a violation of the ozone standard were to occur. Consequently, if the State's redesignation request is approved, the NO_X requirements found in the maintenance plan for that area would thereafter apply as long as the area continues to be designated attainment for ozone.

On March 7, 1995, EPA approved in final Michigan's request for redesignation to attainment. Because the Detroit-Ann Arbor area was redesignated to attainment, the NO_X waiver no longer applies and was replaced by the NO_X requirements found in the area's maintenance plan.

This document serves to revise the Code of Federal Regulations to acknowledge that on March 7, 1995, the NO_X requirements found in the maintenance plan for Detroit-Ann area became effective and that the NO_X waiver granted to the Detroit-Ann Arbor ozone nonattainment area no longer applies. The NO_X requirements in the area's maintenance plan are applicable as long as the area continues to be designated attainment for ozone.

II. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. Executive Order 12866

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

C. Regulatory Flexibility

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

This technical amendment does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

This Federal action serves only as a public notification. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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 may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 2, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

§ 52.1174 [Amended]

2. Section 52.1174 is amended by removing and reserving paragraph (j).

[FR Doc. 96–19140 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN 119–1–6379a; TN 172–1–9639a; FRL–5539–9]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan Regarding Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee on September 1, 1993, and June 10, 1996. These revisions pertain to the Construction Permit chapter. The purpose of these revisions is to correct certain deficiencies to satisfy the requirements of the Clean Air Act (CAA) concerning Prevention of Significant Deterioration (PSD).

DATES: This final rule is effective September 12, 1996 unless notice is received by August 28, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4216.

SUPPLEMENTARY INFORMATION: On September 1, 1993, and June 10, 1996, the State of Tennessee submitted revisions to chapter 1200–3–9-.01 ''Construction Permits'' of the Tennessee SIP to correct certain deficiencies to satisfy the requirements of the CAA concerning PSD.

The revisions to chapter 1200–3–9-.01 ''Construction Permits'' contained in the September 1, 1993, submittal are as follows:

1. Subparagraphs (c), (d), (e), (f), (g), and (h) were added to paragraph (1) ''Application for Construction Permit.'' These subparagraphs were added to incorporate the requirements of Subpart I—Review of New Sources and Modifications as published in the Code of Federal Regulations (40 CFR part 51) specifically addressing legally enforceable procedures and the public availability of information on permit applications.

2. Paragraph (2) ''Definitions'' was amended to add definitions for the terms ''Control strategy,'' ''National ambient air quality standard,'' ''Best available control technology (BACT),'' and ''Lowest achievable emission rate (LAER).'' These definitions are consistent with requirements of 40 CFR part 51, Subpart I—Review of New Sources and Modifications.

3. Paragraph (4) ''Prevention of Significant Air Quality Deterioration'' was amended to clarify applicability.

The following definitions were amended:

''Major stationary source''; ''Major modification''; ''Net emission increases''; ''Building, structure, facility, or installation''; ''Pollutant''; ''Baseline area''; ''Baseline date''; ''Baseline concentration''; ''Secondary emissions''; ''Innovative control technology''; ''Fugitive emissions''; and ''Significant''.

The following definitions were added:

''Volatile Organic Compound (VOC)''; ''Dispersion technique''; and ''Good engineering practice (GEP).''

These definitions are consistent with requirements of 40 CFR part 51, Subpart I—Review of New Sources and Modifications. Requirements relating to the control of nitrogen oxides (NO_X) emissions as well as requirements which were necessary to maintain delegation of authority of the PSD programs were added.

The revisions to chapter 1200–3–9-.01 ''Construction Permits'' contained in the June 10, 1996, submittal are as follows:

1. Subparagraph (f) of paragraph (4) was amended by deleting standards for Total Suspended Particulates (TSP) and replacing them with standards for PM_{10}.

2. Subparagraph (b) of paragraph (2) was amended by adding language to the definition of ''Control Strategy'' stating that a prohibition of a fuel or fuel additive used in motor vehicles may be implemented if necessary to achieve a primary or secondary air standard.

3. Subparagraph (e) of paragraph (2) was amended by deleting the terms ''major'' and ''or major modifications'' from the definition of ''Lowest achievable emission rate (LAER).''

4. Part 1. of subparagraph (a) of paragraph (4) was amended by changing the phrase ''shall be constructed'' to ''shall begin actual construction.''

5. Subparagraph (b) of paragraph (4) was amended by adding the definition for ''Welfare.''

6. Part 7. of subparagraph (b) of paragraph (4) was amended by adding the phrase ''except the activities of any

vessel'' to the first line in the definition of ''Building, structure, facility, or installation.''

7. Subparts (iii), (vi), and (vii) of Part 7. of subparagraph (e) of paragraph (4) were amended by inserting the phrase ''the Technical Secretary determines'' to replace the words ''it is determined'' or ''it can be determined.''

8. Part 1. of subparagraph (n) of paragraph (4) was amended by deleting the word ''significantly'' from the second sentence.

9. Part 2. of subparagraph (o) of paragraph (4) was amended by making corrections to the introductory paragraph to be consistent with the Federal rule.

10. Miscellaneous typographical errors were corrected throughout the chapter.

Final Action

EPA is approving the above referenced revisions to the Tennessee SIP because they meet the requirements of 40 CFR part 51, subpart I—Review of New Sources and Modifications. This action is being taken without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on September 12, 1996 unless, by August 28, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 27, 1996.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607(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.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2) and 7410(k)(3).

Unfunded Mandates

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 CAA. These rules may bind State, local and tribal governments to perform certain duties. EPA has examined whether the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's 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. Therefore, 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 801(a)(1)(A) of the Administrative Procedure Act (APAA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 2, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(137) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(137) Revisions to the State of Tennessee Air Pollution Control Regulations submitted by the Tennessee Department of Environment and Conservation on September 1, 1993, and June 10, 1996. These consist of revisions to Chapter 1200–3–9–.01 CONSTRUCTION PERMITS.

(i) Incorporation by reference.

(A) Chapter 1200–3–9–.01 CONSTRUCTION PERMITS of the Tennessee Department of Environment and Conservation which became state effective August 18, 1996.

(ii) Other material. None.

* * * * *

[FR Doc. 96–19202 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–006–1006(a); FRL–5542–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to correct a previous action published on February 29, 1996, that approved and incorporated multiple amendments to Missouri rule 10 CSR 10–6.110 into the State Implementation Plan (SIP) (see 61 FR 7714). Specifically, this action corrects the EPA's inadvertent approval of section 5 (Emission Fees) of Missouri rule 10 CSR 10–6.110 entitled, ''Submission of Emission Data, Emission Fees, and Process Information'' as a SIP revision.

DATES: This action is effective September 27, 1996 unless by August 28, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: On March 31, 1994, the state of Missouri submitted multiple amendments to rule 10 CSR 10–6.110. These amendments pertained to the submission of emission data and emission fees. The amendments pertaining to the submission of emission data are approvable as a revision to the SIP under section 110 of the Clean Air Act (CAA). However, the emission fee provisions of section 5 were designed to meet the requirements of section 502(b)(3) of the CAA, relating to requirements for state operating permits programs, rather than the requirements of section 110. Consequently, section 5 of Missouri rule 10 CSR 10–6.110 should not have been approved as a SIP revision. However, rule 10 CSR 10–6.110, including section 5, was approved as an integral part of the Missouri operating permit program on April 11, 1996 (see 61 FR 16063).

Under section 110(k)(6) of the CAA, the EPA may revise a previous SIP approval action when it determines that the action was in error. The EPA has determined that its approval of section 5 of 10 CSR 10–6.110 was in error, for the reasons stated in this document.

EPA Action

Pursuant to section 110(k)(6) of the CAA, this is a direct final action correcting the February 29, 1996, SIP approval, and clarifying that section 5 of Missouri rule 10 CSR 10–6.110 is not approved as a part of the Missouri SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

This action has been classified as a Table 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 has exempted this regulatory action from E.O. 12866 review.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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. The Missouri revisions have no impact on tribal governments.

Through submission of this plan revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The 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 or local governments in the aggregate or to the private sector.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as

amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 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 may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: July 5, 1996.

William Rice,

Acting, Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by modifying paragraph (c)(86) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(86) A revision to the Missouri SIP to revise the Missouri Part D new source review rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration, address emission statements under Title I of the CAA, and generally enhance the SIP.

(i) Incorporation by reference.

(A) Revision to rules 10 CSR 10–6.020, Definitions and Common Reference Tables, effective August 30, 1995; 10 CSR 10–6.060, Construction Permits Required, effective August 30, 1995; 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information, except section 5, effective May 9, 1994; and 10 CSR 10–6.210, Confidential Information, effective May 9, 1994.

* * * * * *

[FR Doc. 96–19200 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[TN–96–01; TN–MEMP–96–01; FRL–5542–4]

Clean Air Act Final Interim Approval of Operating Permits Programs; State of Tennessee and Memphis-Shelby County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permit programs submitted by the State of Tennessee on behalf of the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department for the purpose of complying with Federal requirements which mandate that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

EFFECTIVE DATE: August 28, 1996.

ADDRESSES: Copies of the State of Tennessee and the Memphis-Shelby County submittals and the other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents, contained in EPA dockets numbered TN–96–01 and TN–MEMP–96–01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–3555, Ext. 4223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'') and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that permitting authorities develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the program submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials.

EPA received the State of Tennessee's (''the State'') title V operating permit program submittal on November 10, 1994. The State requested, under the signature of the Tennessee Governor's designee, approval of its operating permit program with full authority to administer the program in ninety-one of the State's ninety-five counties. Four of the State's counties (Shelby, Davidson, Hamilton, and Knox) are regulated by local air pollution control agencies operating under certificates of exemption issued pursuant to Tennessee Code Annotated (T.C.A.) Section 68–201–115. The State's jurisdiction also does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The State of Tennessee supplemented its initial title V program submittal on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996. Because the August 8, 1995 supplement materially changed the State's title V program submittal, EPA extended the one-year review period.

On June 26, 1995, EPA received the Memphis-Shelby County (''the County'') title V operating permit program submittal. The State requested, under the signature of the Tennessee Governor's designee, approval of the County's program on behalf of the Memphis-Shelby County Health Department. The Memphis-Shelby County Health Department has authority to administer the operating permit program in all areas of Shelby County, Tennessee, including the incorporated municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, and Millington. The County's jurisdiction does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The County supplemented its initial program on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996.

EPA reviews title V operating permit programs pursuant to section 502 of the

Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that State or local agency.

On March 11, 1996, EPA proposed interim approval of the State of Tennessee and Memphis-Shelby County title V operating permit programs. *See* 61 FR 9661. The March 11, 1996 notice also proposed approval of the State and County interim mechanisms for implementing section 112(g) and for delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. Public comment was solicited on these proposed actions. EPA's detailed response to the comments is contained in the Response to Comment Document, which can be found in the dockets at the address given above. In this document, EPA is taking final action to promulgate interim approval of the State of Tennessee and Memphis-Shelby County operating permit programs.

II. Final Action and Implications

A. Analysis of Approval Action and Response to Public Comments

On March 11, 1996, EPA proposed interim approval of the State of Tennessee and Memphis-Shelby County title V operating permit programs. *See* 61 FR 9661. The program elements receiving approval in this action are unchanged from those discussed in the proposal notice and continue to substantially meet the requirements of title V and part 70. For detailed information on EPA's analysis of the State and County program submittals, please refer to the Federal Register notice cited above and to the technical support documents (TSD) contained in the dockets at the address noted above.

EPA received seven letters during the 30-day public comment period held on the proposed interim approval of the State and County programs. Comments were received from the following agencies, companies and firms: TENNECO Packing; the Tennessee Department of Environment and Conservation; the Department of Energy, Oak Ridge Operations Office; Eastman Chemical Company; the Memphis Shelby County Health Department; the Tennessee Association of Business; and Tuke Yopp & Sweeney, Attorneys.

All of the comments received during the public comment period were reviewed and considered by EPA prior to taking this final action. The original comment letters can be found in the dockets for this action, which are available at the address given above. EPA's response to the comments can be found in the Response to Comment Document, which is part of the dockets. In response to the comments, a few of the conditions for full program approval discussed in the proposal notice are being clarified or revised and are discussed below.

Both the State and County addressed each of EPA's nine proposed interim approval issues in their comment letters and in most cases provided proposed language changes to address the interim approval issue and/or a commitment to adopt the necessary changes. EPA appreciates the State's and County's responses on these issues and will continue to work with these agencies to facilitate the adoption of regulatory changes necessary for full approval.

1. Certification of Compliance With Applicable Requirements

Pursuant to 40 CFR 70.5(c)(9), a certification of compliance is a binding, regulatory requirement upon a source subject to title V. While the State's and County's application forms require a certification of compliance, the regulatory provisions of both programs do not specifically require the permit application to contain a compliance certification. As a condition of full approval, EPA requested that the State and County clarify in supplemental legal opinions that a source submitting an application for a title V permit is legally obligated to certify its compliance status with regards to all applicable requirements. Alternatively, the State and County could revise their regulations to directly incorporate this requirement.

On April 9, 1996, the State submitted to EPA, as part of the State's response to EPA's proposal notice, a legal opinion supporting the State's operating permit application-based compliance certification approach as a method resulting in a binding, legally enforceable compliance certification. As such, EPA is removing the proposed interim approval issue regarding compliance certification for the State of Tennessee.

This interim approval issue remains unchanged for Shelby County. The County indicated in their comment letter, dated April 10, 1996, that the County would develop a opinion letter on this issue and that they expect a conclusion similar to that of the State would be reached.

2. Insignificant Activities

In the March 11, 1996 proposed interim approval notice, EPA discussed interim approval issues related to the State and County ''exemptions'' rule, 1200–3–9–.04, that was included in the initial State and County title V program submittals. Until recently, EPA was unaware that when the State and County supplemented rule 1200–3–9–.04, in August of 1995, with a new subparagraph 1200–3–9–.04(5), entitled ''Major Source Operating Permits Insignificant Emission Units,'' that the original subparagraphs 1200–3–9.04(1)–.04(4) were revised to exclude their applicability to the State and County title V programs. Because these paragraphs are no longer applicable to the State and County title V programs and are no longer State effective rules, EPA is withdrawing those interim approval issues related to subparagraphs 1200–3–9–.04(1)–(4).

EPA received several comments regarding the proposal to list certain aspects of the State's insignificant activities rule as grounds for interim approval. These comments addressed the ''gatekeeper'' issues regarding the structure of the State's exemptions, the list of exempted activities, and the State's exemptions from permit revision procedures.

Regarding permit revision procedures, EPA proposed to require the State and County to eliminate the provisions in subparagraph 1200–3–9–.04(5)(h) which would exempt insignificant activities from permit revision procedures. One commenter asserted that this exemption is appropriate in light of recent revisions that EPA has proposed to part 70, and that it is therefore premature for the State to change its rules until changes to part 70 are finalized. EPA does not agree that this provision of the State's rules finds support in recent proposed revisions to part 70, since that proposal does not contemplate outright exemptions from the need for a permit revision for changes that trigger applicable requirements. However, EPA has stated elsewhere that it shares concerns regarding the need for separate rulemakings to address interim approval deficiencies and changes to part 70. As stated in a memorandum issued June 13, 1996, EPA plans to allow for the granting of extensions for interim approval periods so that these rulemakings can be combined. If this occurs, the State and County should be able to combine rulemakings as it requested.

Regarding the list of insignificant activities in the State's rules, EPA proposed that the State and County must either demonstrate that exclusion from applications of activities on the list would not interfere with the determination or imposition of applicable requirements, or else impose an emissions cap on the activities that would be eligible for exclusion. One commenter asserted that EPA should not require such a demonstration, since the State's rule has the appropriate ''gatekeeper'' providing that activities may not be excluded from the application if they are subject to an applicable requirement. The commenter pointed out that, since the effect of this gatekeeper is that sources will always have to make the determination that a listed activity is in fact not subject to applicable requirements, it is inappropriate to require the State to make a demonstration of non-applicability at the program approval stage.

EPA agrees that the gatekeeper language in 70.5(c), to the extent it is reflected in the State's rule, should function in this manner. Notwithstanding the existence of an insignificant activities list, a source remains obliged to submit an application that properly accounts for all applicable requirements, even where units subject to requirements can be found on the list.[1] Given that applicable requirements may change, this will to some extent always be a situation-specific exercise, and EPA does not believe it appropriate to require States to show at program approval that conflicts between applicable requirements and activities listed as insignificant could never arise. At the same time, however, EPA believes that insignificant activities lists should avoid the potential for confusion created when an activity that is plainly subject to an applicable requirement is included. In the TSD for the proposed approval, EPA noted instances where it believes such a conflict exists, and other instances where the listed activities are so vaguely described that conflicts with applicable requirements appear likely. EPA believes that where problems such as these can be identified at the time of program approval, their correction should be a condition for receiving full approval.

There is more than one way to remedy this deficiency. As suggested in the proposal, the State may be able to retain its activities list as is, but demonstrate that the listed items (at least those about which EPA is concerned) do not in fact conflict with applicable requirements. Preliminarily, EPA believes such a demonstration would have to account for the size of these activities in terms of potential emissions. One commenter pointed out that such a demonstration would be burdensome, and that the applicability of requirements frequently does not depend on size of the emissions unit. EPA does not rule out that such a demonstration might be made in a manner that does not quantify emissions. Whether this is possible will depend on the activity and the applicable requirements potentially implicated. EPA is willing to work with the State to arrive at a satisfactory method for such demonstrations.

Another alternative proposed by EPA was that the State could impose an emissions cap on the listed activities. In response to the comment that the applicability of requirements does not necessarily depend on the potential emissions, EPA notes that this is a valid point, and one which underscores the need for appropriate gatekeeper language that obliges the source to make a determination of applicability notwithstanding the listing of an activity by the State as insignificant, or, for that matter, the use of a generic insignificant activities threshold like that found in § 1200–3–9–.04(5)(a)(4)(i). Again, EPA's main objection to activities on the State's list were that several appeared on their face to implicate applicable requirements. EPA believes a reasonable approach for limiting the confusion that could result from this situation is to impose an emissions cap which, in combination with the appropriate gatekeeper language, would help ensure that applicable requirements are accounted for in the application and permit. Again, EPA is not mandating this as the only acceptable approach to resolving problems it perceives with the existing list.

EPA's proposal for a quantification of emissions from the State, and the alternative for a tons per year cap, was not solely due to a concern over conflicts with applicable requirements, but also encompassed a concern that some of the listed activities could be quite large, possibly approaching major source levels. EPA is maintaining its position that the State must demonstrate that very large activities are not being listed as insignificant. Here again, EPA is willing to work with the State to narrow the group of activities for which an emissions quantification would be necessary.

The final insignificant activities issue concerns the State's exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant activities that are subject only to generic SIP requirements. EPA proposed that the State must remove this exemption in order to receive full approval. Commenters objected to this condition, asserting, first, that this condition was inconsistent with guidance issued by EPA, second, that the State rules did not create an exemption but instead were designed to meet these part 70 requirements, and third, that elimination of this exemption would create an unreasonable permitting burden.

The commenters are correct that EPA's guidance entitled ''White Paper #2'' does specifically address the issue of how title V permits may be written with regard to insignificant activities subject to generally applicable SIP requirements.[2] Briefly summarized, the guidance states that it is within the permitting authority's discretion to decide that no additional monitoring (beyond that provided in the applicable requirement itself) will be required in the title V permit for insignificant activities subject to generally applicable requirements, if there is little or no likelihood that a violation could occur from those activities. [3] However, this is in part a factual finding, and so White Paper #2 contemplates that this discretion would be exercised on a permit by permit basis, where the finding can be reviewed in a context that is specific enough to be meaningful. EPA does not rule out that a State might structure an insignificant activities list narrowly enough that such a finding could be made programmatically, thereby allowing for a categorical exemption from part 70 monitoring, recordkeeping, and reporting. However, EPA does not find this to be the case for the current Tennessee insignificant activities provisions.

EPA thinks that more often than not it will be the case that part 70 monitoring, recordkeeping, and reporting requirements will not be

[1] As EPA explained in its first ''White Paper'' guidance, this obligation to account for all applicable requirements in the application does not necessarily entail a description of every emissions unit that is subject. The more ''generic'' the requirement, the less need there is for a detailed description of the subject emissions units. For further explanation, see the White Paper guidance on streamlined treatment of applications.

[2] ''Generally applicable requirements'' are those that apply universally to all emissions units and activities, as opposed to requirements that focus on a category of units or activities.

[3] If no monitoring is required, it would follow that the permit can also dispense with recordkeeping and reporting for those units, since there is no compliance data being regularly generated.

necessary where the State's insignificant activities are subject only to generally applicable requirements. Therefore, Tennessee and Shelby County may address this interim approval condition by modifying the exemption from these requirements to a regulatory presumption that the monitoring, recordkeeping, and reporting requirements will not apply in those instances, but leaving the State with the authority to prescribe those requirements as needed on a permit by permit basis.

White Paper #2 does not suggest that activities subject to applicable requirements may be exempted from compliance certification, even on a permit by permit basis. To the contrary, White Paper #2 discusses a streamlined way in which compliance certifications may be made for these types of activities.

Industry commenters and the State assert that the provisions being discussed here do not create an exemption from compliance certification, but rather meet it by requiring a certification of compliance to accompany applications for initial permit issuance, revision, or renewal. EPA disagrees. Both title V and part 70 (at § 70.6(c)(5)(i)) require certification of compliance to be performed at least annually. The commenters fail to explain how a certification of compliance which could be as infrequent as once every five years meets this requirement.

EPA also disagrees with the view, strongly asserted by State and industry commenters, that title V permitting will be unreasonably burdensome if an exemption of the sort currently contained in Tennessee's rules is not allowed. The commenters may have been under the impression that a strict monitoring, recordkeeping, and compliance regime would be needed for each insignificant activity subject to a generally applicable requirement. However, EPA has clarified in White Paper #2 that part 70 does not mandate this result.

Part 70 does require sources to certify compliance at least annually with all applicable requirements, even as they apply to smaller activities subject to generally applicable requirements. However, EPA fails to see how an additional burden is created when a source must certify compliance with a requirement that it would be legally obligated to comply with even in the absence of title V. A burden would result only if, as a result of part 70, sources were required to expend additional effort to determine compliance. As White Paper #2 explains, if no additional compliance data is being generated, then the source is not expending any additional effort to determine compliance, and the compliance certification will be based on available information. The commenters did not suggest anything to counter this reasoning.

Since EPA proposed interim approval, the Ninth Circuit Court of Appeals has decided a case addressing this same issue. *Western States Petroleum Association* v. *EPA*, No. 95–70034 (June 17, 1996) (''*WSPA*''). Because of the similarities between that case and this action, EPA believes it appropriate to address here how it plans to respond to that decision. EPA wishes to emphasize that the *WSPA* decision is very recent, and that EPA is still in the process of developing a more thorough response that addresses other title V programs. However, given the State's desire to avoid imposition of the Federal Part 71 operating permits program, EPA decided it is in the State's best interest not to delay approval until a more thorough response could be articulated.

The *WSPA* case concerned EPA's approval of the Washington State program, which also contained an exemption from permit content requirements for insignificant activities subject to generic SIP requirements. Industry petitioners challenged EPA's identification of this exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70, and that EPA had acted inconsistently by approving other title V programs with similar provisions. The 9th Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that it perceived in the Washington approval.

EPA accepts the broader holding of the *WSPA* decision, namely, that it should act consistently in its program approvals or else explain any departures. However, EPA does not necessarily agree with the specific findings of the Court regarding inconsistent actions in other State programs. Nor does EPA necessarily agree that the Washington interim approval constituted a departure from the precedent established generally in the title V program approvals nationwide. Just as importantly, EPA maintains that part 70 does not allow for outright exemptions from permit content requirements for activities subject to applicable requirements. EPA therefore plans to respond to the *WSPA* decision by determining exactly where inconsistencies may exist among title V programs and by addressing these programs as necessary to arrive at a nationally consistent approach in harmony with the part 70 rule.

The *WSPA* court found that EPA had acted to approve title V programs with exemptions from permit content requirements in eight instances. EPA at this time does not necessarily agree with the Court's finding that each of these eight programs represents an inconsistency. In some cases, the Court based its conclusion on language in the State rules or in EPA's approval notice that was merely ambiguous or imprecise. EPA is now in the process of investigating whether these programs present true inconsistencies. EPA expects that in some cases this will be answered from the plain meaning of the State's regulations. Where the State regulations at issue are ambiguous, EPA will seek confirmation from the States themselves as to how these regulations have been interpreted.

EPA's investigation, though still in the early stages, has revealed that of the eight States identified by the 9th Circuit as subject to inconsistent treatment by EPA, three can be eliminated from this list based on the language of the State rules alone. The North Dakota program regulations contain no exemption from permit content requirements for activities subject to applicable requirements, and so EPA's statement in the approval notice, read by the Court as suggesting otherwise, appears to have been merely an imprecise statement of the effect of the State's insignificant activity provisions. Similarly, since the Knox County, Tennessee, rules exempt insignificant activities from permit applications but not permit content, EPA's statements in that approval notice appear likewise overbroad.

The Massachusetts program does, in fact, exempt certain listed insignificant activities as exempt from title V permitting altogether. In analyzing this provision under its Part 70 regulations, EPA assessed each of the listed activities and determined that they either named activities that are not subject to applicable requirements, or that any applicable requirement implicated by the activity was not designed to be implemented by addressing emission units in the permit (i.e., open burning). EPA has reexamined this assumption, and continues to believe it is accurate.

The Florida program regulations also appear to exempt insignificant activities from title V permitting. The Court concluded that EPA had not identified this provision as grounds for interim approval. EPA does not necessarily agree. In EPA's view, in order to remedy

the deficiencies identified by EPA in the Florida interim approval notice, which included the State's failure to include gatekeeper language that assured the completeness of permit applications, the State would necessarily have to address the exemption created from permit content requirements. It follows that, to the extent Florida's regulations can be read as creating an exemption from permit content, this should also be considered grounds for interim approval. EPA has yet to reach a tentative conclusion regarding Ohio, Hawaii, North Carolina, or Jefferson County, KY, all identified by the Court as inconsistent with EPA's action in Washington State. EPA is including a somewhat more detailed explanation of the preceding points in the Response to Comments document for this action.

The *WSPA* opinion states that:

> The EPA may not depart, sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case * * * To the contrary, the EPA must clearly set forth the ground for its departure from *prior norms* so that we may understand the basis of the EPA's action and judge the consistency of that action with EPA's mandate. Slip Op., at 6990 (emphasis added).

EPA reads this to mean that a regulatory interpretation proffered by the Agency is not entitled to judicial deference if it conflicts with the de facto policy established through the Agency's actions on specific programs. That is, if the ''norms'' established through program approvals are other than the Agency's articulated policy, courts will not uphold the Agency's efforts to impose the latter.

EPA acknowledges that its investigation may reveal a small number of inconsistencies on this issue among approved title V programs. However, EPA believes that these inconsistencies, even when construed liberally and aggregated together, still would represent a relatively minor set of deviations from the normal policy manifested in the vast majority of title V program approvals.

The Court in *WSPA* appeared to base its specific holding of inconsistency on its assumption that EPA had approved eight programs with exemptions from permit content, but had acted to impose the policy against permit content exemptions in only two instances.[4] This assumption is incorrect. At the time the Washington State program received interim approval, EPA had approved 22 State and 39 local programs, and had proposed approval of another 13 State and 13 local programs. As of today, EPA has approved 38 State and 55 local programs, and has proposed approval of another seven State and four local programs.[5] Each program submitted to EPA necessarily addresses this issue (though most do so simply by providing for permit content language consistent with part 70—that is, by not affirmatively establishing any permit content exemption). Of 104 title V programs approved or in the process of approval, EPA believes that there are at most four with regulations that present inconsistencies on this issue.

EPA believes it is clear from these totals that its ''prior norm'' has been to grant full approval only where activities subject to applicable requirements are not exempted from the permit, and that its interpretation of part 70, as manifested both in its articulated policy and in actual program approvals, is consistent with the position being taken in today's action. In those few instances where inconsistencies are confirmed to exist, EPA plans to take appropriate action to follow the *WSPA* Court's mandate that it act consistently or explain any departures.

3. Applicable Federal Requirements

Subparagraph 1200–3–9–.02(11)(b) in the State and County programs restricts the domain of applicable Federal requirements referenced in Paragraph 1200–3–9–.02(11) to those in effect on December 15, 1993. As a result, neither program ensures that title V permits will address all applicable requirements in accordance with 40 CFR 70.6(a). As specified in the proposal notice, subparagraph 1200–3–9–.02(11)(b) of the State and County regulations must be revised so that the definition of applicable requirements is consistent with part 70. The State and County regulations must provide that all applicable requirements, as defined in 40 CFR 70.2 and as provided generally in the Clean Air Act and part 70, are included in the permit such that they can be implemented and enforced by the State and County.

EPA received several comments on this interim approval issue, and hence we believe further clarification is necessary. Several commenters, including the State and County, concurred that the indicated change was necessary for the program to meet the requirements of part 70. However, one commenter stated that the regulation could not be revised because the State has specific requirements that Federal regulations cannot be adopted by reference to the Federal rule citation and because all new Federal requirements must be adopted by the Tennessee Air Pollution Control Board before becoming State effective. Another commenter indicated that new Federal standards that have not yet been adopted into State regulation and delegated to the State for implementation are Federally enforceable but not State enforceable unless the source has signed a mutual agreement letter giving the State enforcement authority.

The commenters' statements are likely correct for new Federal requirements that have not been adopted by the State and have not been incorporated into a title V permit. Many State laws require that Federal requirements be adopted by the State prior to implementation and enforcement or may prevent incorporation by reference. Such requirements are generally intended to provide the public and regulated community with adequate notice of the new requirements and to allow the State and regulated sources access to the State court system for enforcement and appeals. However, the title V permitting program also provides a mechanism for new Federal requirements to be implemented and enforced by a State or local agency. In fact, one of the goals of title V is to consolidate all of the various air pollution control requirements that a source is subject to into one document that can be enforced by the designated State or local air pollution control agency.

EPA would like to clarify that, although title V requires that applicable requirements be enforceable as a matter of State law, it does not require that they be adopted by the State or municipality through rulemaking prior to incorporation into a title V permit. State's generally have broad legal authority to incorporate permit conditions into properly issued State (or local) permits. The public notice and comment procedures, required by the title V permitting programs, provide the mechanism to ensure that the permit terms are necessary and reasonable; these procedures are in a sense analogous to the notice and comment rulemaking procedures under State law, to which the commenter alluded. In States with this broad authority, any permit term or applicable requirement incorporated into a valid title V permit can be enforced by the permitting agency. In any case, correction of the applicable requirements definition to eliminate the cutoff date will not constitute the adoption into State law of any additional requirements. That adoption will only occur in a separate

[4] ''[T]he EPA has identified only two Title V programs that in fact apply permitting requirements to IEU's * * *.'' Slip Op., at 6988.

[5] Altogether, 116 State and local agencies will have title V programs.

process, either rulemaking or permit issuance, that should afford whatever level of process is due.

In an opinion submitted to EPA, in support of the State's title V program, the Tennessee Attorney General indicated that the State of Tennessee has broad legal authority to incorporate all applicable Federal requirements, as defined by part 70, into the title V permit and to enforce those requirements. In a letter to EPA, dated June 12, 1996, the State reaffirmed that the State does indeed have such authority and that during the interim approval period and until the necessary changes are made to the State regulations, the State will use such authority to include all applicable Federal requirements in the title V permit and to enforce those requirements.

4. Implementation of Section 112(g) During Transition Period

As discussed in the proposal notice, on February 14, 1995, EPA issued an interpretive notice which outlines the Agency's revised interpretation of section 112(g) applicability (60 FR 8333). The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow permitting authorities time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking.

Unless and until EPA provides for an additional postponement of the section 112(g) effective date, the State of Tennessee and Memphis-Shelby County must have Federally enforceable mechanisms for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State and County regulations. Both program submittals contain Chapter 1200–3–31 entitled ''Case by Case Determinations of Hazardous Air Pollutant Control Requirements'', which will serve as an adequate implementation vehicle during the transition period.

The proposal notice also discussed that Chapter 1200–3–31 contains several discrepancies with respect to the provisions of section 112(g) of the Act. EPA proposed that as a condition of full title V program approval, the State and the County must correct the identified discrepancies. Several commenters indicated that, while they agreed that these changes would likely be necessary for approval of the State's and County's 112(g) programs, it is premature to condition the title V program approvals on these changes. EPA concurs with the commenters and is removing the proposed interim approval issues regarding the 112(g) transition period.

EPA is approving the use of the State of Tennessee and Memphis-Shelby County Chapter 1200–3–31 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the State and County of rules specifically designed to implement section 112(g). This action does not approve Chapter 1200–3–31, in general, for purposes of 112(g), nor does it imply that Chapter 112(g) will be consistent with the final Federal 112(g) rule, when it is promulgated. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State and the County to adopt regulations consistent with the Federal requirements. This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State or local regulations are adopted.

5. Conflict of Interest

The Clean Air Act requires that States implementing and enforcing permitting programs approved pursuant to the Act must adopt requirements regarding conflict of interest that are at least as stringent as those set forth in the Act. CAA 128(a)(1)–(2), 129(e). State law must provide that no State board or body that approves operating permits, either in the first instance or upon appeal, shall be constituted of less than a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to operating permits. State law must also provide that any potential conflicts of interest by members of such board or body or the head of any executive agency with similar powers be adequately disclosed. Pursuant to section 129(e) of the Act and section 70.4(b)(3)(iv) of the Federal operating permit regulation, State law must also provide that no permit for a solid waste incinerator unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

In the State of Tennessee Attorney General's opinion that was submitted to EPA as part of the State's application for the title V program, and in a subsequent letter, dated September 29, 1994, the State made a commitment to submit a Board adopted rule that would satisfy the provisions of sections 128 and 129(e) of the Act to the Tennessee Attorney General for approval no later than March 30, 1995. In responding to a public comment addressing conflict of interest, it was brought to EPA's attention that the State conflict of interest rules are not yet State effective. While the necessary regulations were reviewed by EPA and adopted by the Board in April 1995, the rules have not yet been signed by the State Attorney General. The State has indicated to EPA that they expect such regulations to be made State effective in the near term. Hence, as a condition of full approval, the State must complete the adoption procedure and submit to EPA regulations that satisfy the provisions of section 128 and 129(e) of the Act.

6. Third Party Standing

One commenter raised the issue of whether the State's title V program met the program approval requirements for standing, as outlined in Section 502(b)(6) of the Clean Air Act, 42 U.S.C. 7661a(b)(6). Standing is a critical component of the title V program. The United States Court of Appeals for the Fourth Circuit recently held, in the title V context, that States at a minimum, must extend judicial review rights to participants in the State public comment process who satisfy the standards for standing for the purposes of Article III of the U.S. Constitution. *Commonwealth of Virginia* v. *Browner,* 1996 U.S. App. LEXIS 5334, *23 (March 26, 1996).

In the commenter's opinion, the Tennessee Air Pollution Control Board's (''the Board'') relatively recent decision in *In the Matter of Bayou Steel Corporation* (*Tennessee*), Division of Air Pollution Control Case No. 95–0132, Docket No. 04.09–45–10788A (October 2, 1995), holds that the Board will require a party to demonstrate that the party had suffered an actual injury before it could ''appeal'' a permit to the Board, thereby effectively preventing third party ''appeals'' for permit actions.

In response to the comment, EPA re-examined the State Attorney General's opinion submitted with the State's title V program. In addition, in a letter to the State dated May 22, 1996, EPA requested further clarification of the State law and interpretation of the State's standing requirements. The State's response to EPA's inquiries, dated June 4, 1996 and July 3, 1996, clarified the State's position on standing. These letters are available for public review in the dockets for this

action. In brief, the State made clear that the law of standing in Tennessee does anticipate situations where there is a threatened injury. Based on the State's responses to EPA's inquiries and the State Attorney General's opinion, EPA continues to believe that the State of Tennessee meets the title V requirements for standing. This analysis does not reflect an opinion on the State's *Bayou Steel* case.

B. Final Action

1. Title V Operating Permit Programs

EPA is promulgating interim approval of the operating permit program submitted by the Tennessee Department of Environment and Conservation on November 10, 1994, and supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996. EPA is also promulgating interim approval of the title V program submitted by the Memphis-Shelby County Health Department on June 26, 1995, and supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996. The following changes must be made for full approval of the State and County programs.

a. Opt-in Provision for Exempted Sources

Neither the State or the County program addressed 40 CFR 70.3(b)(3), which allows exempted sources to apply for a permit. Justification of the omission of this part 70 provision is requested from the State and the County.

b. Certification of Compliance With Applicable Requirements

The County must clarify in a supplemental legal opinion that the County's permitting program requires a source submitting an application for a title V permit to certify its compliance status with regards to all applicable requirements. In the alternative, the County regulations could be revised to directly incorporate this requirement.

c. Insignificant Activities

The State and the County must complete the following:

i. Remove the exemption from permitting requirements contained in Subparagraph 1200–3–9–.04(5)(f).

ii. Revise subparagraph 1200–3–9–.04(5) to specify, consistent with 40 CFR 70.5(c), that the application may not omit information needed to evaluate the fee amount required.

iii. Revise Subparagraph 1200–3–9–.04(5)(c)(3) to eliminate the exemption from the certification requirements of 40 CFR 70.6(c) and to allow the permitting authority to require additional monitoring, recordkeeping, and reporting, as necessary, for sources subject to generally applicable SIP requirements.

iv. Address EPA's concerns, as discussed in the TSD, about potential conflicts of certain activities and emission units, listed in Paragraph 1200–3–9–.04(5), with applicable requirements.

v. Provide a description of the activities and emission units, and their associated emissions, listed in subparagraphs 1200–3–9–.04(5)(f) and (g), sufficient to allow EPA to determine that exclusion of the activities and units from permit applications will not interfere with the determination and imposition of applicable requirements and collection of fees. In the alternative, the State and the County could specifically limit or ''cap'' the emissions from the listed activities and emissions units to levels that are insignificant compared to the level of emissions that are required to be permitted or subject to applicable requirements.

vi. Subparagraph 1200–3–9–.04(5)(h) must be revised, consistent with the criteria in 40 CFR 70.7 for administrative permit amendments and permit modifications, to eliminate the provisions that would exempt certain emission increases from permit amendment and modification requirements.

d. Applicable Federal Requirements

Subparagraph 1200–3–9–.02(11)(b) in the State and County programs restricts the domain of Federal requirements referenced in paragraph 1200–3–9–.02(11) to those in effect on December 15, 1993. Subparagraph 1200–3–9–.02(11)(b) must be revised, consistent with part 70.6(a), to ensure that title V permits address all applicable requirements.

e. General Permits

Subparagraph 1200–3–9–.02(11)(e)4, which provides for the issuance of general permits, allows a source to operate without a title V permit and not be subject to enforcement action. This provision must be revised in both the State and County programs to be consistent with the requirements of 40 CFR 70.6(d)(1).

f. Excess Emissions Due to Malfunction, Startup, and Shutdown

The State must revise Chapter 1200–3–20 to make clear that it applies only to requirements in the Tennessee SIP. The revised rule must be submitted to EPA for approval in the SIP.

g. Permit Reopenings

Subparagraph 1200–3–31–.04(1)(a) must be revised in both the State and County programs to be consistent with the permit reopening requirements in 40 CFR 70.7(f)(1)(i), which requires completion of permit reopenings not later than 18 months after promulgation of a new applicable requirement in cases of permits with remaining permit terms of three or more years.

h. Use of Title V Fees

Memphis-Shelby County's fee provisions allow for use of operating permit fees for any purpose rather than solely for the funding of title V program activities, as required by 40 CFR 70.9(a). In addition, the County's program does not specify that the fees used to cover the direct and indirect costs of the operating permit program will be collected only from part 70 sources, as required by 40 CFR 70.9(a). Memphis-Shelby County, therefore, must revise its fee provisions to be consistent with the 40 CFR 70.9(a).

i. Conflict of Interest

The State must adopt regulations, which at a minimum, satisfy the provisions of section 128 and 129(e) of the Act.

The scope of the State and County's title V programs approved in this notice applies to all part 70 sources (as defined in the approved programs) within the ninety-one counties under the State's jurisdiction and in Shelby County, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (November 9, 1994).[6]

This interim approval extends until August 31, 1998. During this interim approval period, the State of Tennessee and Memphis-Shelby County are protected from sanctions for failure to have a program, and EPA is not obligated to promulgate, administer, and enforce Federal operating permit programs in the State or the County. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins

[6] The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

upon the effective date of this final interim approval, as does the three-year time period for processing the initial permit applications.

If the State or the County fail to submit complete corrective programs for full approval by March 2, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State or the County fail to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State or the County has corrected the deficiency. If EPA disapproves the State or County corrective programs, and has not granted full approval within 18 months after the disapproval, the EPA must impose mandatory sanctions. In both cases, if the State or County has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period. If EPA has not granted full approval to an operating permit program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that State or County.

2. Implementation of Section 112(g) During Transition Period

EPA is approving the use of the State of Tennessee and Memphis-Shelby County Chapter 1200–3–31 as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by the State and County of rules specifically designed to implement section 112(g). This action does not approve Chapter 1200–3–31, in general, for purposes of 112(g), nor does it imply that Chapter 112(g) will be consistent with the final Federal 112(g) rule, when it is promulgated. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State and the County to adopt regulations consistent with the Federal requirements. This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State or local regulations are adopted.

3. Program for Delegation of Section 112 Standards as Promulgated

The requirements for title V program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of an operating permit program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that operating permit programs contain adequate authorities, adequate resources for implementation, and expeditious compliance schedules, which are also requirements under part 70. Therefore, EPA is also approving, under section 112(l)(5) and 40 CFR 63.91, the State of Tennessee and Memphis-Shelby County programs for receiving delegation of section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA is delegating to the State and the County all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[7]

III. Administrative Requirements

A. Docket

Copies of the State of Tennessee and Memphis-Shelby County submittals and other information relied upon for the final interim approval, including the comment letters received and reviewed by EPA on the proposal notice and EPA's response to these comments, are contained in the dockets numbered TN–96–01 and TN–MEMP–96–01 that are maintained at the EPA Region 4 office. The dockets are organized and complete files of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The dockets are available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

[7] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

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

EPA has determined that the final interim approval action promulgated today does not include a Federal 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APAA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 16, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraphs (a) and (e) to the entry for Tennessee to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Tennessee

(a) Tennessee Department of Environment and Conservation: submitted on November 10, 1994, and supplemented on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996; interim approval effective on August 28, 1996; interim approval expires August 31, 1998.

* * * * *

(e) Memphis-Shelby County Health Department: submitted on June 26, 1995, and supplemented on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996; interim approval effective on August 28, 1996; interim approval expires August 31, 1998.

* * * * *

[FR Doc. 96–19091 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 81

[AZR91–0003; FRL–5543–6]

Clean Air Act Reclassification; Arizona-Phoenix Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document EPA is making a final finding that the Phoenix nonattainment area (Maricopa County, Arizona) has not attained the carbon monoxide (CO) national ambient air quality standards (NAAQS) by the applicable attainment date in the Clean Air Act (CAA) for moderate CO nonattainment areas, December 31, 1995. This finding is based on EPA's review of CO ambient air quality data. As a result of this finding, the Phoenix area is reclassified as a serious CO nonattainment area by operation of law. The intended effect of the reclassification is to allow the State 18 months from the effective date of this action to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practical but no later than December 31, 2000, the CAA attainment date for serious areas.

EFFECTIVE DATE: This action is effective on August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Mobile Sources Section, A–2–1, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation, Classification and Reclassification

The Clean Air Act Amendments of 1990 (CAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Phoenix Area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either ''moderate'' or ''serious'' depending on the severity of the area's air quality problem. The Maricopa Area was classified as moderate. 40 CFR 81.303. Moderate CO nonattainment areas were required to attain the CO national ambient air quality standards (NAAQS) as expeditiously as practicable but no later than December 31, 1995.

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date, whether the Phoenix area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a document in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.

EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Phoenix area in 1994 and 1995, this document addresses only the air quality status of the area with respect to the 8-hour standard.

The reader should consult EPA's Notice of Proposed Rulemaking (NPRM) for this action for a more detailed discussion of the applicable CAA requirements, and EPA guidance on those requirements and on the method of calculating CO NAAQS violations for reclassification purposes. See 61 FR 21415 (May 10, 1996).

B. Effect of Reclassification

CO nonattainment areas reclassified as serious are required to submit, within 18 months of the area's reclassification, SIP revisions providing for attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. In addition, the State must submit a SIP revision that includes: (1) a forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Finally, upon the effective date of this reclassification, contingency measures in the moderate area plan for the Phoenix area must be implemented.

C. Proposed Finding of Failure to Attain

On May 10, 1996 EPA proposed to find that the Phoenix area had failed to attain the CO NAAQS by the applicable attainment date. 61 FR 21415. This proposed finding was based on CO monitoring data collected by Maricopa County Environmental Services Department during the years 1994 and 1995. These data demonstrate violations of the CO NAAQS in both years. For the specific data considered by EPA in making this proposed finding, see 61 FR 21415.

II. Response To Comments on Proposed Finding

During the public comment period on EPA's proposed finding, the Agency received a comment only from the Arizona Department of Environmental Quality (ADEQ). ADEQ expressed its

concern that CAA section 107(d)(4)(A)(iv) and (v) could be construed to mean that the Phoenix CO nonattainment area (which currently includes only the urbanized area of Maricopa County) would be expanded to include all of the Phoenix metropolitan statistical area (MSA) (the entire County) upon reclassification to serious and stated that it supports EPA's interpretation that this requirement applies only to the initial designation and classification of an area to nonattainment.

CAA section 107(d)(4)(A)(iv) states that, if a carbon monoxide nonattainment area located in a MSA is classified as serious, the boundaries of such area are revised by operation of law to include the entire MSA. A CO area is classified at the time it is designated as nonattainment either (1) by operation of law on the date of enactment of the 1990 Clean Air Act Amendments, or (2) after enactment if the area was designated attainment or unclassifiable but later experiences NAAQS violations. See section 186 (a)(1) and (b)(1). Therefore, section 107(d)(4)(A)(iv) applies only in these two situations and does not apply to the reclassification of an already existing nonattainment area that is based on a failure to attain. As a result, the boundaries of the Phoenix CO nonattainment area are unaffected by the area's reclassification to serious.[1]

III. Today's Final Action

EPA is today taking final action to find that the Phoenix area did not attain the CO NAAQS by December 31, 1995, the CAA attainment date for moderate CO nonattainment areas. As a result of this finding, the Phoenix area is reclassified by operation of law as a serious CO nonattainment area as of the effective date of this document.

IV. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

The Agency has determined that the finding of failure to attain finalized today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 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.

As discussed in section IV of this document, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's final action does not have a significant impact on small entities.

VI. Unfunded Mandates

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 assess whether various actions undertaken in association with proposed or final regulations 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.

EPA believes, as discussed above, that the finding of failure to attain and reclassification of the Maricopa Area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VII. Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Dated: July 12, 1996.

Felicia Marcus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.303 is amended by revising the table for Arizona—Carbon Monoxide to read as follows:

§ 81.303 Arizona.

* * * * *

[1] Even if the boundary expansion provision of section 107(d)(4)(A)(iv) were deemed to apply to reclassified areas, EPA believes that the State would likely qualify under section 107(d)(4)(A) (iv) and (v) for an exclusion from that requirement. Section 107(d)(4)(A)(v) allows exclusion of areas in the MSA from the nonattainment area where the Administrator finds that sources in the those areas do not contribute significantly to violations of the NAAQS. Cars represent the most significant contributor to CO violations in metropolitan Phoenix. Data, however, indicate that only a very small fraction of cars operating within the metropolitan area are registered in Maricopa County but outside the current nonattinment boundaries. Thus, EPA believes the State is likely to be able to readily show that sources outside the current boundaries do not contribute significantly to the area's CO violations.

ARIZONA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date	Type	Date	Type
Phoenix Area:				
Maricopa County (part)	11/15/90	Nonattainment	Aug. 28, 1996	Serious.
Phoenix nonattainment area boundary:				
1. Commencing at a point which is the intersection of the eastern line of Range 7 East, Gila and Salt River Baseline and Meridian, and the southern line of Township 2 South, said point is the southeastern corner of the Maricopa Association of Governments Urban Planning Area, which is the point of beginning;				
2. thence, proceed northerly along the eastern line of Range 7 East which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statute Section 11–109, to a point where the eastern line of Range 7 East intersects the northern line of Township 1 North, said point is also the intersection of the Maricopa County Line and the Tonto National Forest Boundary, as established by Executive Order 869 dated July 1, 1908, as amended and showed on the U.S. Forest Service 1969 Planimetric Maps;				
3. thence, westerly along the northern line of Township 1 North to approximately the southwest corner of the southeast quarter of Section 35, Township 2 North, Range 7 East, said point being the boundary of the Tonto National Forest and Usery Mountain Semi-Regional Park;				
4. thence, northerly along the Tonto National Forest Boundary, which is generally the western line of the east half of Sections 26 and 35 of Township 2 North, Range 7 East, to a point which is where the quarter section line intersects with the northern line of Section 26, Township 2 North, Range 7 East, said point also being the northeast corner of the Usery Mountain Semi-Regional Park;				
5. thence, westerly along the Tonto National Forest Boundary, which is generally the south line of Section 19, 20, 21 and 22 and the southern line of the west half of Section 23, Township 2 North, Range 7 East, to a point which is the southwest corner of Section 19, Township 2 North, Range 7 East;				
6. thence, northerly along the Tonto National Forest Boundary to a point where the Tonto National Forest Boundary intersects with the eastern boundary of the Salt River Indian Reservation, generally described as the center line of the Salt River Channel;				
7. thence, northeasterly and northerly along the common boundary of the Tonto National Forest and the Salt River Indian Reservation to a point which is the northeast corner of the Salt River Indian Reservation and the southeast corner of the Fort McDowell Indian Reservation, as shown on the plat dated July 22, 1902, and recorded with the U.S. Government on June 15, 1902;				
8. thence, northeasterly along the common boundary between the Tonto National Forest and the Fort McDowell Indian Reservation to a point which is the northeast corner of the Fort McDowell Indian Reservation;				
9. thence, southwesterly along the northern boundary of the Fort McDowell Indian Reservation, which line is a common bondary with the Tonto National Forest, to a point where the boundary intersects with the eastern line of Section 12, Township 4 North, Range 6 East.				
10. thence, notherly along the eastern line of Range 6 East to a point where the eastern line of Range 6 East intersects with the southern line of Township 5 North, said line is the boundary between the Tonto National Forest and the east boundary of McDowell Mountain Regional Park;				
11. thence, westerly along the southern line of Township 5 North to a point where the southern line intersects with the eastern line of Range 5 East which line is the boundary of Tonto National Forest and the north boundary of McDowell Mountain Regional Park;				
12. thence, northerly along the eastern line of Range 5 East to a point where the eastern line of Range 5 East intersects with the northern line of Township 5 North, which line is the boundary of the Tonto National Forest;				

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
13. thence, westerly along the northern line of Township 5 North to a point where the northern line of Township 5 North intersects with the easterly line of Range 4 East, said line is the boundary of Tonto National Forest;				
14. thence, northerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects with the northern line of Township 6 North, which line is the boundary of the Tonto National Forest;				
15. thence, westerly along the northern line of Township 6 North to a point of intersection with the Maricopa-Yavapai County line, which is generally described in Arizona Revised Statute Section 11–109 as the center line of the Aqua Fria River (Also the north end of Lake Pleasant);				
16. thence, southwesterly and southerly along the Maricopa-Yavapai County line to a point which is described by Arizona Revised Statute Section 11–109 as being on the center line of the Aqua Fria River, two miles southerly and below the mouth of Humbug Creek;				
17. thence, southerly along the center line of Aqua Fria River to the intersection of the center line of the Aqua Fria River and the center line of Beardsley Canal, said point is generally in the northeast quarter of Section 17, Township 5 North, Range 1 East, as shown on the U.S. Geological Survey's Baldy Mountain, Arizona Quadrangle Map, 7.5 Minute series (Topographic), dated 1964;				
18. thence, southwesterly and southerly along the center line of Beardsley Canal to a point which is the center line of Beardsley Canal where it intersects with the center line of Indian School Road;				
19. thence, westerly along the center line of West Indian School Road to a point where the center line of West Indian School Road intersects with the center line of North Jackrabbit Trail;				
20. thence, southerly along the center line of Jackrabbit Trail approximately nine and three-quarter miles to a point where the center line of Jackrabbit Trail intersects with the Gila River, said point is generally on the north-south quarter section line of Section 8, Township 1 South, Range 2 West.				
21. thence, northeasterly and easterly up the Gila River to a point where the Gila River intersects with the northern extension of the western boundary of Estrella Mountain Regional Park, which point is generally the quarter corner of the northern line of Section 31, Township 1 North, Range 1 West;				
22. thence, southerly along the extension of the western boundary and along the western boundary of Estrella Mountain Regional Park to a point where the southern extension of the western boundary of Estrella Mountain Regional Park intersects with the southern line of Township 1 South;				
23. thence, easterly along the southern line of Township 1 South to a point where the south line of Township 1 South intersects with the western line of Range 1 East, which line is generally the southern boundary of Estrella Mountain Regional Park;				
24. thence, southerly along the western line of Range 1 East to the southwest corner of Section 18, Township 2 South, Range 1 East, said line is the western boundary of the Gila River Indian Reservation;				
25. thence, easterly along the southern boundary of the Gila River Indian Reservation which is the southern line of Sections 13, 14, 15, 16, 17, and 18, Township 2 South, Range 1 East, to the boundary between Maricopa and Pinal Counties as described in Arizona Revised Statues Section 11–109 and 11–113, which is the eastern line of Range 1 East;				
26. thence, northerly along the eastern boundary of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, to a point where the eastern line of Range 1 East intersects the Gila River;				
27. thence, southerly up the Gila River to a point where the Gila River intersects with the southern line of Township 2 South; and				

ARIZONA—CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
28. thence, easterly along the southern line of Township 2 South to the point of beginning which is a point where the southern line of Township 2 South intersects with the eastern line Range 7 East.				
Tuscon Area:				
Pima County (part)	11/15/90	Nonattainment	11/15/90	Not classified.
Township and Ranges as follows: T11–12S, R12–14E; T13–15S, R11–16E; and T16S, R12–16E Gila and Salt River Baseline and Meridian excluding portions of the Saguaro National Monument and the Coronado National Forest.				
Rest of State	11/15/90	Nonclassifiable/ Attainment		
Apache County				
Cochise County				
Coconino County				
Gila County				
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part)				
Area outside Phoenix Area:				
Mohave County				
Navajo County				
Pima County (part)				
Area outside Tucson Area:				
Pinal County				
Santa Cruz County				
Yavapai County				
Yuma County				

* * * * *

[FR Doc. 96–19194 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 9F3766/R2254; FRL–5385–3]

RIN 2070–AB78

Norflurazon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide norflurazon (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone) and its desmethyl metabolite (4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyradazinone) in or on the following raw agricultural commodities (RACs): alfalfa, forage, alfalfa, hay, alfalfa, seed; and in or on meat by products (except liver) of cattle, goats, hogs, horses, and sheep and in or on liver of cattle, goats, hogs, horses and sheep resulting from the use of norflurazon in the culture of alfalfa. This regulation to establish a maximum permissible level for the residues of norflurazon was requested in a petition submitted by Sandoz Agro, Inc. of 1300 East Touhy Avenue Des Plaines, Illinois 60018–3300.

EFFECTIVE DATE: July 29, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [PP 9F3766/R2254], may be submitted to: Hearing clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 36277M, Pittsburgh, PA 15251. Information not marked confidential may be disclosed publicly by EPA without prior notice. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electonic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in Wordperfect 5.1 file format or as ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 9F3766/R2254]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (23) Registration Division (7505C), Office of Pesticide Programs. Environment Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice of filing, published in the Federal Register of June 29, l989 (54 FR 27423), which announced that

Sandoz Crop Protection Corp., of 1300 East Touhy Avenue, Des Plaines, IL 60018 had submitted a request for an EPA Pesticide Petition, PP 9F3766, for the purpose of amending 40 CFR part 180, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), by establishing tolerances for combined residues of the herbicide norflurazon, (4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone) and its desmethyl metabolite (4-chloro-5-(amino)-2-alpha, alpha alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone) in or on alfalfa, forage at 3.0 ppm, alfalfa, hay at 5.0 ppm, alfalfa, seed at 0.1 ppm. The proposed analytical method of determining residues was gas chromatography.

A second notice of filing was published in the Federal Register (61 FR 30238, June 14, l996) (FRL–5370–7). The notice announced that Sandoz had revised requested tolerances for residues of norflurazon (4-chloro-5-(methylamino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3-(2*H*)-pyridazinone) and its desmethyl (metabolite 4-chloro-5-(amino)-2-alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone) in or on the following raw agricultural commodities: alfalfa, forage at 3.0 ppm, alfalfa, hay at 5.0 ppm and alfalfa, seed at 0.1 ppm; and in or on meat-by-products (except liver) of cattle, goats, hogs, horses, and sheep at 0.1 ppm and in or on liver of cattle, goats, hogs, horses and sheep at 0.25 ppm.

There were no comments received in response to the notices of filing. The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. The following acute studies with norflurazon:

Acute Oral, Rat (Male) LD_{50}: 9.3 g/kg, Toxicity Category IV.

Acute Dermal, Rabbit: LC_{50} ≤20,000 mg/kg, Toxicity Category IV.

Acute Inhalation, Acceptable study unavailable.

Primary Eye Irritation, Rabbit: Toxicity Category IV.

Primary Dermal Irritation, Rabbit, non-irritating: Category IV.

Dermal Sensitization, Guinea Pig, technical norflurazon at 0.1 percent did not cause sensitization in males, a repeat study is required because of flaws in the study.

2. A 90–day rat feeding study at nominal dosages of 0, 12.5, 25.0 and 125.0 mg/kg/day. There were no significant effects of norflurazon on survival, body weight, body weight gain and food consumption in male and female rats at any dose level. At the 125.0 mg/kg/day dose level, the following effects were observed at 13 weeks: an increase in red cell count of 19 percent in male rats; a decrease in alkaline phosphatase activity of 38 percent and 42 percent in male and female rats, respectively; a decrease in SGOT activity of 36 percent in female rats; an increase in liver weight of 14 percent and 12 percent in male and female rats, respectively; an increase in thyroid weight of 96 percent in male rats; and an increase in the incidence of hypertrophic acinar epithelium and colloid depletion of the thyroid in male rats. At the 25.0 mg/kg/day level after 13 weeks of treatment, thyroid weight was increased by 20 percent in male rats with an increased incidence of hypertrophic acinar epithelium and colloid depletion. In addition, red cell count was increased by 14 percent in male rats, SGOT was decreased by 10 percent in female rats, and liver weight was increased by 14 percent in males. The systemic no-observable-effect-level (NOEL) was considered to be 12.50 mg/kg/day in male rats, and 25.0 mg/kg/day in female rats. The systemic lowest-effect-level (LEL) was considered to be 25.0 mg/kg/day in male rats based on increased red cell count, increased thyroid and liver weight, and increased incidence of hypertropic acinar epithelium and colloid deposition in the thyroid. The systemic LEL was considered to be 125.0 mg/kg/day in female rats, based on an increased liver weight and liver-to-body weight ratio. The decreased alkaline phosphatase and SGOT activity observed in females at this dose were of unknown biological significance.

3. A 6–month dog feeding study at dosages of 0, 1.53, 5.02 and 14.27 mg/kg/day for males and 0, 1.58, 4.77 and 17.75 mg/kg/day for females, technical norflurazon (99.2 percent a.i.). At the mid-dose level, liver weight was increased by 38 percent in male dogs and by 23 percent in female dogs. Thyroid weight was increased by 33 percent in male dogs and 37 percent in female dogs at those dose levels. Also, as noted at the mid-dose level there were increases of cholesterol in both sexes (23 to 40 percent in males, 6 to 34 percent in females), a decrease in SGPT (36 to 38 percent in males, 13 to 20 percent in females) and SGOT (4 to 23 percent in males, 13 to 23 percent in females). At the highest level, similar changes were observed in male and female dogs, with the additional observation of a decrease in red cell count in female dogs (79 to 92 percent of control). The systemic NOEL was determined to be 1.53 mg/kg/day for males and 1.58 mg/kg/day for females. The systemic LEL was determined to be 5.02 mg/kg/day for males and 4.77 mg/kg/day for females, based on increased absolute and relative liver weight and increased cholesterol in both sexes.

4. A 3–week rabbit dermal study with 80 percent norflurazon wettable powder. Dermal applications were made at doses of 150 mg (approximately 375 mg/kg/day) and 400 mg (approximately 1,000 mg/kg/day) 5 days per week, 6 to 8 hours per day, for the 3–week study. The systemic NOEL was 375 mg/kg/day for males and females, and the systemic LEL was 1,000 mg/kg/day for males and females, based on increases in alkaline phosphatase activity, liver weight and liver to body weight ratio in both sexes. The dermal NOEL was also 375 mg/kg/day for both sexes, and the dermal LEL was 1,000 mg/kg/day for both sexes, based on slight erythema observed immediately after bandage removal.

5. A 28–day rat feeding study at dosages of 0, 25.0, 50.0 and 250.0 mg/kg/day with a NOEL of 50.0 mg/kg/day. The effect was hyperplasia and hypertrophy of liver and higher liver, kidney, adrenal, and heart/body weight ratios.

6. A 28–day mouse feeding study at dosages of 0, 10.5, 31.5, 63.0, and 378.0 mg/kg/day with a NOEL of 63.0 and 378.0 mg/kg/day with a NOEL of 63.0 mg/kg/day and a LEL of 378.0 mg/kg/day. The effect was diffused and smooth granular livers and an increase in the liver/body weight ratios.

7. A rat dermal absorption study at dosages of 0, 0.1, 1.0 and 10.0 mg/rat showing that no more than 0.1 percent of applied dose was absorbed at doses up to 10 mg/rat.

8. Gene mutation assays in *Salmonella typhimurium* (strains TA98, TA100, TA1535, TA1537 and TA1538), and *Saccharomyces cerevisiae* (strain D4), *in vitro*, in the absence and presence of metabolic activation (Aroclor 1254 induced rat liver S-9). Norflurazon technical at concentrations of 0, 0.1, 1.0, 10, 100, or 500 µg/plate (non-activation) and concentrations of 0, 0.1, 1.0, 10.0, 100 or 500 µg/plate activation) [1,000 µg/plate for TA1537 in a second assay] showed no evidence of mutagenicity in this study. There was no evidence of cytotoxicity in any of the strains at any of the dose concentrations used. Positive controls appeared adequate for all strains except TA100, where positive controls in the absence and presence of S-9 gave less than 2 times the number of revertants observed in negative controls. In the absence of data demontrating toxic effects, the highest concentration used in this study is inadequate and higher concentrations

should have been assayed. In an *in vitro* chromosomal aberration assay, norflurazon did not cause a clastogenic response at doses of 63 to 500 µg/ml in the absence of liver S-9 and at doses of 125 to 1,000 µg/ml in the presence of S-9. In an *in vitro* unscheduled DNA synthesis assay, norflurazon at doses ranging from 1 to 333 µg/ml failed to induce unscheduled DNA synthesis in primary rat hepatocytes.

9. A developmental study in rats at dosages of 0, 100, 200 and 400 mg/kg/day showed no maternal or developmental effects at 400 mg/kg/day. Maternal NOEL was <100 mg/kg/day; maternal LEL was 100 mg/kg/day, based on reductions in body weight for the period of dosing and for the dosing plus post-dosing period.

10. A developmental study in rabbits at dosages of 0, 10, 30 and 60 mg/kg/day showed maternal body weight decreases at 60 mg/kg/day. Developmental effects seen at 60 mg/kg/day were decreased fetal weight and incomplete ossification of the skull, fore and hind limb middle phalanx, metacarpal, and proximal epiphysis of the tibia. The NOEL for maternal toxicity was 30 mg/kg/day. The NOEL for developmental toxicity was 30 mg/kg/day.

11. A three generation reproduction study in rats at dosages of 0, 6.25, 18.75 and 51.25 mg/kg/day showed no apparent effects on reproductive performance at any dose level tested.

12. A chronic toxicity and carcinogenicity study in Sprague-Dawley rats at dosages of 0, 6.25, 18.75 and 51.25 mg/kg/day for 104 weeks. No significant effects of technical norflurazon were evident for survival, body weight, body weight gain, or food consumption in male or female rats at any dose level tested. At the 18.75 mg/kg/day dose, liver weight was increased by 17 percent and 13 percent in males and females at 52 weeks and at 51.25 mg/kg/day by 24 percent and 27 percent in both sexes. At 104 weeks, liver weight was increased by 12 to 14 percent in both males and females, and kidney weight by 16 to 39 percent vs. controls. The weight of the thyroid was also increased at the 51.25 mg/kg/day dose in male rats at 104 weeks. An increased incidence of hydronephrosis was observed in high dose male rats at 52 weeks vs. control, while the incidence of nephritis was increased in male rats (terminal sacrifice plus dying on test) at the 51.25 mg/kg/day dose. The incidence of tubular casts was increased in female rats at the high dose in those rats surviving to study termination. Other microscopic alterations observed at the high dose included an increased incidence of parathyroid hyperplasia (both sexes), hemosiderin pigment deposition in the spleen (males only) and liver (both sexes), and endometritis and squamous metaplasia of the uterus (females).

The systemic NOEL was determined to be 18.75 mg/kg/day for both sexes. The systemic LEL was determined to be 51.25 mg/kg/day in both sexes, based on the increased kidney weight and accompanying microscopic pathologic changes, as well as the increase in liver weight in male and female rats and the increase in thyroid weight in males. There was no evidence of carcinogenicity for norflurazon.

13. A carcinogenicity study in CD-1 HaM/ICR Swiss mice at dosages of 0, 12.8, 58.7 and 218.8 mg/kg/day technical norflurazon in the diet for 100 to 104 weeks. No significant effects were observed on body weight, body weight gain, clinical toxicity, and food consumption at any dose. Liver weight was increased by 9 percent and 15 percent in male and female mice at the 58.7 mg/kg/day dose, and by 27 percent and 21 percent at the 218.8 mg/kg/day dose, respectively. The liver to body weight ratio was increased by 19 percent and 4 percent in male and female mice at the 58.7 mg/kg/day dose, and by 43 percent and 19 percent at the 218.8 mg/kg/day dose, respectively. Increased incidence of enlarged spleen, nephritis, swollen/enlarged liver, and nodular enlargement of the liver were observed in high dose male mice, while increased incidences of pyelonephritis, enlarged liver, and cystic ovaries were observed in high dose female mice. Carcinogenic potential was evidenced by an increased incidence of hepatic adenoma and combined adenoma/carcinoma in high dose male mice.

The systemic NOEL was determined to be 12.8 mg/kg/day for male mice, and 58.7 mg/kg/day for female mice. The systemic LEL was determined to be 58.8 mg/kg/day for male mice, based on the increased incidence of enlarged spleen, increased absolute and relative liver weight, and increased incidence of nephritis. The systemic LEL was determined to be 218.8 mg/kg/day for female mice, based on the increased incidence of enlarged liver and cystic ovaries, the increased absolute and relative liver weight, and the increased incidence of pyelonephritis.

14. A rat metabolism study at single oral doses of 2 or 110 mg/kg, a single i.v. dose of 2.0 mg/kg, or a single oral dose at 2 mg/kg after animals had ingested 0.1 mg/kg for 14 days showed that less than 1.0 percent of the administrated dose remained 96 hours after dosing. Thirteen metabolites were isolated. Norflurazon appears to be metabolized by *N*-demethylation, displacement of the chlorine atom by glutathione, glutatione attack on the aromatic ring, and replacement of the chlorine atom with hydrogen. Norflurazon appears to be rapidly absorbed from the gastrointestinal tract and extensively metabolized.

The Agency's Health Effects Division Peer Review Committee classified norflurazon as a Group C, possible human carcinogen, based on the criteria in the Agency's Guideline for the Classification of Carcinogens (51 FR 33992-34003, September 24, l986) and the statistically significant increase in comparison to controls in hepatocellular adenomas and combined hepatocellular adenomas and carcinomas in male CD-1 mice as well as the statistically significant positive trend for hepatocellular adenomas and combined adenomas and carcinomas.

That committee also recommended that for the purposes of risk characterization the Reference Dose (RfD) approach should be used for the quantification of human risk. This recommendation was supported by the presence of only benign tumors in only one sex of one species at one dose level, and adequate but negative mutagenicity data and no positive analogues. EPA believes norflurazon poses a negligible cancer risk to humans.

Since the committee's review, the Agency has reevaluated the gene mutation assay in *Salmonella typhimurium*, strain TA100 and determined that it was inadequate. Sandoz Agro, Inc. has agreed to submit a repeat study by August 15, l996. The Agency does not believe that the study would significantly change the risk analysis for the use of norflurazon in the culture of alfalfa, as proposed in the subject petition.

Using a 100-fold safety factor and the NOEL of 1.53 mg/kg/day determined by the most sensitive species (the 6–month dog feeding study), the RfD is 0.02 mg/kg/bwt/day. The theoretical maximum residue contribution (TMRC) from the established and the proposed tolerances is 0.002041 and utilizes 10.2 percent of the RfD for the overall U.S population. The exposure of the most highly exposed subgroup in the population, non-nursing infants, is 0.009356 mg/kg/bwt/day and utilizes 46.8 percent of the RfD.

In a worst case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with norflurazon is minimal for alfalfa commodities and does not exceed the RfD for any of the subgroups.

Because developmental effects were seen in the rabbit developmental study, the Agency assessed acute dietary risk from developmental effects for the subgroup females (13+ years) the only appropriate group of acute dietary concern. The Margin of Exposure (MOE), a measure of how closely the high-end exposure comes to the NOEL, was calculated as the ratio of the NOEL to the exposure and determined to be 3,000. The Agency is not generally concerned unless the MOE is below 100 when based upon data generated in animal studies.

Previous tolerances have been established for norflurazon in almonds, hulls and nutmeat; apples; apricots; asparagus; avocados; blackberries; blueberries; cattle, fat, meat, and meat-by-products (mbp); cherries; citrus fruit; cottonseed; cranberries; filberts; goats, fat, meat and mbp; grapes; hogs, fat, meat, and mbp; hops, green; horses, fat, meat, and mbp; milk; nectarines; peaches; peanuts; peanut hay, hulls and vines; pecans; pears; plums (fresh prunes); poultry, fat, meat and mbp; raspberries; sheep, fat, meat and mbp; soybeans, forage and hay; and walnuts. The metabolism of norflurazon in plants is adequately understood. Metabolism of norflurazon in livestock has been studied and tolerances for livestock commodities have been established. A ruminant study adequately identified the metabolites in milk, liver and kidney. Norflurazon was not detected in ruminant milk or tissue, and total radioactive residues in fat and muscle were <0.01 part per million (ppm).

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography using electron capture detection, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Registration for use in the culture of alfalfa will be conditioned on the basis that Sandoz Agro, Inc., the registrant will submit an acute inhalation study, a mutagenicity study and a dermal sensitization study. These studies are replacement studies for studies that were determined to be inadequate during the Agency's review of norflurazon for a Reregistration Eligibility Decision (presently not issued). There are presently no actions pending against the continued registration of this chemical. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 9F3766/R2254] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by

Executive Order 12898 (59 FR 7629, February 16, l994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. In § 180.356, the table is amended by adding alphabetically the entries for Alfalfa, forage; Alfalfa, hay; Alfalfa, seed; Cattle, liver; Goats, liver; Hogs, liver; Horse liver; and Sheep, liver, and by revising the entries for Cattle, mbyp; Goats, mbyp; Hogs, mbyp; Horse, mbyp; and Sheep, mbyp; to read as set forth below:

§ 180.356 Norflurazon; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Alfalfa, forage	3.0
Alfalfa, hay	5.0
Alfalfa, seed	0.1
* * * * *	
Cattle, liver	0.25
Cattle, mbyp (except liver)	0.1
* * * * *	
Goats, liver	0.25
Goats, mbyp (except liver)	0.1
* * * * *	
Hogs, liver	0.25
Hogs, mbyp (except liver)	0.1
* * * * *	
Horses, liver	0.25
Horses, mbyp (except liver)	0.1
* * * * *	
Sheep, liver	0.25
Sheep, mbyp (except liver)	0.1
* * * * *	

[FR Doc. 96–19082 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5E04443/R2258; FRL–5386–8]

RIN 2070–AB78

1,1-Difluoroethane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of 1,1-difluoroethane (CAS Reg. No. 75–37–6) when used as an inert ingredient (*aerosol propellant*) in aerosol pesticide formulations used for insect control in food- and feed-handling establishments and animals. The Dupont Company requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 29, 1996.

ADDRESSES Written objections, identified by the document control number, [PP 5E04443/R2258] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5E04443/R2258]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 4, 1996 (61 FR 28118), EPA issued a proposed rule (FRL–5371–5) that gave notice that The Dupont Company, 1007 Market Street, Wilmington, DE 19898 had submitted pesticide petition (PP) 5E04443 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of 1,1-difluoroethane (CAS Reg. No. 75–37–6) when used as an inert ingredient (*aerosol propellant*) in pesticide formulations used for insect control in food- and feed-handling establishments and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are

not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within August 28, 1996, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number (PP insert0 number) (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A statement containing the factual basis for this certification was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the table to paragraph (c) and paragraph (e) is amended by adding alphabetically the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
1,1-Difluoroethane (CAS Reg. No. 75–37–6)	For aerosol pesticide formulations used for insect control in food- and feed-handling establishments and animals.	Aerosol propellant
* * * * * * *		

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
1,1-Difluoroethane (CAS Reg. No. 75–37–6)	For aerosol pesticide formulations used for insect control in food- and feed-handling establishments and animals.	Aerosol propellant
* * * * * * *		

[FR Doc. 96–19084 Filed 7–26–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 271

[FRL–5542–7]

Final Authorization of State Hazardous Waste Management Program: Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Kansas has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976, as amended (hereinafter RCRA). The Kansas revisions consist of provisions contained in federal rules promulgated between July 1, 1986 to June 30, 1992. These requirements are listed in Section B of this document. The EPA has reviewed the Kansas application and has made a decision, subject to public review and comment, that the Kansas hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, the EPA intends to approve the Kansas hazardous waste program revisions, subject to authority retained by the EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA). The Kansas application for program revision is available for public review and comment.

DATES: Final authorization for Kansas shall be effective September 27, 1996, unless the EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on the Kansas program revision application must be received by the close of business August 28, 1996.

ADDRESSES: Written comments should be sent to Ms. Pat Price, Iowa RCRA & State Programs Branch, U.S. Environmental Protection Agency Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913/551–7592). Copies of the Kansas program revision application are available for inspection and copying during normal business hours at the following addresses: Bureau of Waste Management, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620–0001 (913/296–1600); U. S. EPA Headquarters Library, PM 211A, 401 M Street, S.W., Washington, D.C. 20460 (202/382–5926); U. S. EPA Region 7 Library, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913/551–7241).

FOR FURTHER INFORMATION CONTACT: Ms. Pat Price, U.S. EPA Region 7, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913/551–7592).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program. The Hazardous and Solid Waste Amendment of 1984 (Public Law 98–616, November 8, 1984, hereinafter HSWA) allows states to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21, revisions to state hazardous waste programs are necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to the EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273 and 279.

B. Kansas

Kansas initially received final authorization for its base RCRA Program effective October 17, 1985 (50 FR 40377). Kansas received authorization for a revision to its program effective on June 25, 1990, for Non-HSWA Clusters I and II (55 FR 17273). Kansas received additional approval for a revision to its program effective on August 15, 1994, for Non-HSWA Clusters III, IV, V, and HSWA Cluster I (59 FR 30528). Kansas submitted a final application for additional program approval on April 16, 1996, for Non-HSWA Cluster VI, HSWA Cluster II, and RCRA Clusters I and II. Kansas is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

The EPA has reviewed the Kansas application and has made an immediate

final decision that the Kansas hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant final authorization for the additional program modifications to Kansas. The public may submit written comments on EPA's immediate final decision up until August 28, 1996. Copies of the Kansas application for program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of the Kansas program revisions shall become effective in sixty (60) days, unless an adverse comment pertaining to the state's revisions discussed in this document is received by the end of the comment period. If an adverse comment is received, the EPA will publish either: (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On September 27, 1996, Kansas will be authorized to carry out, in lieu of the federal program, those provisions of the state's program which are analogous to the following provisions of the federal program.

Federal requirement	Kansas regulation
Checklist 39—California List Waste Restrictions, July 8, 1987, 52 FR 25760–25792, as amended on October 27, 1987, 52 FR 41295–41296.	28–31–2(a), 28–31–4(b)(4), 28–31–8(a), 28–31–14, 28–31–9(a).
Checklist 42—Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987, 52 FR 35894–35899.	28–31–4(f)(4).
Checklist 44D—HSWA Codification Rule 2 (Permit Modification), December 1, 1987, 52 FR 45788–45799.	28–31–9(a).
Checklist 44E—HSWA Codification Rule 2 (Permit as a Shield Provision), December 1, 1987, 52 FR 45788–45799.	28–31–9(a).
Checklist 44F—HSWA Codification Rule 2 (Permit Condition to Protect Human Health and the Environment), December 1, 1987, 52 FR 45788–45799.	28–31–9(a).
Checklist 44G—HSWA Codification Rule 2 (Post-Closure Permits), December 1, 1987, 52 FR 45788–45799.	28–31–9(a).
Checklist 48—Farmer Exemptions; Technical Corrections, July 19, 1988, 53 FR 27164–27165	28–31–4(a), 28–31–8(a), 28–31–14, 28–31–9(a).
Checklist 50—Land Disposal Restrictions for First Third Scheduled Wastes, August 17, 1988, 53 FR 31138–31222, as amended on February 27, 1989, 54 FR 8264–8266.	28–31–8(a), 28–31–8(b), 28–31–14.
Checklist 52—Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, September 2, 1988, 53 FR 34079–34087.	28–31–2(a), 28–31–8(a), 28–31–9(a).
Checklist 62—Land Disposal Restrictions Amendments to First Third Scheduled Wastes, May 2, 1989, 54 FR 18836–18838.	28–31–14.
Checklist 63—Land Disposal Restrictions for Second Third Scheduled Wastes, June 23, 1989, 54 FR 26594–26652.	28–31–14.
Checklist 64—Delay of Closure Period for Hazardous Waste Management Facilities, August 14, 1989, 54 FR 33376–33398.	28–31–8(a), 28–31–9(a).
Checklist 65—Mining Waste Exclusion I, September 1, 1989, 54 FR 36592–36642	28–31–3(a).
Checklist 66—Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, September 6, 1989, 54 FR 36967, as amended on June 13, 1990, 55 FR 23935.	28–31–8(b), 28–31–14.
Checklist 67—Testing and Monitoring Activities, September 29, 1989, 54 FR 40260–40269	28–31–2(a), 28–31–3(a).
Checklist 68—Reportable Quantity Adjustment Methyl Bromide Production Wastes, October 6, 1989, 54 FR 41402–41408.	28–31–3(a).
Checklist 69—Reportable Quantity Adjustment, December 11, 1989, 54 FR 50968–50979	28–31–3(a).
Checklist 70—Changes to Part 124 Not Accounted for by Present Checklists, April 1, 1983, 48 FR 14146–14295; June 30, 1983, 48 FR 30113–30115; July 26, 1988, 53 FR 28118–28157; September 26, 1988, 53 FR 37396–37414; January 4, 1989, 54 FR 246–258.	28–31–9(a).
Checklist 71—Mining Waste Exclusion II, January 23, 1990, 55 FR 2322–2354	28–31–2(a), 28–31–3(a), 28–31–4(b).
Checklist 72—Modification of F019 Listing, February 14, 1990, 55 FR 5340–5342	28–31–3(a).
Checklist 73—Testing and Monitoring Activities; Technical Corrections, March 9, 1990, 55 FR 8948–8950.	28–31–2(a), 28–31–3(a).
Checklist 74—Toxicity Characteristic Revisions, March 29, 1990, 55 FR 11798–11877, as amended on June 29, 1990, 55 FR 26986–26998.	28–31–3(a), 28–31–8(a), 28–31–14.
Checklist 75—Listing of 1,1-Dimethylhydrazine Production Wastes, May 2, 1990, 55 FR 18496–18506.	28–31–3(a).
Checklist 76—Criteria for Listing Toxic Wastes; Technical Amendment, May 4, 1990, 55 FR 18726.	28–31–3(a).
Checklist 77—HSWA Codification Rule 2, Double Liners; Correction, May 9, 1990, 55 FR 19262–19264.	28–31–8(a).
Checklist 78—Land Disposal Restrictions for Third Third Scheduled Wastes, June 1, 1990, 55 FR 22520–22720.	28–31–3(a), 28–31–4(a), 28–31–4 (a) and (e), 28–31–8(a), 28–31–14, 28–31–9(a).
Checklist 79—Organic Air Emission Standards for Process Vents and Equipment Leaks, June 21, 1990, 55 FR 25454–25519.	28–31–2(a), 28–31–3(a), 28–31–8(a), 28–31–9(a).
Checklist 80—Toxicity Characteristic; Hydrocarbon Recovery Operations, October 5, 1990, 55 FR 40834–40837, as amended on February 1, 1991, at 56 FR 3978, and April 2, 1991, at 56 FR 13406–13411.	28–31–3(a).
Checklist 81—Petroleum Refinery Primary and Secondary Oil/Water Solids Separation Sludge Listings (F037 and F038), November 2, 1990, 55 FR 46354–46397, as amended on December 17, 1990 at 55 FR 51707.	28–31–3(a).
Checklist 82—Wood Preserving Listings, December 6, 1990, 55 FR 50450–50490	28–31–2(a), 28–31–3(a), 28–31–4(a), 28–31–8(a), 28–31–9(a).
Checklist 83—Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, January 31, 1991, 56 FR 3864–3928.	28–31–3(a), 28–31–4(a), 28–31–14.

Federal requirement	Kansas regulation
Checklist 84—Toxicity Characteristic; Chlorofluorocarbon Refrigerants, February 13, 1991, 56 FR 5910–5915.	28–31–3(a).
Checklist 86—Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, February 25, 1991, 56 FR 7567–7568.	28–31–3(a).
Checklist 87—Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, April 26, 1991, 56 FR 19290.	28–31–8(a), 28–31–9(a).
Checklist 88—Administrative Stay for K069 Listing, May 1, 1991, 56 FR 19951	28–31–3(a).
Checklist 89—Revision to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), May 13, 1991, 56 FR 21955–21960.	28–31–3(a).
Checklist 90—Mining Waste Exclusion III, June 13, 1991, 56 FR 27300–27330	28–31–3(a).
Checklist 91—Wood Preserving Listings, June 13, 1991, 56 FR 27332–27336	28–31–3(a), 28–31–8(a).
Checklist 92—Wood Preserving Listings; Technical Corrections, July 1, 1991, 56 FR 30192–30198.	28–31–3(a), 28–31–4(a), 28–31–4(g), 28–31–8(a), 28–31–9(a).
Checklist 95—Land Disposal Restrictions for Electric Arc Furnace Dust (K061), August 19, 1991, 56 FR 41164–41178.	28–31–3(a), 28–31–14.
Checklist 97—Exports of Hazardous Waste; Technical Correction, September 4, 1991, 56 FR 43704–43705.	28–31–4(q).
Checklist 99—Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations, December 23, 1991, 56 FR 66365–66369.	28–31–2(a), 28–31–8(a).
Checklist 100—Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, January 29, 1992, 57 FR 3462–3497.	28–31–2(a), 28–31–8(a), 28–31–9(a).
Checklist 101—Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable, February 18, 1992, 57 FR 5859–5861.	28–31–8(a).
Checklist 102—Second Correction to the Third Third Land Disposal Restrictions, March 6, 1992, 57 FR 8086–8089.	28–31–8(a), 28–31–14.
Checklist 103—Hazardous Debris Case-by-Case Capacity Variance, May 15, 1992, 57 FR 20766–20770.	28–31–14.
Checklist 104—Used Oil Filter Exclusion, May 20, 1992, 57 FR 21524–21534	28–31–3(a).
Checklist 105—Recycled Coke By-Product, June 22, 1992, 57 FR 27880–27888	28–31–3(a).
Checklist 106—Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance, June 26, 1992, 57 FR 28628–28632.	28–31–14.

The state will assume lead responsibility for issuing permits for those program areas authorized today. For those HSWA provisions for which the state is not authorized, the EPA will retain lead responsibility. For those permits which will now change to state lead from the EPA, the EPA will transfer copies of any pending applications, completed permits, or pertinent file information to the state within 30 days of the effective date of this authorization. The EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. The EPA will also be responsible for enforcing the terms and conditions of RCRA permits regarding HSWA requirements until the state has the authority to address the HSWA requirements.

The state has agreed to review all state-issued permits and to modify or reissue them as necessary to require compliance with the currently approved state law and regulations. When the state reissues federally issued permits as state permits, the state will take the lead in enforcing such permits, with the exception of those HSWA requirements for which the state has not received authorization. Kansas is not authorized to operate the Federal Program on Indian Lands. This authority remains with the EPA unless provided otherwise in a future statute or regulation.

C. Decision

We conclude that the Kansas application for program revisions meets all of the statutory and regulatory requirements established by RCRA and its amendments. Accordingly, following the public comment period, Kansas is granted final authorization to operate its hazardous waste management program, as revised. Kansas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Kansas also has primary enforcement responsibilities, although the EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Incorporation by Reference

The EPA incorporates by reference, authorized state programs in 40 CFR Part 272, to provide notice to the public of the scope of the authorized program in each state. Incorporation by reference of the Kansas program will be completed at a later date.

Compliance With Executive Order 12866

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the

EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector. The Act excludes from the definition of a ''federal mandate'' duties that arise from participation in a voluntary federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. The Kansas request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the state will gain the authority to implement the program within its jurisdiction, in lieu of the EPA thereby eliminating duplicative state and federal requirements. If a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA.

In any event, the EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of the Kansas hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the state, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because the EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once the EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, the EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Kansas program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under Section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by Section 804(2) of the APA as amended.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: July 17, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–19086 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS-400096A; FRL-5372-6]

Diethyl Phthalate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting diethyl phthalate (DEP) from the list of chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community

Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is deleting DEP because the Agency has concluded that DEP meets the deletion criterion of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on DEP that occurred during the 1995 reporting year, and for activities in the future.

DATES: This rule is effective July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Affected Entities

Entities potentially affected by this action are those which manufacture, process, or otherwise use diethyl phthalate (DEP) and which are subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the affected categories and entities include:

Category	Examples of affected entities
Industry	Facilities that produce soaps, detergents, cleaners, perfumes, cosmetics, other toilet preparations, unsupported film and sheet plastics, other plastic products, and miscellaneous industrial organic chemicals.
Federal Government	Federal Agencies that manufacture, process, or otherwise use DEP.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

B. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–9499).

C. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEP was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61432, November 30, 1994) (FRL-4922-2).

II. Description of Petition and Proposed Action

On February 7, 1995, the Fragrance Materials Association petitioned the Agency to delete DEP (Chemical Abstract Service (CAS) Registry No. 84-66-2) from the EPCRA section 313 list of toxic chemicals. The petitioner contends that DEP, which is mainly used as a plasticizer, should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

Following a review of the petition, EPA granted the petition and issued a proposed rule in the Federal Register of September 5, 1995 (60 FR 46076) (FRL-4970-5) proposing to delete DEP from the list of chemicals subject to the reporting requirements under EPCRA section 313. EPA's proposal was based on its preliminary conclusion that DEP meets the deletion criteria of EPCRA section 313(d)(3). With respect to deletions, EPCRA provides at section 313(d)(3) that ''[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)].'' In the proposed rule, EPA preliminarily concluded that the available toxicological data indicates that DEP does not cause adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility cite boundaries, and causes systemic, developmental, and reproductive toxicities only at relatively high doses and thus has low chronic toxicity. Furthermore, EPA preliminarily concluded that DEP exhibits low toxicity to aquatic organisms, and is not likely to bioconcentrate. EPA also preliminarily concluded that releases of DEP will not result in exposures of concern. Therefore, EPA preliminarily concluded that based on the total weight of available data, DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

III. Final Rule and Rationale for Delisting

In response to the petition from the Fragrance Materials Association, EPA is deleting DEP from the list of chemicals for which reporting is required under EPCRA section 313 and PPA section 6607. EPA is delisting this chemical because the Agency has determined that DEP satisfies the delisting criterion of EPCRA section 313(d)(3).

A. Response to Comments

EPA received four comments in response to the proposed rule, all in support of the proposed deletion. EPA agrees with the commenters that DEP satisfies the criterion for delisting. One commenter requests that EPA make this action effective as of the date of the proposal, September 5, 1995, in order for the deletion to apply for the 1995 reporting year. While this action is effective as of the date of publication of this final rule, not the date of the proposal, EPA agrees that DEP should not be reported for the 1995 calendar year. As discussed in Unit IV. of this preamble, reporting for DEP is not required for the 1995 reporting year, covering activities and releases which occurred in 1995.

B. Rationale for Delisting and Conclusions

EPA has concluded that the assessment set out in the proposed rule should be affirmed. Further, because of questions raised recently about the ability of phthalates to produce hormone disruption, EPA has looked at this issue as it relates to DEP. While EPA is aware of limited and preliminary *in vitro* data indicating that some phthalates bind/activate estrogen receptors at high concentrations, EPA has not located any such information on DEP. Further, for those few phthalates tested *in vitro*, there is no indication that any common structural feature of these compounds is responsible for the observed activity. In addition, EPA is not aware of any data that demonstrate that DEP produces estrogenic effects *in vivo*. Accordingly, EPA has determined that there is insufficient evidence, at this time, to demonstrate that DEP causes hormone disruption. In summary, based on the total weight of available data, EPA has concluded that DEP cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment, and therefore DEP meets the delisting criterion of 313(d)(3). A more detailed discussion of the rationale for delisting is given in the proposed rule (60 FR 46076, September 5, 1995) (FRL–4970–5).

Based on current data, EPA concludes that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because DEP exhibits acute oral toxicity only at levels that greatly exceed estimated exposures outside the facility. Specifically, DEP cannot reasonably be anticipated to cause ''. . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.''

EPA has concluded that there is not sufficient evidence to establish that DEP meets the criterion of EPCRA section 313(d)(2)(B). The lowest-observed-adverse-effect-level (LOAEL) for systemic toxicity is 3,160 milligrams/kilogram/day (mg/kg/day) and the no-observed-adverse-effect-level (NOAEL) is 750 mg/kg/day. The LOAEL for developmental toxicity is 3,210 mg/kg/day and the NOAEL is 1,910 mg/kg/day. The NOAEL for reproductive toxicity is approximately 3,750 mg/kg/day, which was the highest dose tested. EPA has no information indicating that DEP causes any other section 313(d)(2)(B) effects. EPA considers the above doses where DEP caused adverse effects to be relatively high and concludes that DEP has low chronic toxicity. Therefore, EPA conducted an exposure assessment for chronic human exposure and found that exposure to DEP at the estimated levels is not likely to result in adverse health risks in humans. EPA has estimated that releases of DEP will not result in exposures of concern. Therefore, EPA has concluded that DEP does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also concluded that DEP does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting. DEP exhibits low toxicity to aquatic organisms (fish 96 hr median lethal concentration (LC_{50}), 12 to 100 milligrams/liter (mg/l); daphnid 48 hr LC_{50}, 50 to 90 mg/l; and algae 96 hr median effective concentration (EC_{50}), 30 to 86 mg/l, and is not likely to bioconcentrate.

Thus, in accordance with EPCRA section 313(d)(3), EPA is deleting DEP from the section 313 list of toxic chemicals. Today's action is not intended, and should not be inferred, to affect the status of DEP under any other statute or program other than the reporting requirements under EPCRA section 313.

IV. Effective Date

This action becomes effective July 29, 1996. Thus, the last year in which facilities had to file a Toxic Release Inventory (TRI) report for DEP was 1995, covering releases and other activities that occurred in 1994.

Section 313(d)(4) provides that ''[a]ny revision'' to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency has determined, as it has with DEP, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

V. Rulemaking Record

The record supporting this decision is contained in docket control number OPPTS–400096A. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

It has been determined that this action is not a ''significant regulatory action'' within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), because this action eliminates an existing regulatory requirement. The Agency estimates the total cost savings to industry from this action to be $124,000 per year. The cost savings to EPA is estimated at $3,000 per year.

This action does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). And, given its deregulatory nature, I hereby certify pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this action does not have a significant economic impact on a substantial number of small entities. As required, information to this effect has been forwarded to the Small Business Administration.

This action does not have any information collection requirements subject to the provisions of the

Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The elimination of the information collection components for this action is expected to result in the elimination of 2,305 paperwork burden hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency has determined that there are no environmental justice related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 19, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended to read as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

Sections 372.65(a) and (b) are amended by removing the entire entry for diethyl phthalate under paragraph (a) and removing the entire CAS No. entry for 84-66-2 under paragraph (b).

[FR Doc. 96–19075 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 201

[FIRMR Amendment 9]

RIN 3090–AG04

Removal of Chapter 201, Federal Information Resources Management Regulation, From Title 41—Public Contracts and Property Management

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Final rule.

SUMMARY: This amendment removes Chapter 201, Federal Information Resources Management Regulation (FIRMR), from Title 41—Public Contracts and Property Management. This action is necessary because the Information Technology Management Reform Act of 1996, (Pub. L. 104–106) effectively removes most of the statutory basis for the FIRMR after August 7, 1996.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, GSA, Office of Policy, Planning and Evaluation, Strategic IT Analysis Division (MKS), 18th and F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–4469 (v) or (202) 501–0657 (tdd), or Internet (steward.randall@gsa.gov).

SUPPLEMENTARY INFORMATION: (1) The President signed S. 1124, the National Defense Authorization Act (NDAA) For Fiscal Year 1996, (Pub. L. 104–106) on February 10, 1996. Included in the NDAA was Division E, the Information Technology (IT) Management Reform Act of 1996. Section 5105 of the said Act repeals section 111 of the Federal Property and Administrative Services Act of 1949, as amended (the Brooks Act) (40 U.S.C. 759). The Brooks Act was the authority for most of the provisions in the GSA's Federal Information Resources Management Regulation so that the Brooks Act repeal effectively removes most of the statutory basis for the FIRMR. Any FIRMR provisions that are still needed, such as those regarding records management, are being removed from the FIRMR and are being reestablished as appropriate.

(2) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 201–1 Through 201–39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Government property management, Records management, Telecommunications.

CHAPTER 201—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION—[REMOVED AND RESERVED]

Accordingly, under the authority of 40 U.S.C. 486(c) and 751(f), Chapter 201 is removed and reserved.

Dated: July 17, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–19184 Filed 7–26–96; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–21, FCC 96–313]

Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule; change of effective date.

SUMMARY: In this Order on Reconsideration, the Commission advances the effective date of its recently released Report and Order concerning Bell operating company provision of domestic, out-of-region, interstate, interexchange services. In the Matter of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96–21, FCC 96–288 (rel. July 1, 1996) (*Interim BOC Out-of-Region Order*). The effective date as specified in that *Interim BOC Out-of-Region Order* was thirty days after its publication in the Federal Register, which is August 8, 1996. To further facilitate the efficient and rapid provision of such services by the BOC as contemplated by the Telecommunications Act of 1996, the Order on Reconsideration advances the

effective date of the *Interim BOC Out-of-Region Order* to July 29, 1996.

EFFECTIVE DATE: The interim rule published on July 9, 1996 at 61 FR 35964 will be effective July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Pryor (202) 418–0495 or Melissa Waksman (202) 418–0913, Common Carrier Bureau, Policy and Program Planning Division.

SUPPLEMENTARY INFORMATION:

1. On our own motion, pursuant to Section 1.108 of our rules, 47 CFR § 1.108, we reconsider the effective date of the *Interim BOC Out-of-Region Order,* 61 FR 35964, July 9, 1996. In that decision, we established interim rules governing Bell Operating company (BOC) provision of domestic, interstate, interexchange services originating outside of their in-region states. We sought to facilitate the efficient and rapid provision of such services by the BOCs, as contemplated by the Telecommunications Act of 1996, (1996 Act), Public Law No. 104–104, 110 Stat. 56 (1996) *codified at* 47 U.S.C. §§ 151 *et seq.* The *Interim BOC Out-of-Region Order* removes dominant carrier regulation for BOCs that provide such services through an affiliate in compliance with certain safeguards. The requirements established in the Order are interim measures that remain in place until we complete our more comprehensive review of the rules that are applicable to both independent local exchange carriers and BOCs in the provision of out-of-region, interstate, interexchange services.

2. We originally established an effective date for the *Interim BOC Out-of-Region Order* of thirty days following publication in the Federal Register. That Order was published in the Federal Register on July 9, 1996, and the scheduled effective date of the Order is August 8, 1996. Under 5 U.S.C. § 553(d)(1), however, a substantive rule which relieves a restriction may become effective prior to thirty days following Federal Register publication. Because the *Interim BOC Out-of-Region Order* lifts dominant carrier regulation for the out-of-region services of BOC affiliates complying with certain minimum safeguards, we find that the Order falls within the exception to the 30-day rule set forth in 5 U.S.C. § 553(d)(1). Accelerating the effective date of that Order will further the goals of the 1996 Act, which provided that upon enactment the BOCs could provide out-of-region, interstate, interexchange services. We find that the effective date of the *Interim BOC Out-of-Region Order* shall be the date of the publication of this Order on Reconsideration in the Federal Register.

3. Accordingly, *It is ordered* that, pursuant to Sections 4(i), 4(j), 303 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303 and 405, and section 1.108 of the Commission's rules, 47 CFR § 1.108, the ORDER ON RECONSIDERATION is hereby ADOPTED and shall become effective on the date of publication in the Federal Register. *It is further ordered* that the effective date of the *Interim BOC Out-of-Region Order,* FCC 96–288 (rel. July 1, 1996), 61 FR 35964 (July 9, 1996), shall be July 29, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19240 Filed 7–26–96; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability of Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Interim rule with request for comment.

SUMMARY: The Cost Accounting Standards (CAS) Board is revising the applicability criteria for application of CAS to negotiated Federal contracts. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act, 41 U.S.C. 422. The Board is taking action on this topic to adjust CAS applicability requirements in accordance with Section 4205 of Pub. L. 104–106, the ''Federal Acquisition Reform Act of 1996.''

EFFECTIVE DATES: This rule is effective July 29, 1996. Comments upon this interim rule must be in writing and must be received by September 27, 1996.

ADDRESSES: Comments should be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9001, Washington, DC 20503. Attn: CASB Docket No. 96–01.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Background

Section 4205 of Pub. L. 104–106, the ''Federal Acquisition Reform Act of 1996,'' amends 41 U.S.C. § 422(f)(2)(B) to revise clause (i) and delete clause (iii). The phrase ''contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public'' has been substituted with the phrase ''contracts or subcontracts for the acquisition of commercial items.'' The CAS Board is today amending its applicability regulations, solicitation provision and contract clauses in recognition of this change. As amended, firm fixed-price contracts and subcontracts for the acquisition of commercial items (see 48 CFR, Chap. 1, part 12) will be exempt from CAS requirements. Consequently, the Board's December 18, 1995 ''Memorandum for Agency Senior Procurement Executives'' authorizing CAS waivers for individual firm fixed-price contracts for the acquisition of commercial items when cost or pricing data is not obtained is hereby rescinded.

To accomplish these changes, the Board is amending Section 9903.201–1(b)(6) of its rules. Additionally, the solicitation provision found at 9903.201–3, the contract clauses at 9903.201–4, and the definition found at 9903.301 are amended to reflect this change.

The conference report to Pub. L. 104–106 directs the CAS Board, in consultation with the Director of the Defense Contract Audit Agency, to issue guidance, consistent with commercial accounting systems and practices, to ensure that contractors appropriately assign costs to commercial item contracts, other than firm fixed-price commercial item contracts. At the present time, however, commercial item contracts are limited by regulation to the fixed-price variety. Accordingly, after consideration and review of this issue, the Board has concluded that development of the requested guidance should appropriately await the time when other than fixed-price commercial item contracts are authorized, or until another need for such guidance arises. At the time that a need arises for guidance to address the allocation of costs to other than firm fixed-price commercial item contracts, the Board will, of course, pursue the development of guidance to address the issue.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this

rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this final rule will not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this rule will not have a significant impact on a substantial number of small businesses because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this interim rule. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. § 422.

2. Section 9903.201–1 is amended by revising paragraph (b)(6) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(6) Firm fixed-price contracts and subcontracts for the acquisition of commercial items.

* * * * *

3. Section 9903.201–3 is amended by revising the clause heading and Part I (a) of the clause to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATIONS (JULY 1996)

* * * * *

I. Disclosure Statement—Cost Accounting Practices and Certifications

(a) Any contract in excess of $500,000 resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201–1

* * * * *

4. Section 9903.201–4 is amended by revising the clause headings and paragraphs (d) of the clause entitled Cost Accounting Standards; (d)(2) of the clause entitled Disclosure and Consistency of Cost Accounting Practices; and by revising paragraph (d)(2) and adding paragraph (d)(3) to the clause entitled Cost Accounting Standards—Educational Institutions, to read as follows:

9903.201–4 Contract clauses.

* * * * *

COST ACCOUNTING STANDARDS (JULY 1996)

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

* * * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JULY 1996)

* * * * *

(d) * * *

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

* * * * *

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTIONS (JULY 1996)

* * * * *

(d) * * *

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

Subpart 9903.3—CAS Rules and Regulations

§ 9903.301 Definitions.

5. Section 9903.301 is amended by deleting the definition for *Established catalog or market price of commercial items sold in substantial quantities to the general public.*

[FR Doc. 96–19067 Filed 7–26–96; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 072396B]

Atlantic Tuna Fisheries; Fishery Closure and Reallocation

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

ACTION: Closure and reallocation.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) Harpoon category annual quota and the June/July period General category quota for 1996 will be attained by July 24, 1996. Therefore, the 1996 Harpoon category fishery will be closed effective at 11:30 p.m. on July 24, 1996, and the General category fishery for June/July will be closed effective at 11:30 p.m. on July 24, 1996. This action is being taken to prevent overharvest of these categories. NMFS also announces a transfer of 10 mt of ABT from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing ABT under the longline-south Incidental subcategory are not likely to achieve the full 1996 allocation. This reallocation is being taken to extend the season for the longline-north Incidental subcategory, ensure additional collection of biological assessment and monitoring data, and prevent waste of ABT that might otherwise be discarded dead.

EFFECTIVE DATES: The General category closure for the June/July period is effective 11:30 p.m. local time on July

24, 1996, through July 31, 1996. The Harpoon category closure is effective 11:30 p.m. local time on July 24, 1996, through December 31, 1996. The longline inseason transfer is effective July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

General and Harpoon Category Closures

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 133 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the General category during the period beginning June 1 and ending July 31. Based on reported catch and effort, NMFS projects that this quota will be reached by July 24, 1996. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the General category must cease at 11:30 p.m. local time July 24, 1996. The General category will reopen August 1, 1996 with a quota of 186 mt for the August period.

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a quota of 53 mt of large medium and giant ABT to be harvested from the regulatory area by vessels permitted in the Harpoon category. Based on reported catch and effort, NMFS projects that this quota will be reached by July 24, 1996. Therefore, fishing for, retaining, possessing, or landing large medium or giant ABT by vessels in the Harpoon category must cease at 11:30 p.m. local time July 24, 1996.

The intent of these closures is to prevent overharvest of the quotas established for these categories.

Inseason Transfer

Under the implementing regulations at 50 CFR 285.22(f), NMFS has the authority to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, NMFS may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of ABT before the anticipated end of the fishing season; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

At the current time, ABT have migrated to summer feeding grounds in New England waters and incidental catch by longline vessels operating south of 34° N. lat. is no longer expected to occur. A total of 45 mt currently remain of the amount allocated to this southern subcategory. The longline-north Incidental subcategory is expected to reach its allocation of 23 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any ABT incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of ABT that might otherwise be discarded dead, it is reasonable to transfer quota from the southern to the northern subcategory.

Reallocating 10 mt from the Incidental longline-south category responds to the criteria listed above as follows: Incidental category landings are a major contributor to the collection of biological data on this fishery; incidental catches by longline vessels in 1996 have been high, and it would be necessary to close this subcategory of the fishery unless additional quota allocation is made.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 23, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19129 Filed 7–23–96; 5:08 pm]

BILLING CODE 3510–22–F

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50 CFR Part 300

[Docket No. 960111003–6068–03; I.D. 072496A]

International Fisheries Regulations; 1996 Halibut Report No. 5

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

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: Area 2A Non-treaty Commercial Fishery Reopening: 8:00 a.m., Pacific Daylight Time (PDT), July 24, 1996, until 6:00 p.m. PDT, July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995, and amended at 61 FR 11337, March 20, 1996). On behalf of the IPHC, this inseason action is published in the Federal Register to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1996 Halibut Report No. 5

Incidental Commercial Halibut Catch in the Area 2A Salmon Troll Fishery

The total allowable incidental commercial catch of halibut allocated to the salmon troll fishery was 16,068 lb (7.28 metric tons (mt)). The salmon troll fishery closed June 30 with an estimated halibut catch of 8,002 lb (3.62 mt). The remaining catch of 8,066 lb (3.65 mt) is added to the directed commercial catch limit.

Area 2A Non-treaty Commercial Fishery to Reopen on July 24

The July 10 fishing period in Area 2A resulted in a catch of about 70,000 lb (31.75 mt), leaving 21,052 lb (9.54 mt) in the commercial catch limit. The total catch limit remaining, including the additional amount from the salmon troll fishery, is 29,118 (13.20 mt).

Area 2A will reopen on July 24 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, Washington (46°53°18″ N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (pounds)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	225	200
26–30	B	225	200
31–35	C	285	250
36–40	D	790	695
41–45	E	850	750
46–50	F	1,020	895
51–55	G	1,135	1,000
56+	H	1,705	1,500

*Weights are after 2% has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Area 2B Commercial Fishery Update

Halibut landings from Area 2B total 5.57 million lb (2,526.53 mt) through July 11, leaving 3.95 million lb (1,791.70 mt) of the catch limit to be caught. The fishery will continue until all quotas have been filled, or November 15, whichever is earlier.

Annette Island Reserve Fishery in Area 2C

The Metlakatla Indian community has been authorized by the U.S. Government to conduct a commercial halibut fishery within the Annette Island Reserve. Six 48-hour fishing periods occurred between April 27 and July 7, producing a total catch of 43,837 lb (19.88 mt).

Alaskan Commercial Fishery Update

It is estimated that the following catches and number of landings were made in the Alaskan Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fisheries through July 10, 1996.

Area	Catch limit (000's pounds)	Catch (000's pounds)	Number of landings
2C	9,000	5,529	1,640
3A	20,000	10,071	1,465
3B	3,700	1,278	182
4A	1,950	616	72
4B	2,310	677	120
4C	770	428	280
4D	770	346	37
4E	120	118	507
Total	38,620	19,063	4,303

During the same time period in 1995, March 15 through July 14, 13.56 million lb (6,150.77 mt) were landed in the Alaskan IFQ and CDQ fisheries.

Dated: July 24, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19207 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 61, No. 146
Monday, July 29, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–09–AD]

RIN 2120–AA64

Airworthiness Directives; Shorts Model SD3–60 and SD3–SHERPA 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 Shorts Model SD3–60 and SD3–SHERPA series airplanes. This proposal would require a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. The proposal also would require repair or replacement of any cracked/corroded gland nut with a new nut. This proposal is prompted by a report that, due to stress corrosion and cracking of the gland nut on the shock absorber, the MLG collapsed on an in-service airplane. The actions specified by the proposed AD are intended to prevent such stress corrosion or cracking and consequent reduced structural integrity of the gland nut, which could result in separation of the shock absorber cylinder from the MLG shock absorber body and, consequently, lead to the collapse of the MLG during landing.

DATES: Comments must be received by September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–09–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 Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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 96–NM–09–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. 96–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Shorts Model SD3–60 and Model SD3–SHERPA series airplanes. The CAA advises that it has received a report indicating that the right-hand main landing gear (MLG) collapsed on a Model SD3–60 series airplane. The cause of this failure has been attributed to stress corrosion and cracking around the inner shoulder radius of the gland nut on the shock absorber of the MLG. The effects of such stress corrosion and cracking could lead to reduced structural integrity of the gland nut. This condition, if not detected and corrected in a timely manner, could result in separation of the shock absorber cylinder from the MLG shock absorber body and, consequently, lead to the collapse of the MLG during landing.

The gland nut on the shock absorber of the MLG on certain Model SD3–SHERPA series airplanes is identical to that on the affected Model SD3–60 series airplanes. Therefore, Model SD3–SHERPA series airplanes may be subject to the same unsafe condition revealed on Model SD3–60 series airplanes.

Explanation of Relevant Service Information

Shorts has issued Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995. These service bulletins describe procedures for a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, and repair or replacement of the gland nut with a new nut, if necessary. Following accomplishment of the inspection, these service bulletins also describe procedures for applying grease to the threads of the cylinder and applying sealant to the inner radius of the gland nut; these procedures will prevent stress corrosion and cracking of the subject gland nut. The CAA classified these service bulletins as mandatory and issued airworthiness directives 010–09–95 (for Model SD3–60 series airplanes)

and 009–09–95 (for Model SD3–SHERPA series airplanes), in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, and repair or replacement of the gland nut with a new nut, if necessary. Following the accomplishment of the inspection, the proposed AD also would require applying grease to the threads of the cylinder and applying sealant to the inner radius of the gland nut. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 88 airplanes (72 Model SD3–60 series airplanes and 16 Model SD3–SHERPA series airplanes) of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $26,400, or $300 per airplane.

The 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers, PLC: Docket 96–NM–09–AD.

Applicability: Model SD3–60 and Model SD3–SHERPA series airplanes, as listed in Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995; 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion or cracking of the gland nut on the shock absorber of the main landing gear (MLG) and consequent reduced structural integrity of the nut, which could result in separation of the shock absorber cylinder from the MLG shock absorber body and, consequently, lead to the collapse of the MLG during landing; accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, in accordance with Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995, as applicable.

Note 2: Shorts Service Bulletins SD360–32–34 and SD3 SHERPA–32–2 reference Messier-Dowty Service Bulletin 32–78SD, dated July 19, 1995, as an additional source of service information.

(1) If no crack and/or corrosion is detected, no further action is required by paragraph (a) of this AD.

(2) If no crack is detected, but corrosion is detected that is within the limits specified in the service bulletin, prior to further flight, repair the gland nut in accordance with the applicable service bulletin.

(3) If any crack is detected, or if any corrosion is detected that is outside the limits specified in the service bulletin, prior to further flight, replace the gland nut with a new gland nut, in accordance with the applicable service bulletin.

(b) Following accomplishment of paragraph (a) of this AD, prior to further flight, apply grease to the threads of the cylinder, and apply sealant to the inner radius of the gland nut, in accordance with Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995, as applicable.

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

Note 3: 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 July 23, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19150 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–38–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped With Walter Kidde Nose Wheel Steering System

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 Fokker Model F27 series airplanes. This proposal would require increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG). This proposal would also require that periodic inspections of that torque value be incorporated into the FAA-approved maintenance program. This proposal is prompted by several reports that the dowel pins in the Walter Kidde nose wheel steering system were found broken and/or had elongated holes due to a reduced torque value of the subject bolt. The actions specified by the proposed AD are intended to prevent such a reduction in the torque value, which could result in failure of the dowel pins in the Walter Kidde nose wheel steering system; this situation could result in reduced controllability of the airplane or the collapse of the NLG during landing.

DATES: Comments must be received by September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–38–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; 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 96–NM–38–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. 96–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes, equipped with a Walter Kidde nose wheel steering system having part number 893954. The RLD advises that it has received several reports indicating that the dowel pins in the Walter Kidde nose wheel steering system were found broken and/or had elongated holes. Investigation revealed that the cause of these discrepancies was due to a reduction of the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the nose landing gear (NLG). This condition, if not corrected, could result in failure of the dowel pins; this situation could result in reduced controllability of the airplane or the collapse of the NLG during landing.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/32–166, dated September 7, 1993, which describes procedures for increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the NLG. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–132 (A), dated September 17, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require increasing the torque value of the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the NLG. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD would also require that periodic inspections of the torque

value of the affected bolt be incorporated into the FAA-approved maintenance program.

Cost Impact

The FAA estimates that 34 Fokker Model F27 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed initial tightening of the bolt, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,080, or $120 per airplane.

The 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–38–AD.

Applicability: Model F27 series airplanes, serial numbers 10102 through 10692 inclusive; equipped with Walter Kidde nose wheel steering system (steering unit gearbox housing assembly) having part number 893954; 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a reduction in the torque value of the bolt in the Walter Kidde nose wheel steering system, which could result in reduced controllability of the airplane or the collapse of the nose landing gear (NLG) during landing, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, or within 4 months after the effective date of this AD, whichever occurs first, tighten the bolt that connects the gearbox housing assembly of the steering unit to the pivot bracket of the NLG to a torque value of 700 to 800 pounds per inch, in accordance with Fokker Service Bulletin F27/32–166, dated September 7, 1993.

(b) Within 30 days following accomplishment of paragraph (a) of this AD, revise the FAA-approved maintenance program to include periodic inspections of the torque value of the affected bolt, as described in Fokker F27 Maintenance Circular No. 32–6, dated April 30, 1993; and, thereafter, comply with those requirements.

(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 July 23, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19151 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AWP–18]

Proposed Amendment of Class D Airspace; Hayward, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class D airspace area at Hayward, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 28L has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Hayward Air Terminal, Hayward, CA.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–18, 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, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

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. 96–AWP–18.'' 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 Operations 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, Operations Branch, P. O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace area at Hayward, CA. The development of GPS SIAP at Hayward Air Terminal has made this proposal necessary. The intended effect of this proposal is to provide adequate Class D airspace for aircraft executing the GPS RWY 28L SIAP at Hayward Air Terminal, Hayward, CA. Class D airspace designations are published in Paragraph 5000 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 D 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 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 CR 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 5000 Class D Airspace

* * * * *

AWP CA D Hayward, CA [Revised]

Hayward Air Terminal, CA
(lat. 37°39′34″ N, long. 122°07′21″ W)
Metropolitan Oakland Internal Airport
(lat. 37°43′17″ N, long. 122°13′415″ W)

That airspace extending upward the surface to but not including 1,500 feet MSL within a 5.6-mile radius of the Hayward Air Terminal excluding that portion within the Metropolitan Oakland International Airport, CA, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on July 15, 1996.

Harvey R. Riebel,

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

[FR Doc. 96–19234 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AAL–17]

Proposed Revision of Class E Airspace; Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Port Heiden, AK. The development of the Very High Frequency (VHF) omni-directional radio range (VOR)/Distance Measuring Equipment (DME) instrument approach to RWY 13 at Port Heiden Airport, AK, has made this action necessary. The areas would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Port Heiden, AK.

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 95–AAL–17, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

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

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

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th

Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposal rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–17.'' 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, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Port Heiden, AK. This action is necessary to accommodate a new VOR/DME instrument approach to Runway 13 at Port Heiden, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas 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 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Port Heiden, AK [Revised]

Port Heiden Airport, AK
(lat. 56°57′32″ N, long. 158°37′57″ W)
Port Heiden NDB
(lat. 56°57′15″ N, long. 158°38′56″ W)
Turnbull VOR/DME
(lat. 56°57′04″ N, long. 158°38′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Port Heiden Airport and within 4 miles north and 8 miles south of the 248° bearing of the Port Heiden NDB extending from the NDB to 20 miles west of the NDB and within 8 miles west and 4 miles east of the Port Heiden NDB 339° bearing extending from the NDB to 20 miles northwest of the NDB; and that airspace extending upward from 1200 feet above the surface within 13 miles west and 4 miles east of the Port Heiden NDB 339° bearing extending from 10 miles north of the NDB to 25 miles north of the NDB and within 17 miles of the Turnbull VOR/DME extending clockwise from the VOR/DME 213° radial to the VOR/DME 074° radial.

* * * * *

Issued in Anchorage, AK, on July 22, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–19230 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–17]

Proposed Amendment of Class E Airspace; Prescott, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Prescott, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runways (RWYs) 12/21L has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ernest A. Love Field, Prescott, AZ.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–17, 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, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulveard, Lawndale, California, 90261, telephone (310) 725–6556.

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. 96–AWP–17.'' 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 Operations 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, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Prescott, AZ. The development of GPS SIAP at Ernest A. Love Field has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 12/21L SIAP at Ernest A. Love Field, Prescott, 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 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Prescott, AZ [Revised]

Prescott Ernest A. Love Field, AZ
(lat. 34°39′06″N, long. 112°25′18″W)
Drake VORTAC
(lat. 34°42′09″N, long. 112°28′49″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Ernest A. Love Field and within a 2.6 miles each side of Drake VORTAC 318° radial extending from 6-mile radius to 7.5 miles northwest of the Drake VORTAC and within 4.3 miles northwest and 3 miles southeast of the Runway 21 localizer extending from the 6-mile radius to 8.7 miles northeast of Ernest A. Love Field. That airspace extending upward from 1,200 feet above the surface within a 18.2-mile radius of the Drake VORTAC, extending clockwise from a line 4.3 miles south of and parallel to the Drake VORTAC 252° radial to a line 4 miles northeast of and parallel to the Drake VORTAC 318° radial and within a 24-mile radius of the Drake VORTAC, extending clockwise from a line 4 miles northeast of and parallel to the Drake VORTAC 318° radial to a line 4 miles west of and parallel to the Drake VORTAC 002° radial and within a 18.2-mile radius of Drake VORTAC, extending clockwise from a line 4 miles west of and parallel to the Drake VORTAC 002° radial to a line 4.3 miles west of and parallel to the Drake VORTAC 159° radial and within a 12.2-mile radius of Drake VORTAC, extending clockwise from a line 4.3 miles west of and parallel to the Drake VORTAC 159° radial to a line 4.3 miles south of and parallel to the Drake VORTAC 252° radial.

* * * * *

Issued in Los Angeles, California, on July 15, 1996.

Harvey R. Riebel,

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

[FR Doc. 96–19233 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ANM–25]

Proposed amendment to Class E Airspace, Blanding, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Blanding, Utah, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Blanding Municipal Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–25, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

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

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 95–ANM–25, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Blanding, Utah, to accommodate a new GPS SIAP to the Blanding Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, UT
(lat. 37°34′59″N, long. 109°29′00″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Blanding Municipal Airport, and within 5.1 miles either side of the 182° bearing from the airport extending from the 6.5–mile radius to 15 miles south of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 37°42′00″ N, long. 109°42′00″ W; to lat. 37°42′00″ N, long. 109°20′30″ W; to lat. 37°52′18″ N, long. 108°58′58″ W; to lat. 37°45′17″ N, long. 108°51′56″ W; to lat. 37°25′09″ N, long. 109°18′00″ W; to lat. 37°22′45″ N, long. 109°18′00″ W; to lat. 37°04′00″ N, long. 108°36′11″ W; to lat. 37°02′00″ N, long.108°55′00″ W; to lat. 37°12′26″ N, long. 109°18′00″ W; to lat. 37°04′00″N, long. 109°18′00″ W; to lat. 37°04′00″ N, long. 109°27′20″ W; to lat. 36°30′00″ N, long. 109°34′45″ W; to lat. 36°30′00″ N, long. 109°46′05″ W; to lat. 37°04′00″, long. 109°38′45″ W; to lat. 37°04′00″ N, long. 109°42′00″ W, thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on July 8, 1996.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–19235 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210 and 211

[Docket No. 95N–0362]

RIN 0910–AA45

Current Good Manufacturing Practice; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 30, 1996, the comment period for the proposed rule that would revise the current good manufacturing practice (CGMP) regulations for finished pharmaceuticals. The proposed rule was published in the Federal Register of May 3, 1996 (61 FR 20104). The proposal would clarify certain manufacturing, quality control, and documentation requirements and would ensure that the regulations more accurately encompass CGMP. The agency is taking this action based on a request for an extension of the comment period.

DATES: Written comments by September 30, 1996.

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

FOR FURTHER INFORMATION CONTACT:

Thomas C. Kuchenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046; or

John M. Dietrick, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0098; or

William G. Marnane, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678; or

Nancy Roscioli, Center for Biologics Evaluation and Research (HFM–205), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3031.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 3, 1996 (61 FR 20104), FDA published a proposed rule that would clarify certain manufacturing, quality control, and documentation requirements and would ensure that the regulations more accurately encompass CGMP. In addition, the proposed rule would update the requirements for process and methods validation to incorporate guidance previously issued to industry to reflect current practice. The agency proposed these revisions to the CGMP regulations to enhance the integrity of the drug manufacturing process and the safety of drug products. The proposal gave interested persons the opportunity to submit written comments by August 1, 1996.

FDA has received a request from the Nonprescription Drug Manufacturers Association (NDMA) to extend the comment period. NDMA asked that the comment period be extended to permit the nonprescription drug industry to prepare and submit comments to FDA.

FDA has carefully considered this request and has decided to extend the comment period in which interested persons may evaluate the proposed rule and submit comments to the agency. Accordingly, the comment period for submission of comments by any interested person is extended to September 30, 1996.

Interested persons may, on or before September 30, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–19158 Filed 7–26–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 833]

RIN 1512–AB35

Implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994—Importation of Ammunition Feeding Devices With a Capacity of More Than 10 Rounds (94F–022P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this Federal Register, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations which provide that ammunition feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, the date of enactment of Public Law 103–322, are eligible for importation into the United States for general commercial sale. The temporary rule also provides guidance on acceptable evidence that magazines sought to be imported were manufactured on or before September 13, 1994. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATES: Written comments must be received on or before October 28, 1996.

ADDRESS: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091–0221; *ATTN: Notice No.833.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The collections of information contained in this notice have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1512–0017, 1512–0018, and 1512–0019, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this proposed regulation are in 27 CFR 178.119. This information is required by ATF to ensure compliance with the provisions of Pub. L. 103–322 (108 Stat. 1796). The likely respondents are individuals and businesses. Estimated total annual reporting burden: 200 hours. Estimated number of respondents: 2,000. Total annual hours requested: 200.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

The temporary regulations in this issue of the Federal Register amend the regulations in 27 CFR Part 178. For the text of the temporary regulations, see T.D. ATF–383 published in the Rules and Regulations section of this issue of the Federal Register.

Drafting Information: The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: March 18, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 19, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–19190 Filed 7–26–96; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AA55

Transfer of Electronic Records to the National Archives

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise NARA regulations relating to the transfer of permanent electronic records to the National Archives. The proposed rule clarifies the timing of transfers and expands the forms of acceptable transfer media.

DATES: Comments must be received by September 27, 1996.

ADDRESSES: Comments must be sent to Regulation Comment Desk (PIRM-POL), Room 3200, Policy and Planning Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–6730, extension 226.

SUPPLEMENTARY INFORMATION: The proposed rule directs agencies to transfer electronic records to the National Archives at the time specified in NARA-approved records schedules or sooner if the agency cannot properly care for the records. The transfer media, formerly limited to open reel magnetic tape or tape cartridges, now includes Compact-Disk, Read Only Memory (CD–ROM) provided that the files contained on the CD–ROM comply with the format and documentation specified in § 1228.188. Open-reel 7-track tape reels recorded at 800 bpi are no longer acceptable. In addition, the proposed section provides more specific transfer information for data files and databases and now includes information for transferring electronic textual documents and digital spatial data files. Finally, agencies are encouraged to transfer documentation in an electronic form.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities. This proposed rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1228

Archives and records, Computer technology, Incorporation by reference.

For the reasons set forth in the preamble, NARA proposes to amend part 1228 of title 36, Code of Federal Regulations, as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Section 1228.188 is revised to read as follows:

§ 1228.188 Electronic records.

(a) *Timing of transfers.* Each agency is responsible for the integrity of the records it transfers to the National Archives. To ensure that permanently valuable electronic records are preserved, each Federal agency shall transfer electronic records to the National Archives promptly in accordance with the agency's records disposition schedule. Furthermore, if the agency cannot provide proper care and handling of the media (see part 1234 of this chapter), or if the media are becoming obsolete and the agency cannot migrate the records to newer media, the agency shall contact NARA to arrange for timely transfer of permanently valuable electronic records, even when sooner than provided in the records schedule.

(b) *Temporary retention of copy.* Each agency shall retain a second copy of any permanently valuable electronic records that it transfers to the National Archives until it receives official notification from NARA that the transfer was successful and that NARA has assumed responsibility for continuing preservation of the records.

(c) *Transfer media.* The agency shall use only media that is sound and free from defects for such transfers; the agency shall choose reasonable steps to meet this requirement. The media forms that are approved for transfer are open reel magnetic tape, magnetic tape cartridge, and Compact-Disk, Read Only Memory (CD–ROM), as described in paragraphs (c) (1) and (2) of this section.

(1) *Magnetic tape.* Agencies may transfer electronic records to the National Archives on magnetic tape using either open-reel magnetic tape or tape cartridges. Open-reel magnetic tape shall be on ½ inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39–1992, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE) or ANSI X3.54–1992, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), respectively. Tape cartridges shall be 18-track 3480-class cartridges recorded at 37,871 bpi that meet ANSI X3.180–1990, American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording. The data shall be blocked at no more than 32,760 bytes per block. The standards cited in this paragraph are available from the American National Standards Institute, (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. 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. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(2) *Compact-Disk, Read Only Memory (CD–ROM).* Agencies may use CD–ROMs to transfer electronic records scheduled to be preserved in the National Archives. The files on such a CD–ROM must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) CD–ROMs used for this purpose must conform to the International Standards Organization (ISO) 9660 standard and to the American Standard Code for Information Interchange (ASCII) standard as defined in the Federal Information Processing Standard 1–2 (11/14/84). The standard is available from the National Institute of Standards and Technology (NIST), Bldg. 820, West Diamond Dr., Rm. 562, Gaithersburg, MD 20899. It is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C. 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. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(ii) Permanently valuable electronic records must be stored in discrete files. The CD–ROMs transferred may contain other files, such as software or temporary records, but all permanently valuable records must be in files that contain only permanent records.

(iii) In some cases, permanently valuable electronic records that an agency disseminates on CD–ROM exist on other media, such as magnetic tape. In such cases, the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives.

(d) *Formats.* The agency may not transfer to the National Archives electronic records that are in a format dependent on specific hardware and/or software. The records shall be written in ASCII or EBCDIC with all control characters and other non-data characters removed (except as specified in paragraphs (d) (1), (2) and (3) of this section). The records must not be compressed unless NARA has approved the transfer in the compressed form in advance. In such cases, NARA may require the agency to provide the software to decompress the records.

(1) *Data files and databases.* Data files and databases shall be transferred to the National Archives as flat files or as rectangular tables; that is as two dimensional arrays, lists, or tables. All ''records'' (within the context of the computer program, as opposed to a Federal record) or ''tuples,'' i.e., ordered collections of data items, within a file or table should have the same logical format. Each data element within a record should contain only one data value. A record should not contain nested repeating groups of data items. The file should not contain extraneous control characters, except record length indicators for variable length records, or marks delimiting a data element, field, record, or file. If records or data elements in different files need to be linked or combined, then each record must contain one or more data elements that constitute primary and/or foreign keys enabling valid linkages between the related records in separate files.

(2) *Textual documents.* Electronic textual documents shall be transferred as plain ASCII files; however, such files may contain Standard Generalized Markup Language (SGML) tags.

(3) *Digital spatial data files.* Digital spatial data files shall be transferred to NARA in accordance with the Spatial Data Transfer Standard (SDTS) as defined in the Federal Information Processing Standard 173 which became mandatory in February 1994 and which is incorporated by reference. Digital geospatial data files created on systems procured prior to February 1994 which do not have a SDTS capability are exempt from this requirement. Agencies should consult with NARA for guidance on transferring noncompliant digital geospatial data files created between the effective date of FIPS 173 and the effective date of this revision. The standard cited in this paragraph is available from the National Institute of Standards and Technology (NIST), Bldg. 820, West Diamond Dr., Rm. 562, Gaithersburg, MD 20899. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(4) *Other categories of electronic records.* Agencies should identify any foreseeable problems in the possible transfer of potentially permanent electronic records in accordance with paragraphs (d) (1), (2) and (3) of this section at the time the records are scheduled. Special transfer requirements agreed upon by NARA and the agency shall be included in the disposition instructions.

(5) *NARA consultation.* The agency shall consult with NARA for guidance on the transfer of types of electronic records other than those prescribed in paragraphs (d) (1), (2) and (3) of this section.

(e) *Documentation.* Documentation adequate to identify, service and interpret electronic records that have

been designated for preservation by NARA shall be transferred with the records. This documentation shall include completed NARA Form 14097, Technical Description for Transfer of Electronic Records, and a completed NARA Form 14028, Information System Description Form, or their equivalents. Where possible, agencies should submit required documentation in an electronic form that conforms to the provisions of this section.

(1) *Data files.* Documentation for data files and data bases must include record layouts, data element definitions, and code translation tables (codebooks) for coded data. Data element definitions, codes used to represent data values and interpretations of these codes must match the actual format and codes as transferred.

(2) *Digital spatial data files.* Digital spatial data files shall include the documentation specified in paragraph (e)(1) of this section. In addition, documentation for digital spatial data files may include metadata that conforms to the Federal Geographic Data Committee's Content Standards for Digital Geospatial Metadata, as specified in Executive Order 12906 of April 11, 1994 (3 CFR, 1995 Comp., p. 882).

(3) *Documents containing SGML tags.* Documentation for electronic files containing textual documents with SGML tags shall include a table for interpreting the SGML tags, when appropriate.

Dated: July 23, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96–19123 Filed 7–26–96; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–005–1005; FRL–5542–8]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes approval of revisions to the State Implementation Plan (SIP) submitted by the state of Iowa. Several of the revisions are necessary to meet requirements of the Clean Air Act (Act) and Code of Federal Regulations (CFR). Others are intended to improve the state's permitting program and air quality. Collectively, these revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to control of hazardous air pollutants.

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The state of Iowa requested approval of four SIP revisions under the authority and signature of the Governor's designee, Larry J. Wilson, Director, Iowa Department of Natural Resources (IDNR). Two separate requests each dated February 16, along with requests dated February 19 and February 27, 1996, were received by the EPA. All of these submittals were determined complete in accordance with the criteria specified in 40 CFR part 51, appendix V. The state provided evidence of the lawful adoption of regulations, public notice, and relevant public hearing requirements for each submittal.

Revision Topics

Revisions by the state are summarized by date of the request to amend the SIP.

I. February 16, 1996(b)—Construction Permit Exemptions and Permit by Rule for Spray Booths

The list of exemptions from the requirement to obtain an air construction permit is amended and expanded. The practical effect of this action reduces the large volume of permits formerly required under state rule. Many of the activities that triggered a construction permit contained negligible emissions. For example, Iowa previously required permits for modifications which did not result in increased emissions.

The rule now exempts such modifications and others involving minimal increases, but requires that such sources provide information showing that increased emissions will not prevent attainment or maintenance of air quality standards.

The rule also exempts certain activities from the requirement to obtain a preconstruction permit, such as incinerators with a rated burning capacity of less than 25 pounds per hour. Iowa has determined, through the use of screening models, that such operations and activities would not have an adverse impact on air quality anywhere in the state. Based on this determination, EPA proposes to approve the exemptions.

The exemption provision, rule 22.1(2), also contains a provision which clarifies that the exemptions are not retroactive. This provision was adopted by the Environmental Protection Commission (EPC) on May 15, 1995, and submitted to the EPA on February 16, 1996. Subsequently, on April 15, 1996, the EPC removed the provision clarifying the retroactivity of the exemptions. However, on June 12, 1996, the IDNR submitted a letter clarifying that it intended that the EPA act on the preamended exemption provision (including the clarification that the exemptions are not retroactive), and that it does not intend that the EPA act on the subsequent amendment. The EPA proposes to approve the exemption provision on this basis.

With this amendment, there will be less burden on the regulated community (due to fewer required permits), and the IDNR can focus on more significant sources of pollution. The EPA believes that the rule, as revised, continues to meet the preconstruction review requirements of section 110(a)(2)(C) of the Act.

A permit by rule for paint spray booths is added. If a source meets the criteria established in the rule, the source's spray booths will be deemed to be in compliance with the requirements to obtain air construction and operating permits. Sources which emit at levels allowed by the rule would not be major sources for purposes of the construction and operating permit programs under the Act.

Thus, this revision provides a mutual benefit to the IDNR, regulated community and the public. Sources have an incentive to maintain low levels of emissions, thereby reducing their own and the IDNR's administrative requirements while the public's exposure to pollutants is decreased. The rule requires specific and enforceable operating restrictions which meet the EPA guidance for Federal enforceability.

Because the rule limits emissions of hazardous air pollutants as well as volative organic compounds, the EPA is proposing to approve the rule under sections 110 and 112(l) of the Act.

II. February 16, 1996(c)—Open Burning

Open burning exemptions and their intent in rural settings are clarified. The exemptions are also modified to prohibit burning of asbestos-containing shingles as required by the Iowa statutes.

The use of ''landowner'' in certain definitions is expanded to include a

tenant. A clarified exemption allows open burning within one-fourth mile of a building inhabited by a person if a waiver is submitted by the owner prior to the activity. Finally, the previous rule's restriction to two training fires per year is clarified to indicate the restriction only related to fires where the asphalt roofing has not been removed. The EPA believes that this revision strengthens the previously approved open burning rule, and is therefore approvable.

III. February 19, 1996(a)—New Source Review (NSR) in Nonattainment Areas

On March 8, 1994, the EPA designated areas of Muscatine County, Iowa, nonattainment for the SO_2 National Ambient Air Quality Standard. This area is currently the only designated nonattainment area in Iowa. The nonattainment designation requires the state to amend its NSR rules to conform with changes made by the 1990 Act.

Many of these amendments were approved by the EPA in a rulemaking dated October 30, 1995. The remaining amendments are addressed in this request for a SIP revision and include:

1. Emission offsets for SO_2 which provide for reasonable further progress toward attainment of the national standard must be obtained by major new sources and modifications. The practical effect of this is a positive net air quality benefit by new or modified sources.
2. Emission reduction credits are only valid if not required by other requirements of the Act.
3. Emission reduction credits for shutdown or curtailment of operations must be Federally enforceable conditions.
4. A new or modified source must comply with the lowest achievable emission rate to reduce SO_2 emissions.
5. Sources must provide an alternate site analysis demonstrating the emissions from the proposed activity in a nonattainment area are outweighed by the benefits of the activity.
6. No permit may be issued until notice and opportunity for public comment are made available. This procedure must be conducted in accordance with 40 CFR § 51.161.
7. A permit may not be issued if the EPA determines that the state is not implementing the applicable SIP in the designated area.

The EPA believes these revisions meet the requirements of section 173 of the Clean Air Act and applicable regulations in 40 CFR part 51, subpart I. The reader may request the Technical Support Document (TSD) for this action which further explains this conclusion.

On a procedural note, the EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in Parts C and D of Title I of the Act. If the EPA has not taken final action on the state's NSR submittals by the time the proposed rule is published for comment, the EPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. Upon promulgation of the final regulations, the EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

Prior to the EPA approval of a state's NSR SIP submission, the state may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991, and September 3, 1992. As explained in the March 11 memorandum, the EPA does not believe Congress intended to mandate the more stringent Title I NSR requirements during the time provided for SIP development. States were thus allowed to continue issuing permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR Part 51, Appendix S, for new designated areas without previous NSR requirements.

IV. February 27, 1996(b)—Definitions and Adoption Updates

These amendments update the state's incorporation by reference of the Federal regulation concerning the definition of volatile organic compound and the guidelines for air quality models. This revision also updates the incorporation by reference of Federal regulations relating to stack sampling and associated analytical methods used to evaluate compliance with emission limitations.

The revision also references an updated compliance sampling manual which the state uses to determine compliance with applicable SIP requirements for SO_2 and particulate matter. The specific regulations are referenced in the TSD.

V. January 26, 1995—Permit Requirements Relating to Nonattainment Areas

In a previous revision to the SIP requested by the state dated January 26, 1995, the EPA inadvertantly failed to act on rule 31.1 which contains specific requirements for nonattainmnet areas. This rule informs readers that special construction permit requirements in nonattainment areas are contained in subrules 22.5 and 22.6 (which are addressed in section III of this notice).

EPA Action

The EPA proposes approval of the revisions described in this document to strengthen maintenance of air quality standards and meet the Act's requirements.

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

Under the Regulatory Flexibility Act, 5. U.S.C. 600 *et seq.*, the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110, 112, 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, the EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 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 has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the 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 plan revision, the state and any affected local governments have elected to adopt the program provided for under sections 110 and 112 of the Act. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal governments as regulators.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 5, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–19087 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–113–6768b; TN–122–6767b; TN–133–6568b; TN–138–6766b; TN–163–9625b; TN–170–9630b; FRL–5529–4]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Tennessee SIP and the Nashville/Davidson County Portion of the Tennessee SIP Regarding Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Tennessee State Implementation Plan (SIP) submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC) which add a new chapter to the Nashville/Davidson County and the State portion of the Tennessee SIP for the control of nitrogen oxide (NO_X) emissions. Only the portions of the Tennessee NO_X rule necessary for the approval of Tennessee's ozone redesignation request are being approved in this notice. EPA is granting an exemption to the area under 182(f) of the Clean Air Act (CAA) from NO_X Reasonably Available Control Technology (RACT) requirements in a separate action. The only sources which will be subject to this rule tangentially-fired coal burning boilers which have a heat input capacity in excess of 600 million BTU per hour in the five county Nashville ozone nonattainment area. In the final rules section of this Federal Register, the EPA is approving the exemption request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1996.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN113–01–6768, TN122–01–6767, TN133–01–6568, TN138–01–6766, TN163–01–9625, and TN170–01–9630. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L&C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

FOR FURTHER INFORMATION CONTACT: William Denman 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: June 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–19144 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WI67–01–7276b; FRL–5539–2]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Wisconsin State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Wisconsin to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

DATES: Comments on this proposed action must be received by August 28, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, (312) 353–6680.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register. Copies of the request and the EPA's analysis are available for inspection at the following

address: EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Michael G. Leslie at (312) 353–6680 before visiting the Region 5 office.) Authority: 42 U.S.C. 7401–7671q.

Dated: June 24, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–19142 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN 119–1–6379b; TN 172–1–9639b; FRL–5540–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Tennessee State Implementation Plan Regarding Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee on September 1, 1993, and June 10, 1996. These revisions pertain to the Construction Permit chapter. The purpose of these revisions is to correct certain deficiencies to satisfy the requirements of the Clean Air Act (CAA) concerning Prevention of Significant Deterioration (PSD).

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 28, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Scott M. Martin at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4216.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: July 2, 1996.

A. Stanely Meiburg,

Acting Regional Administrator.

[FR Doc. 96–19203 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MO–006–1006(b); FRL–5542–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to correct a previous action published on February 29, 1996, that approved and incorporated multiple amendments to Missouri rule 10 CSR 10–6.110 into the State Implementation Plan (SIP) (see 61 FR 7714). Specifically, this action corrects the EPA's inadvertent SIP approval of section 5 (Emission Fees) of Missouri rule 10 CSR 10–6.110 entitled, ''Submission of Emission Data, Emission Fees, and Process Information.'' In the final rules section of the Federal Register, the EPA is approving the correction as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 28, 1996.

ADDRESSES: Comments may be mailed to Joshua A. Tapp, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register

Dated: July 5, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–19201 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[WA 53–7126; FRL–5543–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA invites public comment on its proposed approval of two related State Implementation Plan (SIP) revisions submitted by the Washington Department of Ecology (Washington). Washington has submitted a SIP revision to redesignate the Vancouver, Washington, carbon monoxide (CO) nonattainment area, which is located within the southern portion of Clark County, Washington, from nonattainment to attainment. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is

proposing to approve the Washington request because it meets the redesignation requirements set forth in the CAA. This action is being proposed under section 110 of the CAA.

In addition, Washington has submitted for inclusion into its SIP the 1990 base year emission inventory for CO emissions, which includes emissions data for sources of CO in the Vancouver, Washington CO nonattainment area. EPA is proposing to approve this SIP revision, also, as part of this action.

DATES: Comments must be received in writing and postmarked on or before August 28, 1996.

ADDRESSES: Written comments should be sent to Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, Docket # WA 53–7126, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the redesignation request and Washington's submittal are available for public review during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, M/S OAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101; Washington Department of Ecology, Attention Tami Dahlgren, Olympia, Washington 98504–7600, telephone (360) 407–6830; and the Southwest Air Pollution Control Authority, 1308 NE 134th Street, Vancouver, Washington 98685.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality at (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 1991, the Governor of Washington recommended that the Vancouver portion of the Portland-Vancouver Air Quality Maintenance Area be designated as nonattainment for CO as required by section 107(d)(1)(A) of the 1990 Clean Air Act Amendments (CAAA) (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The area was designated nonattainment and classified as ''moderate'' with a design value less than or equal to 12.7 ppm under the provisions outlined in sections 186 and 187 of the CAA. (See 56 FR 56694 (November 6, 1991), codified at 40 CFR 81.348). On September 29, 1995, EPA approved the separation of the Portland-Vancouver carbon monoxide nonattainment area into two distinct nonattainment areas, effective November 28, 1995. Because the Vancouver area had a design value of 10 ppm (based on 1988–1989 data), the area was considered moderate. The CAA established an attainment date of December 31, 1995, for all moderate CO areas. The Vancouver area has ambient monitoring data showing attainment of the CO National Ambient Air Quality Standard (NAAQS) since 1992. On March 19, 1996, Washington submitted a CO redesignation request and a maintenance plan for the Vancouver area. Washington submitted evidence that two public hearings were held in Vancouver: one on December 19, 1995, by the Southwest Air Pollution Control Authority (SWAPCA), and the other on January 30, 1996, by Washington.

II. Evaluation Criteria

Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA; and
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

III. Review of State Submittal

On April 1, 1996, EPA Region 10 determined that the information received from Washington constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, §§ 2.1 and 2.2.

The Washington redesignation request for the Vancouver area meets the five requirements of section 107(d)(3)(E), noted above. The following is a brief description of how Washington has fulfilled each of these requirements.

1. Attainment of the CO NAAQS

Quality-assured CO ambient air monitoring data shows that the Vancouver area has met the CO NAAQS. The Washington request is based on an analysis of quality-assured CO air monitoring data which is relevant to the maintenance plan and to the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year over at least two consecutive years. The ambient air CO monitoring data for calendar year 1992 through calendar year 1995, relied upon by Washington in its redesignation request, shows only one exceedance in 1994 of the CO NAAQS in the Vancouver area. Because the area has complete quality assured data showing no more than one exceedance of the standard per year over at least two consecutive years, the area has met the first statutory criterion of attainment of the CO NAAQS (40 CFR 50.8 and appendix C). Washington has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. Fully Approved SIP Under Section 110(k) of the CAA

With the exception of the 1990 Emission Inventory, which is discussed and proposed for approval herein, and the vehicle inspection and maintenance program, Washington's CO SIP is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the Act, including the requirements of Part D (relating to nonattainment), which were due prior to the date of Washington's redesignation request. Washington's CO SIP for Vancouver (Attainment Plan) was submitted on January 22, 1993. No previous CO SIP for the Vancouver area had been submitted. The 1990 CAAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for the Vancouver area included a vehicle inspection and maintenance program, the preparation of a 1990 emission inventory with periodic updates, adoption of an oxygenated fuels program, the development of contingency measures, and development of conformity procedures. Each of these requirements added by the 1990 Amendments to the CAA is discussed in greater detail below. Final approval of this redesignation request is contingent upon final action by EPA to approve the 1990 emission inventory and the vehicle inspection and maintenance program originally submitted on January 22, 1993.

All moderate CO nonattainment areas with a design value of 12.7 ppm or less were required to submit proposed Part D New Source Review (NSR) programs no later than November 15, 1993, pursuant to sections 172(b), 172(c)(5), and 173 of the Act. Washington submitted amendments to the SIP on April 11, 1994, which included SWAPCA's NSR requirements. The NSR portion was approved by EPA on May 3, 1995. Washington submitted its amended Part D NSR rules to EPA on March 8, 1994, as a SIP revision. These rules were approved by EPA on June 2, 1995. Washington's visibility NSR rules were approved by EPA on June 26, 1986, and remain in effect. Because the Vancouver area is being redesignated to attainment by this action, Washington's

Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources in the Vancouver area for CO. The Washington PSD requirements incorporate by reference 40 CFR 52.21(b) through (w), which are part of the SIP. *See* 40 CFR 52.2497(b).

A. Emission Inventory

Washington submitted its 1990 base year inventory to EPA on January 22, 1993, which included estimates for CO emissions for the Vancouver portion of the Portland-Vancouver CO nonattainment area, as required under Section 187(a)(1) of the CAA. EPA is proposing to approve the Vancouver portion of the 1990 CO Base Year emission inventory with this redesignation request.

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Washington included the requisite inventory in the CO SIP. The base year for the inventory was 1990, using a three month CO season of November 1990 through January 1991. Stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO were included in the inventory. Stationary sources with emissions of greater than 50 tons per year were also included in the inventory.

The following list presents a summary of the CO peak season daily emissions estimates in tons per winter day by source category: Point Sources, 81.85 tons per day; Area Sources, 67.39 tons per day; Mobile On-Road Sources, 223.38 tons per day; Mobile Nonroad Sources, 17.59 tons per day; Total Sources, 390.21 tons per day. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 110(k) of the CAA sets out provisions governing the EPA's review of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1). The EPA is proposing to approve the Washington 1990 base year CO emissions inventory for the Vancouver area submitted on January 22, 1993, based on the EPA's technical review of the CO inventory. For further details, the reader is referred to the Technical Support Document, which is available for review at the addresses provided above.

B. Oxygenated Gasoline

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the CAA requires that for CO nonattainment areas with a design value of 9.5 or greater parts per million based on data for the 2-year period of 1988 and 1989, a SIP revision be submitted for an oxygenated fuel program for the area. The oxygenated fuel requirement must apply to all fuel refiners or marketers who sell or dispense gasoline in the Metropolitan Statistical Area (MSA) or in the Consolidated Metropolitan Statistical Area (CMSA) in which the nonattainment area is located. The Vancouver area has a design value above 9.5 parts per million based on 1988 and 1989 data and, consequently, Washington was subject to the requirement to adopt an oxygenated fuel program for the Vancouver area.

Washington submitted an oxygenated fuel SIP revision for the Vancouver CO nonattainment area to EPA on November 16, 1992, having implemented the program on November 1, 1992. EPA approved this SIP revision on January 20, 1994. As noted in Washington's redesignation request, Washington intends to relegate the oxygenated fuel program to contingency status upon EPA's approval of its redesignation request.

The oxygenated gasoline program is one in which all oxygenated gasoline must contain an average minimum oxygen content of 2.7 percent by weight of oxygen. Under section 211(m)(4) of the CAA, EPA also issued requirements for the labeling of gasoline pumps used to dispense oxygenated gasoline, as well as guidelines on the establishment of an appropriate control period. These labeling requirements and control period guidelines may be found in the Federal Register, 57 FR 47849, dated October 20, 1992. Washington's oxygenated gasoline regulation requires the minimum 2.7 percent oxygen content in the Washington State portion of the Portland-Vancouver CMSA (Clark County). The regulation also contains the necessary labeling regulations, enforcement procedures, and oxygenate test methods.

As mentioned above, Washington has chosen to convert its oxygenated fuels requirement in the Washington State portion of the Portland-Vancouver CMSA (Clark County) to a contingency measure in its maintenance plan upon redesignation. In its demonstration of maintenance, described below, Washington has shown that oxygenated gasoline in the Washington State portion of the Portland-Vancouver CMSA (Clark County) is not necessary for continued maintenance of the CO NAAQS.

C. Conformity

Under section 176(c) of the CAA, states are required to submit revisions to their SIPs that include criteria and procedures to ensure that federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as all other federal actions (''general conformity''). Congress provided for the state revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the states adopt both transportation and general conformity provisions in their SIPs for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule, Washington was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the federal rule by November 25, 1994. Similarly, pursuant to § 51.851 of the general conformity rule, Washington was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the federal rule by December 1, 1994. Washington submitted its transportation conformity SIP revision to EPA on May 10, 1994, but it has not yet been approved by EPA. Washington has not submitted its general conformity SIP revision.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity [58 FR 62188] and general conformity [58 FR 63214] rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to

comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, Washington remains obligated to adopt the transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of state-adopted rules. Therefore, a delay in adopting state rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if state rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

Therefore, on April 1, 1996, EPA modified its national policy regarding the interpretation of the provisions of section 107(d)(3)(E) concerning the applicable requirements for purposes of reviewing a carbon monoxide redesignation request (61 FR 2918, January 30, 1996). Under this new policy, for the reasons just discussed, EPA believes that the CO redesignation request for the Vancouver area may be approved notwithstanding the lack of submitted and approved state transportation and general conformity rules.

For transportation conformity purposes, the on-road emission totals outlined in the chart below for each year will be designated as the emissions budget for the Vancouver CO nonattainment/maintenance area. This budget explicitly contains a surplus above the 2006 mobile source emissions estimate to provide a ''safety margin'' to the mobile emission budget of about one to ten percent, depending on the year; including this ''safety margin'' still results in total emissions remaining below the 1992 attainment level by three to five percent.

VANCOUVER CO EMISSION BUDGET

[Pounds per winter day]

	1992	1995	1997	2001	2003	2006
Other sources	318,823	318,259	327,317	344,693	350,365	359,089
Mobile budget	328,606	300,000	300,000	270,000	270,000	260,000
Total	647,429	618,259	627,317	614,693	620,365	619,089

D. Inspection and Maintenance

Section 187(a)(4) requires that the applicable CO implementation plan include the vehicle inspection and maintenance (I/M) program described in section 182(a)(2)(B). This requires that Washington implement at least a basic inspection and maintenance program. Washington submitted its I/M SIP on January 22, 1993, and submitted a revised I/M SIP on August 24, 1995, to meet the requirements of EPA's ''low enhanced I/M'' as delineated in the rulemaking of September 18, 1995. Washington is applying low enhanced I/M to all nonattainment areas, over and above the statutory requirements for basic I/M. EPA is currently reviewing this SIP revision.

E. Contingency Measures

States containing CO nonattainment areas with design values of 12.7 ppm or less were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9). These provisions require contingency measures to be implemented in the event that an area failed to reach attainment by the applicable attainment date, December 31, 1995. The SIP revision for the contingency measures portion of the Attainment Plan was submitted on November 10, 1993. This was approved by EPA on October 31, 1994.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Once this action and the vehicle inspection and maintenance program are approved, EPA will have completed its approval of Washington's 1993 CO SIP (attainment plan). Emission reductions achieved through the implementation of the primary control measures contained in that SIP are enforceable. These measures are: a low-enhanced Inspection and Maintenance Program and the Federal Motor Vehicle Control Program. Also, the oxygenated fuel program, from its implementation in 1992 until its transfer to contingency status after redesignation, has been and is fully enforceable. As discussed above, Vancouver area initially attained the NAAQS in 1992 with monitored attainment through the 1994–1995 CO season. This indicates that the improvements were due to the permanent and enforceable measures contained in the 1993 CO SIP. An analysis by SWAPCA using historical trends in Clark County's population and employment data as indices of the overall level of economic activity and growth in the area supports this conclusion.

Washington has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed the area to attain the NAAQS.

4. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment.

The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is proposing to approve Washington's maintenance plan for the Vancouver area because EPA finds that

Washington's submittal meets the requirements of section 175A.

A. Attainment Emission Inventory

On March 19, 1996, Washington submitted, as part of its redesignation and maintenance plan approval request, a comprehensive inventory of CO emissions for the Vancouver area. The inventory includes emissions from area, stationary, and mobile sources using 1992 as the base year for calculations.

The Washington submittal contains the detailed inventory data and summaries by source category. The comprehensive base year emissions inventory was submitted in the National Emission Data System format. This inventory was prepared in accordance with EPA guidance.

Although the 1992 inventory can be considered representative of attainment conditions because the NAAQS was not violated during 1992, Washington established CO emissions for the attainment year, 1992, as well as forecast years out to the year 2006. These estimates were derived from the State's 1992 emissions inventory. The future emission estimates are based on assumptions about vehicle miles travelled and economic growth. The economic growth assumptions are documented in ''BEA Regional Projections to 2040, Volume 2: Metropolitan Statistical Areas,'' dated October 1990. The population, household, and VMT (vehicle miles traveled) growth estimates are from the Southwest Washington Regional Transportation Council.

1992 CO BASE YEAR EMISSIONS INVENTORY VANCOUVER NONATTAINMENT AREA

[Tons per day]

Year	Area	Nonroad	Mobile	Point	Total
1992	76.43	15.14	164.30	67.84	323.71

B. Demonstration of Maintenance: Projected Inventories

Total CO emissions were forecast from 1992 base year out to 2010, although the Maintenance Plan projects maintenance through 2006. These projected inventories were prepared in accordance with EPA guidance. Washington will not implement the oxygenated fuel program in the Washington State portion of the Portland-Vancouver CMSA (Clark County) unless a violation is measured or if it is determined that implementation of the program is the most appropriate response to an exceedance. The projections show that calculated CO emissions, assuming no oxygenated fuels program, are not expected to exceed the level of the base year inventory during this time period. Therefore, it is anticipated that the Vancouver area will maintain the CO standard without the program, and the oxygenated fuel program would not need to be implemented following redesignation, except as a contingency measure.

Vancouver Nonattainment Area CO Emissions Inventory Summary

(Tons per day)

Year	Area	Nonroad	Mobile	Point	Total
1992	76.43	15.14	164.30	67.84	323.71
1993	76.16	15.42	159.16	70.36	321.10
1995	70.60	16.67	129.43	71.86	288.56
2000	76.02	19.62	137.47	75.34	308.45
2005	79.85	21.52	124.76	76.76	302.89
2010	84.16	23.55	128.89	77.79	314.38

C. Verification of Continued Attainment

Washington will document continued attainment of the CO NAAQS in the Vancouver area, in part, by tracking indicators of continued attainment during the maintenance period. Washington has also committed to submit periodic inventories of CO emissions every three years.

D. Contingency Plan

The level of CO emissions in the Vancouver area will largely determine the area's ability to stay in compliance with the CO NAAQS in the future. Despite Washington's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Section 175A(d) of the CAA requires that, when violations of the NAAQS occur, Washington implement all measures with respect to the control of CO which were contained in the SIP for the area before redesignation of the area as an attainment area. Therefore, Washington has provided contingency measures with a schedule for implementation in the event of future exceedances or violations of the CO NAAQS. The plan contains triggering mechanisms to determine when contingency measures are needed.

Washington has developed a contingency plan which utilizes actual validated CO monitoring results to trigger activation of the CO contingency measures. A four-tiered level of escalating response and contingencies is proposed for the Vancouver CO Contingency Plan as follows.

An exceedance of the 8-hour standard at one monitoring site will result in the analysis and identification of the exceedance. If the cause is transportation related, SWAPCA will coordinate with the Regional Transportation Council (RTC) to identify an appropriate localized control measure to solve the problem; SWAPCA and the RTC will coordinate to identify the appropriate transportation project. Examples of localized control measures include, but are not limited to, SWAPCA's requesting the acceleration of construction to open an interchange sooner to alleviate heavy traffic at an intersection, traffic signal synchronization changes, and/or the construction of additional turn lanes.

An exceedance of the 8-hour standard at both monitoring sites shall result in an evaluation of the reason for the condition with the possibility of implementing the oxygenated fuel

program, if such action is determined to be a prudent response.

A violation (more than one exceedance within a one-year period) shall trigger the implementation of the oxygenated fuel program (2.7% oxygen), as soon as practical but no later than the following winter season.

A second violation shall trigger the re-implementation of the New Source Review requirements, LAER (lowest achievable emission rate), and offsets for major new (and major modifications of existing) CO industrial sources.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Washington has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

5. Meeting Applicable Requirements of Section 110 and Part D

In Section III.2. above, EPA sets forth the basis for its conclusion that Washington has a fully approved SIP which meets the applicable requirements of Section 110 and Part D of the CAA.

IV. This Action

EPA is proposing to approve the Vancouver area CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, the Agency is proposing to approve the request to redesignate the Vancouver CO area to attainment, because Washington has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also proposing to approve Washington's 1990 base year CO emissions inventory.

V. Administrative Review

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2224), 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.

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

The CO SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing or proposing to authorize Washington to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation (section 179(a) of the CAA) and in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k)(2) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities.

Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

VI. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 25, 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, Washington and any affected local or tribal governments have elected to adopt the program provided for under section 175A and section 187(a)(1) of the Clean Air Act. The rules and commitments proposed for approval in this action may bind State, local, and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that any mandate is imposed upon the State, local, or tribal governments either as the owner or operator of a source or as mandate upon the private sector, EPA's proposed action will impose no new requirements under State law; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, results 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.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 15, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–19196 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5542–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Delete the Oak Grove Sanitary Landfill Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region V announces its intent to delete the Oak Grove Township, Anoka County, Minnesota

from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Fund-financed response under CERCLA has been implemented and EPA, in consultation with the State of Minnesota has determined that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until August 28, 1996.

ADDRESSES: Comments may be mailed to Timothy Prendiville (SR–6J) Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. The comprehensive information on the site is available at the local information repositories located at: Oak Grove Township Hall, Cedar, MN. and the St. Francis Branch of the Anoka Public Library, St. Francis, MN.

Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Timothy Prendiville, Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–5122 or Don DeBlasio (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4360.

SUPPLEMENTARY INFORMATION:

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V. Conclusion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Oak Grove Sanitary Landfill Site from the National Priorities List (NPL), Appendix B to the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300 (NCP), and requests comments on the deletion. The EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-Financed remedial actions. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate;

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before EPA can delete a site from the NPL, the state in which the site was located must concur on the proposed deletion. EPA shall provide the state 30 working days for review of the deletion notice prior to its publication in the Federal Register.

As noted above, deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions.

Deletion of sites from the NPL does not itself create, alter, revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, EPA may formally begin deletion procedures. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on EPA's intention to delete the site from the NPL. All critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will, if necessary prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that the deletion from the NPL is appropriate, final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the site from the NPL: The Oak Grove Sanitary Landfill was entered on the NPL approximately June 10, 1986, (51 FR 111). The 45-acre Oak Grove Sanitary Landfill is a former municipal and industrial solid waste landfill in Oak Grove Township, Anoka County, Minnesota. Land consists of low regions of uplands and sand dunes intersperse among numerous lakes and wetlands. The nearby developed land use in the area is agricultural and residential. The site overlies two aquifers, which are separated by a semi-confining layer. The deeper aquifer provides regional potable water and supplies many area residential wells. Landfill operations began in 1967 and continued until 1984, when the operating license was suspended. An estimated 2.5 million cubic yards of waste is present in the landfill including acidic oil sludge, paint and solvent waste, foundry sands and sludge, inorganic acids, metal sludge, and chlorinated and unchlorinated organic compounds from pesticide manufacturing. In addition, lime sludge was used as a cover material on two thirds of the landfill. A 1988 Record of Decision (ROD) addressed the sources of contamination by containing the onsite waste and contaminated soil with a cover. EPA investigations in 1989 determined that the contaminated shallow aquifer discharges directly to

the surface water of the adjoining wetlands where ground water contamination is being reduced by natural attenuation, and thus, limiting migration of contaminants to the surface water.

This ROD addresses remediation of contaminated shallow ground water, prevention of significant impacts on surface water from the discharge of contaminated shallow ground water, and provides for continued use of the deep aquifer as a drinking water supply. The primary contaminants of concern affecting the ground water are VOCs including benzene, toluene, and xylenes; and metals including arsenic.

On October 15, 1990, the Remedial Investigation/Feasibility Study (RI/FS Report) and the Proposed Plan for the Oak Grove Sanitary Landfill Site were released to the public for comment.

The selected remedial action for this site includes long term monitoring of the shallow and deep aquifers, surface water, and sediment at a frequency of three times per year for the first year and semi-annually thereafter; natural attenuation of shallow ground water; abandoning non-essential wells; and implementing institutional controls including ground water use restrictions.

During Phase 1 of the Remedial Action, debris was removed from the site and a security fence was installed around the perimeter off the Landfill. Warnings signs were posted along the fence to provide site information as well as telephone number for further information. This was completed by August 1993.

Phase II began and consisted of soil excavation, installation of monitoring wells, groundwater, surface water, and sediment sampling; air monitoring, and construction of the Landfill Cover. The process began approximately on August 1992 and final inspection was completed on September 2, 1993, by representatives of MPCA and EPA.

In 1994, the Legislature of the State of Minnesota enacted the Landfill Cleanup Law, Minnesota Laws 1994, ch. 639, codified at Minnesota Stat. § § 115B.39 to 115B.46 (the Act), authorizing the Commissioner of the Minnesota Pollution Control Agency (MPCA) to assume responsibility for future environmental response actions at qualified landfills that have receive notices of compliance from the Commissioner of MPCA. Additionally, the Act established funds to enable the MPCA to perform all necessary response, operation and maintenance at such landfills. At sites where no response for issuing a notice of compliance, all work would be expected, (under a state order or under state closure requirements) to be completed.

A notice of compliance was issued by MPCA for the Oak Grove Sanitary Landfill on May 14, 1996. MPCA has since assumed all responsibility for the Oak Grove Sanitary Landfill under the Act. Therefore, no further response actions under CERCLA are appropriate at this time. Consequently, U.S. EPA proposes to delete the site from the NPL.

V. Conclusion

EPA, with concurrence of the State of Minnesota has determined that all appropriate Fund-financed responses under CERCLA at the Oak Grove Sanitary Landfill Site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment. Therefore, it is proposed that the site be deleted from the NPL.

Dated: July 16, 1996.

Michelle D. Jordan,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–19088 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–152, FCC 96–310]

Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking (NPRM) which seeks comment on proposed regulations to clarify, where necessary, and to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 274, 275 and 260 of the Telecommunications Act of 1996 (47 U.S.C. 274, 275 and 260) with respect to BOC and/or LEC provision of electronic publishing, alarm monitoring and telemessaging services, respectively. In the NPRM, the Commission seeks to promote competition in the provision of electronic publishing, alarm monitoring, and telemessaging services by minimizing the burden of the rules it must adopt pursuant to the requirements of the new law.

DATES: Comments are due on or before September 4, 1996 and Reply Comments are due on or before September 20, 1996. Written comments by the public on the proposed and/or modified information collections are due September 4, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996.

ADDRESSES: Comments and Reply Comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. 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, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1557, Robert MacDonald, Attorney, Common Carrier Bureau, Policy and Program Planning Division (202) 418–2764, or Raelynn Tibayan, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–2698. For additional information concerning the information collections contained in this NPRM 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 adopted July 18, 1996 and released July 18, 1996 (FCC 96–310). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under 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. The full text of this Notice

of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, D.C. 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. 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 NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due September 27, 1996. 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.

OMB Approval Number: None.

Title: Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents (approx.)	Estimated time per response (hours)	Total annual burden (hours)
Network disclosure	1,400	48	67,200
Installation and maintenance reporting—timeliness	1,400	8	11,200
Installation and maintenance reporting—quality	1,400	1	1,400
Annual report	1,400	2	2,800
Biannual tariff report	1,400	2	5,600

Total Annual Burden: 88,200.

Respondents: Incumbent local exchange carriers and/or Bell Operating Companies.

Estimated costs per respondent: $0

Needs and Uses: The NPRM seeks comments on a number of issues, the resolution of which may lead to the imposition of information collections subject to the Paperwork Reduction Act. The NPRM seeks comment on certain reporting requirements to implement the non-accounting, separate affiliate and/or nondiscrimination requirements of the 1996 Act.

SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING

I. Introduction

1. In enacting the Telecommunications Act of 1996 (''1996 Act''), Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the U.S. telecommunications industry. In furtherance of that goal, the 1996 Act seeks to eliminate or modify artificial barriers to competition in telecommunications markets. Such barriers include the legal restrictions that have excluded the Bell Operating Companies (''BOCs'') from various markets, such as the manufacturing of telecommunications equipment and the provision of interLATA telecommunications services. The 1996 Act permits the BOCs to enter those and other markets from which they previously were restricted, including the provision of electronic publishing, alarm monitoring and telemessaging on an interLATA basis, subject to certain safeguards.

2. Section 274 establishes separate affiliate and nondiscrimination requirements that are applicable to BOC provision of electronic publishing service. Sections 275 and 260 establish nondiscrimination and cross-subsidization safeguards that apply to local exchange carrier (''LEC'') provision of alarm monitoring and telemessaging services, respectively. The purpose of this *Notice of Proposed Rulemaking* (''NPRM'') is to clarify, where necessary, and to implement the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in sections 274, 275 and 260 with respect to BOC and/or LEC provision of electronic publishing, alarm monitoring and telemessaging services, respectively.

3. This proceeding is one of a series of interrelated rulemakings that collectively will implement the 1996 Act. Certain of those proceedings focus on opening markets to entry by new competitors. Other proceedings focus on the separate affiliate, nondiscrimination and other safeguards that Congress adopted in the 1996 Act to foster the development of robust competition in all telecommunications markets. As discussed more fully below, those safeguards are intended both to protect subscribers to BOC monopoly services against the potential risk of having to ''foot the bill'' for BOC entry into competitive services and to protect competition in the new markets that the BOCs will enter against the potential risk that the BOCs will use their existing market power to obtain an unfair advantage in those new markets.

A. Background

4. Prior to the enactment of the 1996 Act, the BOCs and their affiliates were effectively precluded under the Modification of Final Judgment (''MFJ'') from providing information services across local access and transport area (''LATA'') boundaries. While the MFJ, as originally entered, prohibited the BOCs from providing any information services, that restriction was eliminated in 1991. BOCs nevertheless were precluded from providing information services across LATA boundaries because the MFJ still prohibited the BOCs from providing interLATA telecommunications services. Therefore, BOCs could provide information services only between points located in the same LATA. They were allowed to do so on an integrated basis, subject to certain nondiscrimination and cross-subsidization safeguards established by the Commission.

5.The 1996 Act seeks to eliminate artificial statutory and regulatory barriers to entry into telecommunications markets. Such barriers may be particularly inimical to the interests of consumers when the excluded potential entrants are engaged in a complementary business and, as a consequence, could realize economies of scope (both technical and marketing) if they were allowed to enter. Such economies of scope should benefit consumers in both the markets in which

the entrant currently offers service and the markets it seeks to enter.

6. The 1996 Act opens the way for BOCs to provide, among other things, electronic publishing and telemessaging, and, in the future, alarm monitoring services on an interLATA basis in states in which they currently provide local exchange and exchange access services. The provision by the BOCs of such interLATA information services offers the prospect of fostering vigorous competition among providers of such services, because of the unique assets that the BOCs possess. BOCs can offer a widely recognized brand name that is associated with telecommunications services, the benefits of ''one-stop shopping,'' and other advantages of vertical integration.

7. At the same time, Congress recognized that BOC entry into the provision of in-region interLATA information services such as electronic publishing, alarm monitoring and telemessaging raises serious concerns for competition and consumers. A BOC's existing core business of providing local exchange and exchange access service is still a near-monopoly. If it is regulated under rate-of-return regulation, a price cap structure with sharing (either for interstate or intrastate services), or a price cap scheme that adjusts the X-factor periodically based on changes in industry productivity, a BOC may have an incentive to improperly allocate to its regulated core business costs that would be properly attributable to its competitive ventures. In addition, a BOC could potentially discriminate in providing exchange access services and facilities that its rivals need to compete in the electronic publishing, alarm monitoring and telemessaging markets. Specifically, a BOC could seek to use its control over exchange access services and facilities to weaken its competitors' offerings.

8. Our goal in this proceeding is to establish non-accounting separate affiliate and nondiscrimination safeguards that fulfill those statutory objectives. Pursuant to sections 274, 275 and 260, we seek to guard against the potential that BOCs offering electronic publishing, as well as BOCs and other incumbent LECs offering alarm monitoring and telemessaging services, would improperly allocate costs in a way that adversely affects local telephone ratepayers or competition in markets those entities will enter. We intend to achieve that objective without depriving those carriers of legitimate competitive advantages that can benefit both subscribers to their monopoly local services and consumers of the carriers' new services. We must also adopt rules that prevent potential anticompetitive discrimination by BOCs and other incumbent LECs against rivals without eliminating efficiencies derived from economies of scope.

9. We recognize that these objectives are a means to an overriding end: the replacement of stagnant monopoly regulation with the discipline of dynamic competition. When competition takes hold in what are now the bottleneck markets of local exchange and exchange access, we will no longer need the safeguards that Congress prescribed in the 1996 Act and the implementing rules that we will adopt in this proceeding. We note that, by providing for sunset of the section 274 provisions on February 8, 2000, Congress may have recognized that the level of competition in the electronic publishing industry at that time would be such that the structural safeguards in section 274 would no longer be necessary. We began the movement toward the goal of fostering competition when we adopted our *Notice of Proposed Rulemaking* to implement section 251 (61 FR 18311 (April 25, 1996)). That proceeding seeks to eliminate the legal barriers and reduce the economic and regulatory impediments to entry into the monopoly markets of incumbent LECs. Our upcoming access reform and jurisdictional separations reform rulemakings also will contribute to achieving our goal of fostering effective competition in local telecommunications markets. Until we reach that goal, we seek to minimize the burden of the rules that we adopt in this proceeding, but not at the cost of exposing ratepayers in local markets controlled by BOCs and independent LECs and competitors of BOC/LEC services to potential improper cost allocations and unlawful discrimination.

B. Overview of Sections 274, 275 and 260

10. Section 274 allows a BOC to provide electronic publishing service disseminated by means of its basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture'' that meets the separation and nondiscrimination requirements prescribed by that section. BOCs that were offering electronic publishing services at the time the 1996 Act was enacted have until February 8, 1997, to meet those requirements. The requirements under section 274 expire on February 8, 2000, four years after the date of enactment of the 1996 Act.

11. Section 275(a) prohibits a BOC that was not engaged in the provision of alarm monitoring services as of November 30, 1995, from providing such services for five years after the date of enactment of the 1996 Act. Section 275(a), however, allows BOCs to provide alarm monitoring services under certain conditions if they were already providing such services as of November 30, 1995. In addition, section 275 permits an incumbent LEC, including any grandfathered BOC, to provide alarm monitoring services on an integrated basis so long as it complies with certain nondiscrimination and cost allocation safeguards.

12. Section 260 permits incumbent LECs (including the BOCs) to provide telemessaging service subject to certain nondiscrimination safeguards. Although section 260 does not require a LEC to provide telemessaging through a separate subsidiary, in the *BOC In-Region NPRM,* we tentatively concluded that telemessaging service constitutes an ''information service,'' and therefore proposed that BOC provision of telemessaging on an interLATA basis would be subject to the separate affiliate, nondiscrimination and cross-subsidization requirements of section 272, in addition to the requirements of section 260.

13. This NPRM addresses the non-accounting separate affiliate and nondiscrimination requirements of sections 274, 275 and 260. We address in separate proceedings the non-accounting separate affiliate and nondiscrimination requirements established by sections 272 (applicable to BOC provision of in-region interLATA telecommunications services and interLATA information services other than electronic publishing and alarm monitoring) and 273 (applicable to BOC manufacturing activities). The accounting safeguards required to implement sections 271 through 276 and section 260 also will be addressed in a separate rulemaking proceeding.

14. The structural separation requirement for electronic publishing imposed by section 274 of the 1996 Act seeks to guard against improper cost allocations by the BOCs in two principal ways. First, by requiring the BOCs to use separate facilities and employees for local exchange service and electronic publishing service, that requirement seeks to reduce the joint and common costs that would require allocation between the telephone operating company and the affiliate engaged in competitive businesses. Second, by requiring a BOC to maintain records documenting transactions between the BOC and its affiliate, section 274 discourages the improper allocation of costs between the two entities by

facilitating its detection. Thus, while they do not eliminate the potential for improper cost allocations by a BOC, structural safeguards seek to reduce the likelihood that any such cost misallocation would go undetected.

15. The provisions of section 274 concerning electronic publishing joint ventures represent an alternative to structural separation as a means of addressing the potential problems of improper cost allocations and discrimination. Rather than making undetected cost shifting and discrimination more difficult, those provisions limit the potential likelihood that the BOCs will engage in such behavior by limiting their ownership interest in the electronic publishing entity. Because much of the benefit of favoring an electronic publishing joint venture would accrue to unrelated participants in such joint venture, the gains to the BOC from such activity would be small.

16. The structural separation requirements of section 274(b) for BOCs, along with the prohibitions on discrimination and cross-subsidization in sections 260(a) and 275(b) that apply to all incumbent LECs, address concerns about the BOCs' or the LECs' use of their market power to confer an unlawfully discriminatory competitive advantage on themselves or their affiliates when they provide competitive services. Those safeguards prevent a BOC or LEC from using its control over local exchange and exchange access markets to: (1) PProvide higher quality service to itself or its affiliate than the service provided to competing service providers at the same price; (2) provide exchange access services to itself or its affiliate at a lower rate than the rate charged to competing unaffiliated firms; or (3) improperly shift costs from its electronic publishing, alarm monitoring or telemessaging operations to the local telephone ratepayers, thus artificially reducing the costs of providing such competitive services below those of other providers and resulting in higher rates for local exchange subscribers.

17. Each of these examples of anticompetitive behavior has the potential to harm consumers in the electronic publishing, alarm monitoring and telemessaging markets. If a BOC or LEC provided poorer quality service to its competitor than to itself or its affiliate, but did not correspondingly lower the price charged to the competitor, then consumers would likely face a less attractive menu of offerings from competitors. This would harm both competitors and consumers, and would raise the BOC's profits. If the BOC or LEC exploited its market power to charge rivals supracompetitive prices for inputs, or otherwise raised its rivals' costs, the effect would be similar in degrading the options available to consumers from unaffiliated providers. The resulting ''price squeeze'' would also force competing providers either to match the price of the BOC or LEC or affiliate in the competitive market and absorb lower profit margins, or maintain their retail prices and accept smaller market shares. Thus, a less efficient producer might expand at the expense of a more efficient one.

18. In the discussion that follows, we first examine the scope of the Commission's authority to adopt rules implementing sections 274, 275 and 260. We subsequently discuss, in turn, the structural separation, joint marketing and nondiscrimination requirements relating to BOC provision of electronic publishing under section 274, and the general nondiscrimination requirements applicable to LEC provision of alarm monitoring and telemessaging under sections 275 and 260, respectively. Finally, we discuss enforcement provisions in sections 274, 275 and 260.

II. Scope of Commission's Authority

A. Telemessaging Services

19. In the BOC In-Region NPRM, we tentatively concluded that telemessaging is an information service that, when provided by BOCs on an interLATA basis, is subject to the requirements of section 272 in addition to the requirements of section 260. We also tentatively concluded in the BOC In-Region NPRM that our authority under sections 271 and 272 applies to intrastate and interstate interLATA information services provided by BOCs or their affiliates.

20. Section 260 of the Act imposes additional safeguards regarding the provision of telemessaging services, not only on the BOCs, but on all incumbent LECs. We seek comment on whether, in light of our tentative conclusion that sections 271 and 272 give the Commission jurisdiction over intrastate interLATA information services including telemessaging, section 260 can also be read to give us jurisdiction over intrastate telemessaging services in implementing and enforcing section 260. We note, however, that unlike sections 271 and 272, the scope of section 260 is not strictly limited to interLATA services, nor is it limited to the BOCs. We seek comment, therefore, on whether any such intrastate jurisdiction would extend only to the BOCs, as only BOCs are covered by sections 271 and 272, or to all incumbent LECs.

21. We also seek comment, as we did in the BOC In-Region NPRM, on the extent to which, assuming section 260 does not itself apply to intrastate services, the Commission may nevertheless have authority to preempt state regulation with respect to the matters addressed by section 260. The Commission has authority to preempt state regulation of intrastate communications services where such state regulation would ''thwart or impede'' the Commission's exercise of its lawful authority over interstate communications services, such as when it is not ''possible to separate the interstate and intrastate portions of the asserted FCC regulation.'' Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 260, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate telemessaging services. We seek comment, for example, on the extent to which the Commission would have authority to preempt potentially inconsistent state regulations regarding a LEC's ability to provide telemessaging services on an integrated basis under section 260. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate telemessaging service.

B. Electronic Publishing Services

22. Although electronic publishing is specifically included within the definition of ''information service'' in section 3(20) of the Act, it is specifically exempted from the separate affiliate and nondiscrimination requirements of section 272. Section 274, which applies only to BOCs, requires the use of a ''separated affiliate'' or ''electronic publishing joint venture'' in order for a BOC to engage in the provision of electronic publishing services disseminated by means of its basic telephone service.

23. Section 274 imposes a number of safeguards on the provision by BOCs of electronic publishing through a separated affiliate or electronic publishing joint venture. Unlike sections 260 and 275, however, section 274 specifically refers to State commission jurisdiction regarding one of these safeguards. Section 274(b)(4) provides that a separated affiliate or joint venture and the BOC with which it is affiliated shall: value any assets that

are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies. This explicit reference to State commission regulations indicates that the requirements of this section apply to both interstate and intrastate electronic publishing services. We tentatively conclude, therefore, that the Commission may not have exclusive jurisdiction over all aspects of intrastate services pursuant to section 274. We seek comment on this tentative conclusion. We ask parties to comment specifically on the extent of our authority, if any, under section 274 over intrastate electronic publishing services.

24. Section 274(e) also provides that any person claiming a violation of this section may file a complaint with the Commission, or may bring suit pursuant to section 207. It also provides that an application for a cease and desist order may be made to the Commission, or in any federal district court. No reference is made to complaints being filed with State commissions. We thus encourage parties to clearly identify the Commission's jurisdiction under section 274 over intrastate electronic publishing services, particularly in light of the specific provisions of sections 274(b)(4) and 274(e). We also ask that commenters clearly identify whether specific subsections of section 274 confer intrastate authority on the Commission.

25. We also seek comment on the extent to which, apart from any intrastate jurisdiction conferred by section 274 itself, the Commission may have authority to preempt state regulation with respect to the matters addressed by section 274 pursuant to Louisiana PSC. Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 274, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate electronic publishing services. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate electronic publishing service.

C. Alarm Monitoring Services

26. Alarm monitoring, as defined in section 275(e), appears to fall within the definition of ''information service'' in section 3(20) of the Act. Alarm monitoring services, however, are specifically exempted from the separate affiliate and nondiscrimination requirements of section 272. Section 275 of the Act delays until February 8, 2001, entry into alarm monitoring by a BOC or its affiliate that was not providing this service as of November 30, 1995, and imposes safeguards regarding the provision of alarm monitoring, not only on BOCs, but on all other incumbent LECs. We seek comment on the extent of our authority, if any, under section 275 over intrastate alarm monitoring services.

27. We also seek comment, as we did in the BOC In-Region NPRM, on the extent to which, assuming section 275 does not itself apply to intrastate alarm monitoring services, the Commission may have authority to preempt state regulation with respect to the matters addressed by section 275 pursuant to Louisiana PSC. Thus, we seek specific comment on the extent to which (1) it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement section 275, and (2) state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate alarm monitoring services. We seek comment, for example, on the extent to which the Commission would have authority to preempt potentially inconsistent state regulations regarding an incumbent LEC's, including a BOC's, ability to provide alarm monitoring services on an integrated basis under section 275. We also seek comment on the extent to which the Commission would not have the authority to preempt the state regulation of an intrastate alarm monitoring service.

III. BOC Provision of Electronic Publishing—Section 274

28. At the time of enactment of the 1996 Act, the BOCs were providing certain intraLATA information services, including electronic publishing services, on an integrated basis. Under the Commission's existing regulatory regime, electronic publishing is regulated as an enhanced service, and is provided pursuant to comparably efficient interconnection (''CEI'') plans filed with the Commission. Section 274, however, imposes structural separation and other requirements on BOCs that provide electronic publishing services. Any BOC or BOC affiliate providing electronic publishing service on the date of enactment of the 1996 Act has until February 8, 1997, to meet the requirements of the Act and our regulations. Our task, therefore, is to adopt the rules necessary to implement these requirements.

A. Definition of ''Electronic Publishing''

29. As noted above, electronic publishing is specifically included within the definition of information services. BOC provision of electronic publishing, however, is explicitly exempted from the separate affiliate and nondiscrimination requirements of section 272 that apply to BOC provision of interLATA information services. Instead, section 274 establishes more detailed requirements for BOC provision of electronic publishing services. We note that, in contrast to section 272, which applies only to BOC provision of interLATA information services, section 274 does not distinguish between the intraLATA and interLATA provision of electronic publishing. We seek comment, therefore, on whether section 274 applies to BOC provision of both intraLATA and interLATA electronic publishing services.

30. Section 274(h)(1) defines ''electronic publishing'' as:

> the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

Section 274(h)(2) also lists specific services that are excluded from the definition of electronic publishing. These excepted services include, among other things, common carrier provision of telecommunications service, information access service, information gateway service, voice storage and retrieval, electronic mail, certain data and transaction processing services, electronic billing or advertising of a BOC's regulated telecommunications services, language translation or data format conversion, ''white pages'' directory assistance, caller identification services, repair and provisioning databases, credit card and billing validation for telephone company operations, 911–E and other emergency assistance databases, and video programming and full motion video entertainment on demand.

31. We seek to define those services that are properly included in the definition of electronic publishing in section 274(h)(1) and those services that

are excluded under 274(h)(2). We ask parties to identify any enhanced services that BOCs currently provide that appear to meet the definition of an electronic publishing service under the 1996 Act. To the extent that it is unclear whether a particular service, or a particular group of services, is encompassed by the statutory definition of electronic publishing, we invite parties to identify the basis for the ambiguity and to make recommendations on how the service, or services, should be classified.

B. ''Separated Affiliate'' and ''Electronic Publishing Joint Venture'' Requirements

1. Definitions

32. Section 274 prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) states that no BOC or BOC affiliate ''may engage in the provision of electronic publishing that is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.'' We tentatively conclude, therefore, that a BOC or BOC affiliate may engage in the provision of electronic publishing services disseminated by means of a BOC or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' We seek comment on this tentative conclusion.

33. Section 274(i)(9) defines a ''separated affiliate'' as ''a corporation under common ownership or control with a [BOC] that does not own or control a [BOC] and is not owned or controlled by a [BOC] and that engages in the provision of electronic publishing which is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service.'' The term ''control'' (including the terms ''controlling,'' ''controlled by'' and ''under common control with'') is defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

34. Section 274(i)(5) defines an ''electronic publishing joint venture'' as ''a joint venture owned by a [BOC] or affiliate that engages in the provision of electronic publishing which is disseminated by means of such [BOC's] or any of its affiliates' basic telephone service.'' As will be discussed in more detail below, however, this definition of an electronic publishing joint venture may be circumscribed by section 274(c)(2)(C), which appears to limit the percentage of ownership and the right to revenues a BOC may have in an electronic publishing joint venture. Parties are invited to comment on this interpretation.

2. Structural Separation and Transactional Requirements

35. Section 274(b) provides that a ''separated affiliate or electronic publishing joint venture shall be operated independently'' from the BOC and then lists nine structural separation and transactional requirements that apply to the separated affiliate or electronic publishing joint venture established pursuant to section 274(a). As indicated below, the structural separation requirements of section 274(b) do not apply equally to separated affiliates and electronic publishing joint ventures. In light of these differences, we seek comment on whether Congress intended the phrase ''operated independently'' to have a different meaning for separated affiliates and for electronic publishing joint ventures. Moreover, we invite parties to comment on what additional regulatory requirements we should adopt, if any, to ensure compliance with the ''operated independently'' requirement of section 274(b).

a. Section 274(b)(2)

36. Section 274(b)(2) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the [BOC].'' In the BOC In-Region NPRM, we noted that such a restriction appears to be designed to protect subscribers to a BOC's exchange and exchange access services from bearing the cost of default upon the part of BOC affiliates.

37. We request comment on what types of activities a BOC, a separated affiliate, or an electronic publishing joint venture are precluded from engaging in under this provision. We tentatively conclude that a BOC may not cosign a contract, or any other instrument, with a separated affiliate or an electronic publishing joint venture that would incur debt in violation of section 274(b)(2). We seek comment on this tentative conclusion. We also seek comment on whether this subsection affects a separated affiliate differently from an electronic publishing joint venture because of the different corporate relationship that exists between a separated affiliate and a BOC, and an electronic publishing joint venture and a BOC.

38. Parties are invited to comment on whether we should establish specific requirements regarding the types of activities that are contemplated by section 274(b)(2). To the extent that there are a range of options, we seek comment on the relative costs and benefits of each.

b. Section 274(b)(5)

39. Section 274(b)(5) states that a separated affiliate and a BOC shall ''(A) have no officers, directors, and employees in common after the effective date of this section; and (B) own no property in common.'' Because this provision explicitly refers only to the relationship between a separated affiliate and a BOC, we tentatively conclude that a BOC may share officers, directors, and employees with an electronic publishing joint venture. For this same reason, we also tentatively conclude that a BOC and an electronic publishing joint venture may own ''property in common.'' We seek comment on these tentative conclusions.

40. We also seek comment on the extent of the separation between a BOC and a separated affiliate required by section 274(b)(5)(A). We note, for example, that section 274(c)(2) permits joint marketing activities between a BOC and either a separated affiliate or electronic publishing joint venture under certain conditions. With respect to a BOC and a separated affiliate, therefore, we seek comment on whether, to the extent that they are engaged in permissible joint marketing activities, the separated affiliate may share marketing personnel with the BOC. Further, we seek comment on how BOCs may engage in joint marketing activities with a separated affiliate pursuant to section 274(c)(2)(A) if they cannot share marketing personnel. For example, although it is possible that the statute would allow the separate marketing personnel of the BOC and the separated affiliate to each market the services of the other, this scenario would reduce the efficiencies generally associated with joint marketing ventures. We seek guidance, therefore, on the practical implications of these provisions and whether they can be harmonized.

41. We also invite parties to comment on the types of property encompassed by the phrase ''property in common.'' We tentatively conclude that section 274(b)(5)(B) prohibits a BOC and its separated affiliate from jointly owning goods, facilities, and physical space. In

addition, we tentatively conclude that it also prohibits the joint ownership of telecommunications transmission and switching facilities, one of the separation requirements we previously adopted for independent LECs in the Competitive Carrier Fifth Report and Order (49 FR 34824 (September 4, 1984)). We seek comment on these tentative conclusions.

42. In addition, although section 274(b)(5)(B) explicitly prohibits the ownership of common property between a BOC and a separated affiliate, does it also prohibit a BOC and a separated affiliate from sharing the use of property owned by one entity or the other? Does it prohibit them from jointly leasing any property? We seek comment on these issues.

c. Section 274(b)(6)

43. Section 274(b)(6) states that a separated affiliate or electronic publishing joint venture and the BOC with which it is affiliated shall ''not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing [BOC] except for names, trademarks, or service marks that are owned by the entity that owns or controls the [BOC].'' Because this provision appears to be quite precise, we tentatively conclude that the adoption of regulations to implement this provision is unnecessary. We seek comment on this tentative conclusion.

d. Section 274(b)(7)

44. Section 274(b)(7) states that a BOC is not permitted ''(A) to perform hiring or training of personnel on behalf of a separated affiliate; (B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or (C) to perform research and development on behalf of a separated affiliate.'' Similar to section 274(b)(5), this provision refers explicitly to the relationship between a BOC and a separated affiliate. We tentatively conclude, therefore, that a BOC is permitted to perform these activities on behalf of an electronic publishing joint venture. We seek comment on this tentative conclusion.

45. To the extent that a BOC and a separated affiliate are engaged in permissible joint marketing activities, we seek comment on whether they may perform the hiring or training of marketing personnel on behalf of the separated affiliate under section 274(b)(7)(A). We also seek comment on the type of ''equipment'' encompassed by section 274(b)(7)(B). For example, if a BOC is providing telephone service to a separated affiliate under tariff or contract subject to the requirements of section 274, does this subsection permit the BOC to purchase, install, and maintain transmission equipment for the separated affiliate? We invite parties to comment on these issues.

46. In addition, although the statute is clear that a BOC may not perform research and development on behalf of a separated affiliate under 274(b)(7)(C), are there any circumstances under which a BOC may share its research and development with a separated affiliate? Does this provision simply limit a BOC's ability to perform research and development for the sole and exclusive use of a separated affiliate, or must the BOC refrain from performing any research or development that may potentially be of use to a separated affiliate? We also seek comment on other ways in which this provision may limit a BOC's ability to perform research and development generally.

3. Comparison to Separate Affiliate Requirement of Section 272

47. We seek comment on the interrelationship between the requirements for a ''separate affiliate'' in section 272(b) and the requirements for a ''separated affiliate'' and ''electronic publishing joint venture'' in section 274(b). We believe that identifying the specific differences in these statutory requirements is important for two reasons. First, it will facilitate BOC compliance with the statute. As mentioned above, BOCs are currently providing electronic publishing as well as other information services on an integrated basis and have until February 8, 1997, to bring their provision of electronic publishing services into compliance with the structural separation requirements of section 274(b). Under the 1996 Act, therefore, BOCs must first distinguish electronic publishing services from other information services and then provide their electronic publishing services consistent with the requirements of section 274(b) and their other information services consistent with the requirements of section 272(b). To the extent that certain BOCs currently are providing all of their information services on an integrated basis, we seek comment on what modifications BOCs would have to make to their current provision of service in order to provide electronic publishing services in compliance with the separated affiliate or electronic publishing joint venture requirements of section 274.

48. Second, in the BOC In-Region NPRM we tentatively concluded that a BOC may engage in the manufacturing activities, interLATA telecommunications services, and interLATA information services permitted by section 272 through a single separate affiliate as long as all the requirements imposed by section 272 and our implementing regulations were satisfied. In view of this tentative conclusion, we seek comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides its interLATA information services. We also seek comment on whether a BOC may provide electronic publishing services through the same entity or affiliate through which it provides in-region interLATA telecommunications services, manufacturing activities, and interLATA information services. In addition, if the BOC does choose to provide any or all of its section 272 services and its section 274 electronic publishing services through the same entity, we seek comment on whether the BOC would have to comply with the requirements of section 272, section 274, or both.

C. Joint Marketing

1. Restrictions on Joint Marketing Activities—Section 274(c)(1)

49. Section 274(c)(1) of the 1996 Act sets forth several restrictions on joint marketing activities in which a BOC and an affiliate may engage, with certain exceptions. Section 274(c)(1)(A) specifically states that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate.'' Section 274(c)(1)(B) provides that ''a [BOC] shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.'' Because the definition of ''affiliate'' in section 274 expressly excludes a ''separated affiliate,'' we seek comment on what is meant by section 274(c)(1)(B).

50. We note that the clause ''that is related to the provision of electronic publishing'' in section 274(c)(1)(B) may be interpreted to modify either the ''promotion, marketing, sales, or advertising'' activities that are circumscribed by that section, or the word ''affiliate.'' If we were to adopt the former interpretation, then section 274(c)(1)(B) would prohibit a BOC from carrying out any promotion, marketing, sales or advertising activities ''related to the provision of electronic publishing''

with any affiliate, regardless of the type of business in which such affiliate engaged. On the other hand, if we were to adopt the latter interpretation, i.e., that the clause ''that is related to the provision of electronic publishing'' modifies the word ''affiliate,'' then the affiliate prohibited by section 274(c)(1)(B) from engaging in joint marketing activities with a BOC would be one that were in some manner related to the provision of electronic publishing. We therefore seek comment on the proper interpretation of section 274(c)(1)(B). Parties arguing for a particular interpretation should state the basis for their interpretation and should demonstrate why an alternative construction is not warranted.

51. The joint marketing prohibitions in section 274(c)(1)(B) would appear not to apply to an electronic publishing joint venture. Under section 274(c)(2)(C), a BOC is expressly permitted to ''provide promotion, marketing, sales or advertising personnel and services'' to an electronic publishing joint venture in which it participates. We therefore tentatively conclude that the term ''affiliate'' in subsection (c)(1)(B) excludes an electronic publishing joint venture. We seek comment on whether that interpretation is consistent with other provisions in section 274.

52. Assuming section 274(c)(2)(C) may be read to except electronic publishing joint ventures from the joint marketing restrictions in section 274(c)(1), it is still unclear to what extent section 274(c)(2)(C) authorizes BOCs to engage in marketing activities with such joint ventures. Other provisions in section 274 appear to circumscribe a BOC's otherwise permissible joint marketing activities under section 274(c)(2)(C). In particular, section 274(b)(6) prohibits an electronic publishing joint venture or a separated affiliate from using the ''name, trademark, or service marks of an existing [BOC]'' for the marketing of any product or service, while section 274(c)(2)(A) permits a BOC to provide inbound telemarketing services to, among other things, an electronic publishing joint venture under certain conditions. We thus seek comment on the extent to which section 274(c)(2)(C) allows a BOC to market jointly with an electronic publishing joint venture in light of those other sections.

53. The term ''joint marketing'' is not explicitly defined in the 1996 Act. Similarly, the legislative history does not address the meaning of that term. In the context of section 274(c)(1), ''joint marketing'' appears to contemplate the ''promotion, marketing, sales, or advertising'' by a BOC for or with an affiliate. We tentatively conclude that such activities encompass prohibitions on advertising the availability of local exchange or other BOC services together with the BOC's electronic publishing services, making those services available from a single source and providing bundling discounts for the purchase of both electronic publishing and local exchange services. We seek comment on that tentative conclusion and on whether any other types of prohibitions are contemplated. We also request comment on the distinction, if any, between the term ''carry out'' in sections 274(c)(1)(A) and (B) and the term ''provide'' in section 274(c)(2)(C). We seek comment on whether and to what extent the joint marketing provisions in section 272(g) and the customer proprietary network information (''CPNI'') provisions in section 222 affect implementation of section 274.

2. Permissible Joint Activities—Section 274(c)(2)

54. Section 274(c)(2) permits three types of joint activities between a BOC and a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher under specified conditions. Under subsection (c)(2)(A), a BOC may provide ''inbound telemarketing'' or ''referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher: [p]rovided [t]hat if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, at nondiscriminatory terms.''

55. The statute is silent as to the specific types of obligations section 274(c)(2)(A) imposes on a BOC. Similarly, the Joint Explanatory Statement does not address that question. According to the Committee Report accompanying H.R. 1555, a BOC is permitted under the provision to refer a customer who requests information regarding an electronic publishing service to its affiliate, but that BOC must make such referral service available to unaffiliated providers on the same terms, conditions and prices. The Report also states that outbound telemarketing or similar activities in which a call is initiated by a BOC, its affiliate or someone on its behalf, is prohibited. We seek comment on whether the conditions imposed on inbound telemarketing discussed in the House Report should be adopted. We also seek comment on the significance of the legislative history regarding the prohibition on outbound telemarketing and whether we should adopt any regulations pertaining to outbound telemarketing.

56. In addition to certain joint telemarketing activities, a BOC is permitted to engage in ''teaming'' or ''business arrangements'' to provide electronic publishing under certain conditions pursuant to section 274(c)(2)(B). Section 274(c)(2)(B) specifically states that ''a [BOC] may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the [BOC] only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the [BOC] does not own such teaming or business arrangement.'' Neither the statute nor the legislative history defines ''teaming or business arrangement.'' We request comment on what types of arrangements are encompassed by those terms.

57. Section 274(c)(2)(B) appears to permit a BOC to participate in any type of business arrangement to engage in electronic publishing so long as the BOC complies with the conditions set forth therein. On the other hand, that section arguably may apply only to joint marketing arrangements in which a BOC participates, since it was placed under the ''Joint Marketing'' subheading in section 274(c). We seek comment on the significance, if any, of section 274(c)(2)(B)'s placement under the ''Joint Marketing'' provisions in section 274(c) and the extent to which section 274(c)(2)(B) may be interpreted to address joint business activities for which joint marketing is allowed under certain conditions. We also seek comment on what regulations, if any, are necessary to ensure that the arrangements in which BOCs engage pursuant to section 274(c)(2)(B) are ''nondiscriminatory.'' In addition, we seek comment on how the provision of ''basic telephone service information'' under that section relates to the requirements in section 222 for access to and use of CPNI.

58. The third joint activity in which a BOC is permitted to engage is an electronic publishing joint venture. Section 274(c)(2)(C) expressly permits a BOC or affiliate ''to participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a [BOC], affiliate, or separated affiliate to provide electronic publishing services.'' The BOC or affiliate, however, may not hold more than a 50 percent direct or indirect

equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. In addition, officers and employees of a BOC or affiliate participating in an electronic publishing joint venture may hold no greater than 50 percent of the voting control over the joint venture. The House Report states that such restriction prohibits officers and employees of a BOC from ''collectively having more than 50 percent of the voting control of the venture.''

59. The term ''electronic publishing joint venture,'' as defined in section 274(i)(5), contemplates a degree of ownership by a BOC or affiliate. As noted above, the term ''own'' with respect to an entity means ''to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.'' Therefore, it appears that an electronic publishing joint venture is a joint venture in which a BOC or affiliate, inter alia, holds greater than a 10 percent ownership interest or the right to more than 10 percent of the venture's gross revenues. Section 274(c)(2)(C) appears to prohibit a BOC, or its affiliate, or their officers and employees from owning more than 50 percent of a joint venture or obtaining the right to more than 50 percent of the venture's gross revenues. We tentatively conclude that a BOC is deemed to ''own'' an electronic publishing joint venture if it holds greater than a 10 percent but not more than a 50 percent direct or indirect equity interest in the venture, or has the right to greater than 10 percent but not more than 50 percent of the venture's gross revenues. We seek comment on that conclusion.

60. Section 274(c)(2)(C) also provides that, ''in the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize [a BOC] or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80%.'' The term ''small, local electronic publisher'' is not defined in the statute. While the Joint Explanatory Statement also is silent, according to the House Report, the term was intended to apply to publishers serving communities of fewer than 50,000 persons.

61. Unlike services whose geographic market areas are defined by analog technical limitations or pre-established geographic boundaries, electronic publishing, by definition, contemplates the dissemination of information to the general public. If we adopt a rule that defines a small, local electronic publisher as an entity serving communities of fewer than 50,000, how should we determine the service area of a ''small, local electronic publisher'' for the purpose of applying the 80% threshold? To the extent parties conclude that the service area of such an electronic publisher cannot readily be defined by the number of persons within a community, we request comment on whether it would be consistent with the intent of Congress as expressed in the legislative history for us to adopt additional standards for determining which electronic publishers are subject to the 80% threshold, and, if so, what such standards should be. Commenters answering that question in the affirmative also are asked to address whether ''small'' should be defined in terms of the gross revenues of an electronic publisher, or in other terms. We also seek comment on how we should define ''local'' under section 274(c)(2)(C).

62. With respect to section 274(c)(2)(C)'s provision allowing waiver of the 50% equity interest and revenue share limitation in the case of joint ventures with small, local electronic publishers for ''good cause shown,'' we note that the Commission currently may waive its rules for ''good cause.'' We seek comment on the ''good cause'' showing that is required in order for a BOC to hold a greater interest in a small, local electronic publisher under section 274(c)(2)(C), and whether any additional regulations are necessary to implement the ''good cause'' waiver provision in section 274(c)(2)(C).

63. We also seek comment on what regulations, if any, are necessary to ensure that a BOC participates in an electronic publishing joint venture under section 274(c)(2)(C) on a ''nonexclusive'' basis. Neither the statute nor the legislative history indicates what types of arrangements are prohibited under that provision. As an initial matter, we note that this prohibition appears to bar arrangements whereby a BOC participates in an electronic publishing joint venture with an electronic publishing entity to the exclusion of all other such entities. We invite parties to comment specifically on whether the provision prohibits contracts between a BOC and an electronic publisher whereby the electronic publisher is committed to purchase basic transmission services necessary to provide electronic publishing exclusively from such BOC or whether the provision contemplates other types of prohibitions.

D. Nondiscrimination Safeguards

64. We also seek comment on whether and the extent to which regulations are necessary to implement the nondiscrimination safeguards for electronic publishing set forth in section 274(d). That section states that a BOC ''under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.''

65. Prior to the 1996 Act, electronic publishing services were regulated as enhanced services and were subject to the nondiscrimination requirements established under our Computer II and Computer III regimes. Under Computer III, BOCs have been allowed to provide enhanced services on an integrated basis pursuant to approved CEI plans as well as rules regarding nondiscriminatory access to unbundled network elements, network information disclosure, limitations on use of CPNI, and nondiscrimination in quality of service, installation and maintenance. Moreover, under Computer III and Open Network Architecture (''ONA''), BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services. We conclude that these requirements continue to apply to the extent they are not inconsistent with the 1996 Act. We seek comment on whether the requirements of Computer III and ONA are consistent with the nondiscrimination requirements of section 274(d). To the extent that parties argue they are inconsistent, we seek comment on what regulations are necessary to implement section 274(d). Commenting parties should propose specific regulations and demonstrate in detail how section 274(d) makes them necessary.

66. Section 274(d) requires that a BOC under common ownership or control with a separated affiliate or electronic publishing joint venture must provide other electronic publishers ''network access and interconnections for basic telephone service'' at ''just and reasonable rates that are tariffed'' and that are not higher than the rates it charges to its own affiliates or other competing electronic publishers. The term ''basic telephone service'' is

defined in section 274(i)(2) as ''any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a [BOC] * * *'' excluding competitive services introduced after divestiture and mobile services. We interpret this section to require BOCs to provide unaffiliated electronic publishers with access to ''any wireline telephone exchange service'' and/or interconnection to any ''wireline telephone exchange service facility'' that it provides to its electronic publishing affiliate or joint venture. We seek comment on this interpretation. We tentatively conclude that the unbundling and network disclosure requirements of Computer III apply to this situation to the extent they are not inconsistent with the 1996 Act. We seek comment on whether those requirements are consistent with the requirements set forth in section 274(d).

67. We also seek comment on the meaning of the requirement that access and interconnection be provided to electronic publishers ''at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation).'' We note that carriers currently are obligated under section 201(b) to provide communications services at ''charges'' that are ''just and reasonable.'' Section 274(d), in contrast, requires that rates not be ''higher on a per-unit basis than those charged for such services to any other electronic publisher.'' We interpret this provision to require that BOCs offer necessary ''basic telephone service'' to all electronic publishers at uniform rates. Volume discounts or other preferential rates, therefore, would be unlawful because basic telephone services would be provided to some electronic publishers at higher per-unit rates than rates charged to other publishers. We seek comment on this tentative conclusion. We also seek comment on how we should interpret the requirement that ''rates be tariffed (so long as rates for such services are subject to regulation).'' We tentatively conclude that this section does not require BOCs to file tariffs for services that no longer are subject to tariff regulation. We seek comment on this tentative conclusion.

IV. Alarm Monitoring

68. Section 275(e) defines ''alarm monitoring service'' as ''a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person'' of such threat. Section 275(a) delays until February 8, 2001 entry into alarm monitoring by a BOC or its affiliate that was not providing this service as of November 30, 1995.

69. We seek to define more clearly the services that are included in the definition of alarm monitoring. Alarm monitoring service as defined in section 275(e) appears to fall within the definition of ''information service'' in section 3(20) of the Act. We also note that section 272(a)(2)(C) specifically exempts alarm monitoring service from the separate affiliate requirement applicable to other interLATA information services. We tentatively conclude, therefore, that the provision of underlying basic tariffed telecommunications services alone, without an enhanced or information component, does not fall within the definition of alarm monitoring service under section 275(e). We note, for example, that Ameritech and US West both provide basic tariffed telecommunications services used for alarm monitoring. These tariffed services do not involve enhanced or information features and, therefore, do not appear to be subject to the 1996 Act requirements. We seek comment on this tentative conclusion.

70. Currently, it appears that only one BOC provides alarm monitoring service as an information service. Ameritech provides an alarm monitoring service directly to end-user customers, including the sale, installation, monitoring and maintenance of monitoring and control systems for end-users. This service is provided on an integrated basis pursuant to a CEI plan on file. We tentatively conclude that this service qualifies as an alarm monitoring service under section 275(e) and is therefore grandfathered under section 275(a)(2). We seek comment on this tentative conclusion. We also seek comment on whether any other services provided by BOCs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2). For example, US West asserts that an enhanced service it provides called ''Versanet'' which is used by alarm monitoring companies to monitor residence and business locations for burglary, fire, or life safety events, is an alarm monitoring service under section 275(e). US West provides this service on an integrated basis pursuant to a waiver of Commission rules. We seek comment on whether this service constitutes an alarm monitoring service under section 275(e) and is grandfathered under section 275(a)(2).

71. We also seek comment on what types of activities constitute the ''provision'' of alarm monitoring services subject to the 1996 Act. Parties should address, with specificity, the levels and types of involvement in alarm monitoring that would rise to the level of ''engag(ing) in the provision'' of alarm monitoring. For example, we tentatively conclude that resale of an alarm monitoring service constitutes the provision of such service. We seek comment on this tentative conclusion. We also seek comment on whether, among other things, billing and collection, sales agency, marketing, and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. Parties should also address any other factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing an alarm monitoring service subject to the 1996 Act.

72. Section 275(a)(2) prohibits a BOC already providing alarm monitoring service from ''acquir(ing) any equity interest in, or obtain(ing) financial control of, any unaffiliated alarm monitoring service entity'' prior to February 8, 2001. Specifically excepted from this prohibition, however, is an ''exchange of customers for the customers of an unaffiliated alarm monitoring service entity.'' We seek comment on whether there is a need to issue regulations to further define the terms of section 275(a)(2). For example, we seek comment specifically on what is meant by ''equity interest'' and ''financial control'' for the purpose of determining what types of transactions are prohibited under section 275(a)(2). We also seek comment on the conditions under which an ''exchange of customers'' would be consistent with the Act's purposes.

73. Under section 272 the provision of alarm monitoring service is specifically exempted from the separate affiliate and nondiscrimination requirements that would otherwise apply to the provision of interLATA information services. We also note that, in contrast to section 272 which applies only to BOC provision of interLATA information services, section 275 does not distinguish between the intraLATA and interLATA provision of alarm monitoring. We seek comment, therefore, on whether section 275 applies to BOC provision of both intraLATA and interLATA alarm monitoring services.

74. Section 275(b)(1) requires that an incumbent LEC ''provide nonaffiliated

entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions.'' As discussed above, sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers. In addition, alarm monitoring has been considered an enhanced service under the Computer III and ONA regime, so that the BOCs have been free to provide alarm monitoring services on an integrated basis pursuant to CEI plans filed with the Commission. We conclude that these Computer III nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1). We seek comment on whether the existing nondiscrimination and network unbundling rules in Computer III as they apply to BOC provision of alarm monitoring service are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring. To the extent that parties argue that the nondiscrimination provisions of Computer III and ONA are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 275(b)(1). Commenting parties should state specifically what rules, if any, are required and how section 275(b)(1) makes them necessary.

V. Telemessaging

75. Section 260 sets forth various requirements for the provision of telemessaging service by LECs subject to the requirements of section 251(c). Our rules permit the BOCs to provide telemessaging on an integrated basis, subject to CEI and ONA requirements. Other LECs have been permitted to provide telemessaging subject only to the requirements of sections 201 and 202, which apply to all common carriers, including the BOCs. Like sections 274 and 275, section 260 does not distinguish between the intraLATA and interLATA provision of telemessaging. We seek comment, therefore, on whether section 260 applies to BOC provision of telemessaging, both on an intraLATA and interLATA basis. In the BOC In-Region NPRM, we tentatively concluded that telemessaging is an information service subject to section 272's separate affiliate and nondiscrimination requirements, and therefore, BOC provision of this service on an interLATA basis would be subject to the requirements of section 272 in addition to the requirements of section 260. If we decide not to adopt that tentative conclusion, we seek comment on whether BOCs providing telemessaging services on either an inter- or intraLATA basis would be subject only to the requirements of section 260.

76. Section 260 defines ''telemessaging service'' as ''voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.'' We seek comment on whether rules are necessary to clarify any ambiguities that may exist in this definition. We also invite parties to address the types of services contemplated by the term ''ancillary services,'' and to provide specific examples.

77. Section 260 also sets out specific nondiscrimination requirements applicable to LECs that are engaged in the provision of telemessaging. Section 260(a)(2) provides that a LEC that provides telemessaging service ''shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.'' We seek comment on the extent to which this section imposes greater obligations on LECs providing telemessaging service than currently exist under sections 201 and 202 of the Act. We conclude that the requirements of Computer III and ONA continue to apply to the extent not inconsistent with section 260. We seek comment on whether the nondiscrimination provisions of Computer III and ONA are consistent with section 260(a)(2), and whether these provisions should be applied just to BOCs or to all incumbent LECs to fulfill the requirements of section 260(a)(2). To the extent that parties argue that the nondiscrimination provisions of Computer III and ONA are inconsistent or should not be applied, we seek comment on whether and what types of specific regulations are necessary to implement section 260(a)(2). Commenting parties should state specifically what rules, if any, are required and how section 260(a)(2) makes them necessary.

VI. Enforcement Issues

A. Electronic Publishing—Section 274(e)

78. Section 274(e) provides a private right of action to any person claiming that an act or practice of a BOC, affiliate, or separated affiliate has violated section 274. Under section 274(e)(1), such person may file a complaint with the Commission or bring suit as provided in section 207. Section 274(e)(1) also states that a BOC, affiliate, or separated affiliate shall be liable as provided in section 206, except that damages may not be awarded for a violation ''that is discovered by a compliance review'' as required by section 274(b)(8) and ''corrected within 90 days.'' In addition to damages, section 274(e)(2) permits an aggrieved person to apply to the Commission for a cease and desist order or to a U.S. District Court for an injunction or an order compelling compliance.

79. Parties are invited to comment on the legal and evidentiary standards necessary to establish that a BOC has violated section 274. Commenters should describe what specific acts or omissions are sufficient to state a prima facie claim for relief under this section. Currently, in a typical complaint proceeding, the complainant generally has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. Ordinarily, this burden of proof does not, at any time in the proceeding, shift to the defendant carrier. In the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act. We seek comment on whether there are similar policy concerns for doing this in the context of section 274 as well.

80. We also ask parties to comment specifically on what showing, if any, is required for the issuance of a cease and desist order under section 274. For example, would the evidentiary showing be different for a complainant seeking damages under section 274(e)(1) as opposed to one seeking a cease and desist order under 274(e)(2)? We also seek comment on what actions, if any, the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under section 274.

B. Telemessaging and Alarm Monitoring—Sections 260(b) and 275(c)

81. Sections 260(b) and 275(c) require that the Commission establish expedited procedures for the receipt and review of complaints alleging violations of the nondiscrimination provisions in sections 260(a) and 275(b), or regulations adopted pursuant thereto, that result in ''material financial harm'' to a provider of alarm monitoring or telemessaging service, respectively. Such procedures must ''ensure that the

Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint.'' In addition, these sections provide that if a complaint ''contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations,'' the Commission must, within 60 days, order the incumbent LEC and its affiliates ''to cease engaging in such violation pending such final determination.''

82. Apart from the expedited complaint procedures themselves, which will be addressed in a separate proceeding, we seek comment on the legal and evidentiary standards necessary to ensure a full and fair resolution of complaints filed under section 260 and 275 within the 120-day statutory window. Parties are invited to comment on what prima facie showing should be required of a complainant that invokes the 120-day complaint resolution requirement. Commenters should describe what specific acts or omissions are sufficient to state a prima facie claim for relief under section 260 and 275. As noted above, in the *BOC In-Region NPRM* we sought comment on whether, for purposes of complaints arising under section 271(d)(6)(B), shifting the ultimate burden of proof from the complainant to the defendant advances the pro-competitive goals of the 1996 Act. We seek comment on whether there are similar policy concerns for doing this in the context of sections 260 and 275 as well.

83. Although parties filing complaints under section 208 are not required to show direct damage, sections 260(b) and 275(c) require that complainants availing themselves of the expedited complaint procedures establish ''material financial harm.'' We seek comment, therefore, on the meaning of ''material financial harm'' in these sections. Should there be a particular legal or evidentiary showing that the complaint must make in order to demonstrate material financial harm, or should the Commission decide the materiality of the harm on an individual case basis? If the complainant's pleadings allege a violation of the nondiscrimination requirements of sections 260 or 275, but do not demonstrate material financial harm, should the complainant still be entitled to an expedited review? We invite parties to comment on these issues.

84. In addition, we seek comment on what type of showing constitutes an ''appropriate showing'' for the Commission to issue the LEC an order ''to cease engaging'' in an alleged violation of section 260 or 275. Would it be enough for the complainant to establish a *prima facie* showing of discrimination? We also seek comment on the meaning of an order ''to cease engaging'' under sections 260(b) and 275(c). Do these sections give the Commission authority to issue a cease and desist order similar to the one in section 274(e)(2)? If so, parties should comment on whether the showing under section 274 differs in any material respect from the showing required under sections 260 and 275. We also seek comment on what actions the Commission should take to deter violations of, and facilitate the prompt disposition of, complaints under sections 260 and 275.

VII. Conclusion

85. We seek comment on the foregoing issues regarding the implementation of the non-accounting separate affiliate and nondiscrimination requirements of sections 274, 275 and 260 of the 1996 Act. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggest alternative regulatory policies.

VIII. Procedural Issues

A. Ex Parte Presentations

86. This is a non-restricted notice-and-comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206.

B. Regulatory Flexibility Analysis

87. Section 603 of the Regulatory Flexibility Act, as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as ''small-business concern'' under the Small Business Act, which defines ''small-business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation * * *.'' This proceeding pertains to the BOCs and other ILECs which, because they are dominant in their field of operations, are by definition not small entities under the Regulatory Flexibility Act. We therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this Notice, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register notice.

C. Initial Paperwork Reduction Act of 1995 Analysis

88. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due September 4, 1996; OMB comments are due September 27, 1996. 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.

D. Comment Filing Procedures

89. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 4, 1996 and reply comments on or before September 20, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services,

Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

90. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than thirty-five (35) printed pages and reply comments be no longer than twenty-five (25) printed pages. Page limits do not include proposed rules, which parties are encouraged to submit. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must clearly identify the specific portion of this Notice to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this Notice, such comments must be included in a clearly labelled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) Written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

91. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not in lieu of the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Such submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

92. Written comments by the public on the proposed and/or modified information collections are due on September 4, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996. 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 fain__t@al.eop.gov.

IX. Ordering Clauses

93. Accordingly, *it is ordered* that pursuant to sections 1, 4, 260, 274, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 260, 274, 275, and 303(r), a Notice of Proposed Rulemaking is hereby Adopted.

94. *It is Further Ordered* that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, 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.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19136 Filed 7–25–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Chapter I

[CC Docket No. 96–149, FCC 96–308]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on proposed regulations to implement, and, where necessary, to clarify the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in section 272 of the Telecommunications Act of 1996. Congress enacted these safeguards to help prevent Bell Operating Companies (BOCs) from improperly using their market power in the local telephone market to gain an unfair advantage over their rivals in the in-region interLATA service markets and certain other businesses, such as the manufacturing of telecommunications equipment. These safeguards are intended to encourage the development of robust competition in all telecommunications markets. The Commission also seeks comment on whether to relax the dominant carrier classification that currently applies to the (BOCs) provision of in-region, interstate, domestic interLATA services, as well as whether it should modify its existing rules for regulating independent local exchange carriers' (LECs) provision of interstate, interexchange services in areas where those LECs provide local telephone service. The Commission also considers whether to apply the same regulatory classification to BOC and independent LEC provision of in-region international service as the Commission adopts for their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic, interexchange services, respectively.

DATES: Comments are due on or before August 15, 1996 and Reply Comments are due on or before August 30, 1996. Written comments by the public on the proposed and/or modified information collections are due August 15, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 27, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. 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 fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Melissa Waksman, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580, or Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this NPRM 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 adopted July 17, 1996 and released July 18, 1996 (FCC 96–308). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under 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. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. 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 NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due September 27, 1996. 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.

OMB Approval Number: None.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area.

Form No.: N/A.

Type of Review: New collection.

Information collection	Number of respondents (approx.)	Estimated time per response (hours)	Total annual burden (hours)
Network disclosure	5	48	240
Installation and maintenance reporting—timeliness	5	8	40
Installation and maintenance reporting—quality	5	1	5
Procurement procedure	5	2	10
Nondiscriminatory information provision	5	36	180
Third party reporting, compliance monitoring, and other information collection	5	16	80

Total Annual Burden: 555 hours.

Respondents: Bell Operating Companies.

Estimated costs per respondent: $0.

Needs and Uses: The NPRM seeks comment on a number of issues, the result of which could lead to the imposition of information collections. The NPRM seeks comment on certain reporting requirements to implement the non-accounting nondiscrimination requirements of the 1996 Act.

SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING

I. Introduction

1. In February 1996, Congress passed and the President signed the ''Telecommunications Act of 1996.'' This legislation makes sweeping changes affecting all consumers and telecommunications service providers. The intent of this legislation is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.'' Upon enactment, the 1996 Act permitted the Bell Operating Companies (BOCs) to provide interLATA services that originate outside of their in-region states. The 1996 Act permits the BOCs to provide in-region interLATA services upon our finding that they have met the requirements of new section 271 of the Communications Act. Under section 271, we must determine, among other things, whether a BOC seeking to provide in-region interLATA services has complied with the safeguards imposed by new section 272 of the Communications Act and the rules that we adopt to implement the provisions of that section.

Under the 1996 Act, a ''local access and transport area'' (LATA) is ''a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission.'' 47 U.S.C. § 153(25). LATAs were created as part of the Modification of Final Judgment's (MFJ) ''plan of reorganization'' by which the BOCs were divested from AT&T. Pursuant to the MFJ, ''all BOC territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest.'' *United States* v. *Western Elec. Co.*, 569 F. Supp. 990, 993 (D.D.C. 1983). The purpose of establishing the LATAs was only to delineate the areas within which the respective BOCs would be permitted to provide telecommunications services (i.e., intraLATA services); it was ''not to distinguish the area in which a telephone call [would] be 'local' from

that in which it [would] become a 'toll' or long distance call.'' *Id*. at 995. LATAs are comprised of combinations of local exchanges, and are generally much larger than the traditional local exchange areas and local calling areas defined by local regulators. While AT&T proposed to create 161 LATAs to cover the BOCs' territory, there were, at the time of the plan of reorganization, approximately 7,000 local exchanges within that territory. *Id*. at 993 n.9. There are currently 182 BOC LATAs. Bell Communications Research, *Local Exchange Routing Guide*, § 1, at 1–2 (Mar. 1, 1996) (*Local Exchange Routing Guide*).

3. In this Notice of Proposed Rulemaking (NPRM), we consider rules to implement, and, where necessary, to clarify the non-accounting separate affiliate and nondiscrimination safeguards prescribed by Congress in section 272. That section addresses the BOCs' provision of interLATA telecommunications services originating in states in which they provide local exchange and exchange access services, interLATA information services, and BOC manufacturing activities. The MFJ prohibited the BOCs from providing information services, providing interLATA services, or manufacturing and selling telecommunications equipment or manufacturing customer premises equipment (CPE). This prohibition was based on the theory that the BOCs could leverage their market power in the local market to impede competition in the interLATA services, manufacturing and information services markets. The information services restriction was modified in 1987 to allow BOCs to provide voice messaging services and to transmit information services generated by others. We also seek in this proceeding to determine whether to relax the dominant carrier classification that currently applies to the BOCs' provision of in-region, interstate, domestic interLATA services, and whether to apply the same regulatory classification to the BOCs' provision of in-region, international services.

4. This proceeding is one of a series of interrelated rulemakings that collectively will implement the 1996 Act. Certain of these proceedings focus on opening markets to entry by new competitors. Other proceedings will establish fair rules for competition in these markets that are opened to competitive entry, and yet other proceedings will focus on lifting outmoded legal and regulatory constraints. We seek in the instant rulemaking to adopt safeguards to govern the BOCs' entry into certain new markets. Specifically, this proceeding focuses on the non-accounting BOC separate affiliate and nondiscrimination safeguards that Congress adopted in the 1996 Act to foster the development of robust competition in all telecommunications markets. As discussed more fully below, these safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive services, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter.

5. This proceeding also examines whether the potential risks of BOCs' using market power in local exchange and exchange access services to obtain an advantage in the markets for BOC affiliates that provide in-region, interstate, domestic, interLATA services will be sufficiently limited such that we can relax the dominant carrier classification that under our current rules would apply to such interLATA services provided by a BOC affiliate. We also consider whether we should modify our existing rules for regulating the provision of in-region, interstate, interexchange services by an independent LEC (an exchange telephone company other than a BOC). Finally, we consider whether to apply the same regulatory treatment to the BOC affiliates' and independent LECs' provision of in-region, international services, as we adopt for their provision of in-region, interstate, domestic, interLATA and in-region, interstate, domestic, interexchange services, respectively.

6. We use the term ''independent LECs'' to refer to both the independent LECs and their affiliates. For purposes of this proceeding, we define an independent LEC's ''in-region services'' as telecommunications services originating in the independent LEC's local exchange areas or 800 service, private line service, or their equivalents that: (1) terminate in the independent LEC's local exchange areas, and (2) allow the called party to determine the interexchange carrier, even if the service originates outside the independent LEC's local exchange areas.

A. Background

The 1996 Act seeks to eliminate artificial legal and regulatory barriers, as well as economic impediments, to entry into telecommunications markets. This new scheme permits the BOCs to engage in the activities from which they were barred by the MFJ if they satisfy certain statutory conditions that are intended to prevent them from improperly using their market power in the local exchange market against their competitors in the interLATA telecommunications services, interLATA information services, and manufacturing markets, and from improperly allocating the costs of their new ventures to subscribers to local exchange access services, and if they have taken sufficient steps to open their local exchange networks to competition.

8. Enactment of the 1996 Act opens the way for BOCs to provide interLATA services in states in which they currently provide local exchange and exchange access services. Their provision of such interLATA services offers the prospect of increasing competition among providers of such services. BOCs can offer a widely recognized brand name that is associated with telecommunications services, the ability for consumers to purchase local, intraLATA and interLATA telecommunications services from a single provider (i.e., ''one-stop shopping''), and other advantages of vertical integration. Similar benefits could follow from BOC provision of interLATA information services and BOC manufacturing activities.

9. In lifting or modifying the restrictions on the BOCs, the new regulatory scheme established by the 1996 Act indicates that BOC entry into in-region interLATA services raises issues for competition and consumers, even after a BOC has satisfied the requirements of section 271(d)(3)(A) and (C). BOCs currently provide an overwhelming share of local exchange and exchange access services in areas where they provide such services—approximately 99.5 percent of the market as measured by revenues. If it is regulated under rate-of-return regulation, a price caps structure with sharing (either for interstate or intrastate services), a price caps scheme that adjusts the X-factor periodically based on changes in industry productivity, or if its entitlement to any revenues is based on costs recorded in regulated books of account, a BOC may have an incentive to improperly allocate to its regulated core business costs that would be properly attributable to its competitive ventures.

10. In addition, a BOC may have an incentive to discriminate in providing exchange access services and facilities that its affiliate's rivals need to compete in the interLATA telecommunications and interLATA information services

markets. For example, a BOC could seek to grant undue preferences to its interLATA affiliate in furnishing such services and facilities, in order to gain a competitive advantage for its interLATA affiliate. Moreover, to the extent carriers offer both local and interLATA services as a bundled offering, if a BOC were to discriminate, it could entrench its position in local markets by making its rivals' offerings less attractive alternatives for local and access services. With respect to BOC manufacturing activities, a BOC may have an incentive to purchase only its own equipment, even if such equipment is more expensive or of lower quality than that available from other manufacturers. Although the 1996 Act permits the BOCs to engage in previously restricted activities, it imposes a mix of structural and non-structural safeguards that are intended to protect subscribers to BOC monopoly services and competitors against potential improper cost allocation and discrimination. Our goal in this proceeding is to establish non-accounting separate affiliate and nondiscrimination safeguards to implement Congress's objectives.

11. The emergence of efficient, facilities-based alternatives to the local exchange and exchange access services offered by the BOCs will, over time, eliminate the need for safeguards that Congress prescribed in the 1996 Act and the implementing rules that we will adopt in this proceeding. We began the movement toward that ultimate goal when we adopted our NPRM to implement new section 251 of the Communications Act. Other proceedings, such as our upcoming access reform rulemaking and the jurisdictional separations reform proceeding, also will contribute to achieving our goal of fostering efficient competition in local telecommunications markets. Until we reach that goal, we seek to minimize the burden on the BOCs of the rules that we adopt in this proceeding, but at the same time we seek to avoid the potential exposure of both ratepayers in local markets controlled by the BOCs and competitors of the new BOC service providers to the potential risk of improper cost allocations and unlawful discrimination.

B. Overview of Sections 271 and 272

12. The 1996 Act conditions BOC entry into in-region interLATA service on compliance with certain provisions of sections 271 and 272. Section 271 sets forth prerequisites, including a competitive checklist requiring compliance with certain provisions in sections 251 and 252, for approval of a BOC's application to provide in-region interLATA service. Section 271(b)(1) conditions a BOC's ability to provide interLATA service originating in its region upon receipt of Commission approval under section 271(d)(3). Section 271(d)(3), in turn, requires the Commission to make three findings before approving BOC entry. First, the Commission must find that the interconnection agreements or statements approved at the state level under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B). Second, the Commission must ensure that the structural and nondiscrimination safeguards mandated in section 272 will be met. Finally, the Commission must find that BOC entry into the in-region interLATA market is ''consistent with the public interest, convenience, and necessity.'' In acting on a BOC's application for authority to provide in-region interLATA services, the Commission must consult with the Attorney General and give substantial weight to the Attorney General's evaluation of the BOC's application. In addition, the Commission must consult with the applicable state commission to verify that the BOC complies with the requirements in subsection (c).

13. Section 272 establishes separate affiliate requirements that apply to BOC provision of manufacturing of telecommunications equipment and CPE, interLATA telecommunications services that originate in-region (other than certain previously authorized activities and certain incidental interLATA services), and interLATA information services (in-region and out-of-region). The statutory separate affiliate requirements for manufacturing and in-region interLATA telecommunications services expire three years after a BOC or any BOC affiliate is authorized to provide in-region interLATA services. The statutory interLATA information services separate affiliate requirement expires four years after enactment of the 1996 Act. The statute gives the Commission the discretion to extend either of these periods by rule or order. This NPRM concerns the non-accounting separate affiliate and nondiscrimination requirements of sections 271 and 272.

14. The structural separation requirements of section 272 are intended to prevent potential improper cost allocations by the BOCs in two principal ways. First, by requiring the BOCs and their separate affiliates to use different employees for their respective activities, section 272 allows the cost of each employee to be assigned directly to the appropriate entity thereby reducing the joint and common costs that require allocation between the telephone operating companies and the affiliates engaged in competitive businesses. Second, by requiring a BOC to maintain appropriate records documenting transactions between the BOC and its affiliate, section 272 discourages the improper allocation of costs between the two entities by making detection of such practices easier.

15. The structural separation requirements of section 272, in conjunction with the affirmative nondiscrimination obligations imposed by that section, are intended to address concerns that the BOCs could potentially use local exchange and exchange access facilities to discriminate unlawfully against competitors in order to gain a competitive advantage for their affiliates that engage in competitive activities. These safeguards seek to prevent a BOC from discriminating in favor of its affiliates by, for example: 1) providing exchange access services to its interLATA service affiliate at a lower rate than the rate offered to competing interLATA service providers; 2) providing a higher quality service to its interLATA service affiliate than the service it provides to competing interLATA service providers at the same price; 3) purchasing products needed for its local exchange network that are manufactured by its affiliate even when the affiliate's competitors offer the same or higher quality product at a lower price, or a higher quality product at the same price charged by the affiliate; or 4) providing advance information about network changes to its competitive affiliates.

16. If a BOC charges its competitors prices for inputs that are higher than the prices charged, or effectively charged, to the BOC's affiliate, then the BOC can create a ''price squeeze.'' In that circumstance, the BOC affiliate could lower its retail price to reflect its unfair cost advantage, and competing providers would be forced either to match the price reduction and absorb profit margin reductions or maintain their retail prices at existing levels and accept reductions in their market shares. If the price squeeze was severe enough and continued long enough, the BOC affiliate's market share could become so large, and the competitors so weakened, that the affiliate could unilaterally raise and sustain a price above competitive levels by restricting its output. Alternatively, the BOC affiliate could simply match its competitors' prices and extract supracompetitive profits.

Unlawful discriminatory preferences in the quality of the service or preferential dissemination of information provided by BOCs to their affiliates, as a practical matter, can have the same effect as charging unlawfully discriminatory prices. If a BOC charged the same rate to its affiliate for a higher quality access service than the BOC charged to non-affiliates for a lower quality service, or disclosed information concerning future changes in network architecture to its manufacturing affiliate before the BOC disclosed it to others, the BOC could effectively create the same ''price squeeze'' discussed above.

C. Classification of Carriers as Dominant or Non-Dominant

17. Between 1979 and 1985, the Commission conducted the *Competitive Carrier* proceeding, in which it examined how its regulations should be adapted to reflect and promote increasing competition in telecommunications markets. In a series of orders, the Commission distinguished two kinds of carriers—those with market power (dominant carriers) and those without market power (non-dominant carriers). In the *Competitive Carrier Fourth Report and Order* (48 FR 52452 (November 18, 1983)), the Commission defined market power alternatively as ''the ability to raise prices by restricting output'' and as ''the ability to raise and maintain price above the competitive level without driving away so many customers as to make the increase unprofitable.'' The Commission recognized that, in order to assess whether a carrier possesses market power, one must first define the relevant product and geographic markets. Throughout the *Competitive Carrier* proceeding, the Commission relaxed its tariff filing and facilities authorization requirements for non-dominant carriers and focused its regulatory efforts on constraining the ability of dominant carriers to exercise market power.

18. This proceeding considers whether we should relax the dominant carrier regulation that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOCs' interLATA affiliates. As a preliminary matter, we note that there are two ways in which a carrier can profitably raise and sustain prices above competitive levels and thereby exercise market power. First, a carrier may be able to raise and sustain prices by restricting its own output (which usually requires a large market share); second, a carrier may be able to raise and sustain prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services. We seek comment on whether the BOC affiliates should be classified as dominant carriers under our rules only if we find that they have the ability profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting their own output, or whether the affiliates should be classified as dominant if the BOCs have the ability to raise and sustain prices of such interLATA services significantly above competitive levels by raising the costs of their affiliates' interLATA rivals.

19. We then seek comment, with respect to both types of market power, on whether the BOC affiliates should be classified as dominant or non-dominant. In considering whether a BOC affiliate could raise its prices by restricting its own output, we seek comment on whether, in light of the requirements established by, and pursuant to, sections 271 and 272, together with other existing Commission rules, the BOCs will be able to use, or leverage, their market power in the local exchange and exchange access markets to such an extent that their interLATA affiliates could profitably raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting their own output. In considering whether a BOC affiliate could cause increases in prices for in-region, interstate, domestic, interLATA services by raising the costs of its affiliate's interLATA rivals, we seek comment whether the statutory and regulatory safeguards will prevent a BOC from engaging in unlawful discrimination or other anticompetitive conduct that will raise its affiliate's rivals' costs. We also seek comment on whether regulating BOC in-region interLATA affiliates as dominant would help to prevent improper allocations of costs or discrimination by the BOCs in favor of their interLATA affiliates, or would at least mitigate the effects of such activities. We also consider whether we should modify our existing rules for regulating independent LECs' provision of in-region, interstate, interexchange services.

20. In our recent order addressing BOC provision of interLATA services originating out-of-region, we considered whether, on an interim basis, BOC provision of out-of-region services should remain subject to dominant carrier regulation. *Interim BOC Out-of-Region Order* (61 FR 35964 (July 9, 1996)) at ¶ 2. We found, *inter alia*, that, on an interim basis, if a BOC provides out-of-region domestic, interstate, interexchange services offered through an affiliate that satisfies the separation requirements imposed on independent LECs in the *Competitive Carrier Fifth Report and Order* (49 FR 34824 (September 4, 1984)), we would remove dominant carrier regulation for such services. *Id*. In the *Interexchange NPRM* (61 FR 14717 (April 3, 1996)), we asked whether we should modify or eliminate the separation requirements imposed as a condition for non-dominant treatment of independent LEC provision of interstate, interexchange services originating outside their local exchange areas. *Interexchange NPRM* at ¶ 61. We also sought comment on whether, if we modify or eliminate these separation requirements for independent LECs, we should apply the same requirements to BOC provision of out-of-region interstate, interexchange services. *Id*.

21. Finally, we consider whether to apply the same regulatory classification to the BOC affiliates' and independent LECs' provision of in-region, international services as we adopt for their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic, interexchange services, respectively. In doing so, we emphasize that there is more than one basis for finding a United States (U.S.) carrier dominant in the provision of international services. The issue we address in this NPRM is whether a BOC affiliate or independent LEC should be regulated as dominant in the provision of in-region, international services because of the BOC or independent LEC's current retention of bottleneck facilities on the U.S. end of an international link. The separate issue of whether a BOC, an independent LEC, or any other U.S. carrier should be regulated as dominant in the provision of international services because of the market power of an affiliated foreign carrier in a foreign destination market was addressed by the Commission last year in the *Foreign Carrier Entry Order* (61 FR 4937 (February 9, 1996)). That decision adopted a separate framework for regulating U.S. international carriers (including BOCs or independent LECs ultimately authorized to provide in-region international services) as dominant on routes where an affiliated foreign carrier has the ability to discriminate in favor of its U.S. affiliate through control of bottleneck services or facilities in the foreign destination market. No carriers are exempt from this policy to the extent they have foreign affiliations.

II. Scope of the Commission's Authority

22. As a preliminary matter, we address the scope of the Commission's

authority to adopt rules implementing the non-accounting provisions of sections 271 and 272 of the Communications Act, as amended. In the following subsections, we address the scope of the Commission's authority over interLATA services and interLATA information services and its authority over manufacturing activities.

A. InterLATA Services and InterLATA Information Services

23. Sections 271 and 272 by their terms address BOC provision of ''interLATA'' services and ''interLATA'' information services. Many states contain more than one LATA, and thus, interLATA traffic may be either interstate or intrastate. Accordingly, we must determine whether sections 271 and 272, and our authority pursuant to those sections, apply only to interstate interLATA services and interstate interLATA information services, or to interstate and intrastate interLATA services and interstate and intrastate interLATA information services.

24. The MFJ, when it was in effect, governed BOC provision of both interstate and intrastate services. The 1996 Act provides:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by [the MFJ].

This section supersedes the MFJ, and explains that the Communications Act is to serve as its replacement. As set forth below, we believe that section 271 and 272 of the Act were intended to replace the MFJ as to both interstate and intrastate interLATA services and interLATA information services. Thus, we propose that our rules implementing these sections apply to both interstate and intrastate services. We seek comment on this tentative conclusion, on our analysis, and on any alternative views that commenters may propose.

25. Sections 271 and 272 make no explicit reference to interstate and intrastate services, but they do make reference to a different geographic boundary—the LATA, as originally defined by the MFJ and now by the 1996 Act. The interLATA/intraLATA distinction appears to some extent to have supplanted the traditional interstate/intrastate distinction for purposes of these sections.

26. As to interLATA services, the MFJ prohibited the BOCs and their affiliates from providing any interLATA services, interstate or intrastate, unless specifically authorized by the MFJ or a waiver thereunder. Reading sections 271 and 272 as applying to all interLATA services fits well with the structure of the statute as a whole. Sections 251 and 252 of the Act establish rules and procedures for competitive entry into local exchange markets. In the *Interconnection NPRM* (61 FR 18311 (April 25, 1996)), we tentatively concluded that Congress intended these sections to apply to both interstate and intrastate aspects of interconnection. These new obligations imposed on BOCs (as well as other LECs), enacted at the same time as sections 271 and 272, clearly are part of the process for entry into the interLATA marketplace. Indeed, BOCs are permitted to provide in-region interLATA services only after they have met the requirements of section 271, including a competitive checklist requiring compliance with certain provisions in sections 251 and 252.

27. We note also that the structure of sections 271 and 272 themselves indicates that these sections were intended to address both interstate and intrastate services. For instance, BOCs are directed to apply for interLATA entry on a state-by-state basis, and the Commission is directed to consult with the relevant State Commission before making any determination with respect to an application in order to verify the BOC's compliance with the requirements for providing in-region interLATA services. As we believe it did in sections 251 and 252, Congress appears to have put in place rules to govern both interstate and intrastate services, and provided a role for both the Commission and the states in implementing those rules.

28. By contrast, reading sections 271 and 272 as limited to the provision of interstate services would mean that the BOCs would have been permitted to provide in-region, intrastate, interLATA services upon enactment and without any guidance from Congress as to entry requirements or safeguards, subject only to any pre-existing state rules on interexchange entry. Any such rules, presumably, would not have been directed at BOC entry, which had for many years been prohibited. Concerns about BOC control of bottleneck facilities over the provision of in-region interLATA services are equally important for both interstate and intrastate services. Thus, the reasons for imposing the procedures and safeguards of sections 271 and 272 apply equally to the BOCs' provision of both intrastate and interstate, in-region, interLATA services. We find it implausible that Congress could have intended to lift the MFJ's ban on BOC provision of interLATA services without making any provision for orderly entry into intrastate interLATA services, which constitute approximately 30 percent of interLATA traffic. Based on the preceding analysis, we tentatively conclude that our authority under sections 271 and 272 applies to intrastate and interstate interLATA services and intrastate and interstate interLATA information services provided by the BOCs or their affiliates.

29. We believe that section 2(b) of the Communications Act does not require a contrary result. Section 2(b) provides that, except as provided in certain enumerated sections not including sections 271 and 272, ''nothing in [the Communications Act] shall be construed to apply or to give the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier * * *.'' In enacting sections 271 and 272 after section 2(b) and squarely addressing therein the issues before us, we tentatively conclude that Congress intended for sections 271 and 272 to take precedence over any contrary implications based on section 2(b). We note also, that in enacting the 1996 Act, there are instances where Congress indisputably gave the Commission intrastate jurisdiction without amending section 2(b). Thus, we believe that the lack of an explicit exception in section 2(b) should in this instance create less of a presumption that the Commission's jurisdiction under sections 271 and 272 is limited to interstate services than would ordinarily be the case.

30. We seek comment on the jurisdictional analysis set forth above. In particular, we ask that parties disagreeing with this analysis set forth their own alternative analysis of how sections 271 and 272 apply to interstate and intrastate interLATA services and interLATA information services.

31. To the extent that commenters disagree with the analysis set forth above, we also seek comment on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed by sections 271 and 272. The Commission has authority to preempt state regulation of intrastate communications services where such state regulation would thwart or impede the Commission's exercise of its lawful authority over interstate communications services, such as when it is not ''possible to separate the

interstate and intrastate portions of the asserted FCC regulation.'' Thus, we seek specific comment on (1) the extent to which it may not be possible to separate the interstate and intrastate portions of the regulations we propose here to implement sections 271 and 272, and (2) the extent to which state regulation inconsistent with our regulations may thwart or impede the Commission's exercise of lawful authority over interstate interLATA services. We seek comment, for example, on potentially inconsistent state regulations regarding: (1) a BOC affiliate's ability to use, co-use, or co-own facilities with the BOC; (2) a BOC affiliate's ability to share personnel with the BOC; and (3) a BOC's ability to discriminate in favor of its affiliate.

32. We note that when the Commission adopted rules to govern the BOCs' provision of enhanced services rules prior to the enactment of the 1996 Act, it preempted certain inconsistent state structural separation requirements dealing with the intrastate portion of jurisdictionally mixed enhanced services. The U.S. Court of Appeals for the Ninth Circuit upheld this exercise of our preemption authority, agreeing that the state separation requirements would essentially negate the Commission's goal of allowing BOC provision of interstate enhanced services on a non-separated basis. Along the same lines, it is conceivable that a state may try to impose separate affiliate or nondiscrimination requirements on the intrastate portion of jurisdictionally mixed services that are inconsistent with the requirements in section

33. We believe that *California* III may provide support for Commission preemption of such inconsistent state regulations, to the extent that the regulations would thwart or impede the Commission's exercise of its authority over interstate interLATA services or interstate interLATA information services pursuant to sections 271 and 272. We seek comment on this analysis. We also seek comment on whether state regulation of intrastate services that is less stringent than the Commission's regulation of interstate services could thwart or impede the Commission's exercise of its authority over interstate, interLATA, information services.

B. Manufacturing Activities

34. To the extent that sections 271 and 272 address BOC manufacturing activities, we believe that the same statutory analysis set forth above would apply. We see no basis for distinguishing among the various subsections of sections 271 and 272. Even apart from that analysis, however, we believe that the provisions concerning manufacturing clearly apply to all manufacturing activities. Section 2(b) of the Communications Act limits the Commission's authority over ''charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service.'' We believe that the manufacturing activities addressed by sections 271 and 272, however, are not within the scope of section 2(b). Alternatively, if section 2(b) applies with respect to BOC manufacturing, we believe that such manufacturing activities plainly cannot be segregated into interstate and intrastate portions. Thus, any state regulation inconsistent with sections 271 and 272 or our implementing regulations would necessarily thwart and impede federal policies, and should be preempted. We tentatively conclude, therefore, that our authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE. We seek comment on this tentative conclusion.

III. Activities Subject to Section 272 Requirements

35. Section 272 provides that a BOC (including any affiliate) that is a LEC subject to the requirements of section 251(c) may provide certain services only through a separate affiliate. Under section 272, BOCs (or BOC affiliates) may engage in the following activities only through one or more affiliates that are separate from the incumbent LEC entity: (A) manufacturing activities; (B) interLATA telecommunications services that originate in-region; and (C) interLATA information services. We discuss each of these activities separately below and seek comment where necessary about which activities are subject to the section 272 separate affiliate requirements. Section 272(a)(2)(B) exempts from the separate affiliate requirement for interLATA telecommunications services certain incidental interLATA services (as described in sections 271(g)(1), (2), (3), (5), and (6)), out-of-region services (as described in section 271(b)(2)), and previously authorized activities (as described in section 271(f)). Although they are information services, electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)) are exempted from the section 272 separate affiliate requirements, and are subject to their own specific statutory separate affiliate and/or nondiscrimination requirements.

36. We tentatively conclude that the separate affiliate and nondiscrimination safeguards adopted in this proceeding pursuant to section 272 will apply to a BOC's provision of both domestic and international interLATA telecommunications services that originate in a BOC's in-region states. The 1996 Act defines ''interLATA services'' as ''telecommunications between a point located in a local access and transport area and a point located outside such area.'' Because this definition does not distinguish between domestic and international calls, we tentatively conclude that Congress intended to apply the same safeguards to BOC provision of domestic and international interLATA services that originate in-region. Similarly, in the provisions concerning interLATA information services, Congress has not distinguished between domestic and international provision of these services. The 1996 Act does not specify a definition for ''interLATA information services.'' Consequently, we tentatively conclude that the safeguards adopted in this proceeding will apply to BOC provision of both domestic and international interLATA information services. We seek comment on these tentative conclusions.

37. As a threshold matter, we note that section 272(a)(1) requires a BOC to provide services subject to the section 272 separate affiliate requirements through ''one or more affiliates.'' Based on this statutory language, we tentatively conclude that a BOC may, if it chooses, conduct all, or some combination, of its manufacturing activities, interLATA telecommunications services, and interLATA information services in a single separate affiliate, as long as all the requirements imposed pursuant to the statute and our regulations are otherwise met. We seek comment on this tentative conclusion. If a BOC places its local exchange operations in a separate affiliate, pursuant to section 272(a)(1), the local exchange affiliate must be separate from the BOC affiliate or affiliates engaged in covered competitive activities.

38. Section 272(h) provides that ''[w]ith respect to any activity in which a Bell operating company is engaged on the date of enactment of the Telecommunications Act of 1996, such company shall have one year from such date of enactment to comply with the requirements of this section.'' Section 271(f) states ''[n]either [section 271(a)] nor section 273 shall prohibit a [BOC] from engaging, at any time after the date of enactment of the [1996 Act], in any activity to the extent authorized by, and subject to the terms and conditions contained in'' an order of the MFJ Court. As further discussed below, section

272(h) appears to cover activities included in the definition of ''previously authorized activities'' described in section 271(f). We therefore seek comment on whether, subject to the exceptions discussed below, section 272(h) applies to the activities listed in section 272(a)(2)(A)-(C) that the BOCs were providing on the date the 1996 Act was passed. Parties contending that section 271(f) bars the Commission from applying section 272(h) to such activities should explain their interpretation of the requirements of section 272(h).

A. Manufacturing

39. Section 273(a) allows a BOC to manufacture and provide telecommunications equipment, and to manufacture CPE, if the Commission has authorized that BOC or any BOC affiliate to provide in-region interLATA services under section 271(d). BOCs may only engage in manufacturing activities through a separate affiliate that meets the requirements of section 272. Section 273 sets out certain additional safeguards and nondiscrimination requirements applicable to BOC entry into manufacturing activities, including separate affiliate requirements applicable to entities that certify either telecommunications equipment or CPE manufactured by unaffiliated entities. As noted above, in this NPRM we address the non-accounting separate affiliate and nondiscrimination requirements of sections 271 and 272; we will address the additional safeguards established in section 273 in a separate proceeding.

B. InterLATA Telecommunications Services

40. Section 271 addresses the entry of the BOCs into the provision of three categories of interLATA telecommunications services: services that originate in-region, services that originate out-of-region, and incidental interLATA services. Section 272, in turn, requires a BOC to establish a separate affiliate for:

(B) Origination of interLATA telecommunications services, other than-

(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g);

(ii) out-of-region services described in section 271(b)(2); or (iii) previously authorized activities described in section 271(f). *Id*. § 272(a)(2)(B).

The 1996 Act defines ''telecommunications'' as ''the transmission, between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.'' ''Telecommunications service'' is defined as ''the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of facilities used.''

41. Section 271(g) provides:

For purposes of this section, the term ''incidental interLATA services'' means the interLATA provision by a Bell operating company or its affiliate—

(1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

(B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;

(C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or

(D) of alarm monitoring services;

(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);

(3) of commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

(4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;

(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

42. Under the 1996 Act, BOC provision of ''incidental interLATA services'' is treated differently than BOC provision of other in-region interLATA telecommunications services in two respects. First, section 271(b)(3) specifies that a BOC, or any BOC affiliate, may provide incidental interLATA services originating in any state immediately after the date of enactment of the 1996 Act, while section 271(b)(1) conditions BOC provision of other in-region interLATA services upon prior approval by the Commission. Second, section 272(a)(2)(B)(i) exempts from the section 272 separate affiliate requirement all of the incidental interLATA telecommunications services listed in subsection 271(g), except a BOC's provision of a service ''that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.'' Section 271(h) requires that the Commission ensure that the provision of incidental services by a BOC or its affiliate ''will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market,'' and states that the provisions of section 271(g) ''are intended to be narrowly construed.'' We seek comment on what, if any, non-accounting structural or nonstructural safeguards the Commission should establish to implement the requirements of section 271(h). We seek comment regarding the interplay between section 271(h) and section 254(k), which prohibits telecommunications carriers from ''us[ing] services that are not competitive to subsidize services that are subject to competition.'' Parties proposing that the Commission adopt specific safeguards to implement section 271(h) should explain how these safeguards would be consistent with section 272(a)(2)(B)(i), which exempts incidental interLATA services from the section 272 separate affiliate requirements.

43. Section 272(a)(2)(B)(iii) exempts from ''origination of interLATA telecommunications services'' for which a separate affiliate is required ''previously authorized activities described in section 271(f).'' We seek comment on whether, in light of section 272(h), Congress intended section 272(a)(2)(B)(iii) to grant a permanent exemption for previously authorized activities from the separate affiliate requirements of section 272.

44. We note that section 272(a)(2)(B)(iii) refers to ''previously authorized activities'' as defined in section 271(f), which includes manufacturing activities and interLATA information services. We also note that section 272(a)(2)(A) and (C) expressly require the BOCs to engage in manufacturing activities and the provision of interLATA information services in accordance with section 272. Therefore, we seek comment on whether sections 272(a)(2)(A) and (C), in combination with section 272(h), require that BOCs come into compliance with section 272, within one year of the date of passage of the 1996 Act, with respect to any manufacturing activities or interLATA information services in which they were engaged on the date of passage. We seek comment, in particular, on whether Congress

intended to treat previously authorized manufacturing and interLATA information services differently from previously authorized interLATA telecommunications services.

45. Subject to the exceptions discussed in the preceding paragraphs, section 272 safeguards apply to interLATA telecommunications services which originate within a BOC's region. Section 271(i)(1) defines an in-region state as ''a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before the date of enactment of the Telecommunications Act of 1996.'' Section 153(4)(B) indicates that the definition of a BOC includes ''any successor or assign of any such company that provides wireline telephone exchange service.'' We note that two pairs of BOCs have proposed to merge their operations (through both mergers and acquisitions). If these or other mergers among the BOCs are completed, we believe, pursuant to section 153(4)(B), that the in-region states of the merged entity shall include all of the in-region states of each of the BOCs involved in the merger. We seek comment on this interpretation. We are concerned, however, that our existing and proposed safeguards may not be sufficient to address potential concerns about the practices of proposed merger partners during the pendency of the merger. Specifically, a BOC could potentially discriminate, during this period, in favor of the interLATA affiliate of the BOC's future merger partner that is offering service in the BOC's in-region area. Therefore, we seek comment on what effect, if any, the entry into a merger agreement by two or more of the BOCs has upon the application of the section 271 and 272 non-accounting separate affiliate and nondiscrimination requirements to the BOCs that are parties to the agreement, and what, if any, additional safeguards are required to ensure that these BOCs do not provide the affiliates of their merger partners with an unfair competitive advantage during the pendency of their merger agreement. We note also the possibility that the BOCs may enter into joint ventures for the provision of interLATA services. We seek comment regarding what effect, if any, joint venture arrangements involving two or more of the BOCs have upon the application of the section 271 and 272 requirements to those BOCs.

C. InterLATA Information Services

46. The MFJ originally barred the BOCs from providing information services. This restriction was subsequently narrowed, and then eliminated entirely in 1991. As a consequence, the BOCs were providing information services at the time the 1996 Act became law. We note that, although the 1996 Act distinguishes between in-region interLATA telecommunications services and out-of-region interLATA telecommunications services, no such distinction is made with respect to interLATA information services. The 1996 Act defines ''interLATA service'' as referring to telecommunications service. Thus, where the 1996 Act draws distinctions between in-region and out-of-region ''interLATA services,'' as it does in section 271(b), these distinctions do not apply to information services. Specifically, section 272(a)(2)(B) excepts out-of-region interLATA telecommunications services described in section 271(b)(2) from the section 272 separate affiliate requirements. By contrast, section 272(a)(2)(C) states that a separate affiliate is required to provide ''[i]nterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).'' Based on the statutory language, we tentatively conclude that the BOCs must provide interLATA information services through a separate affiliate, regardless of whether these services are provided in-region or out-of-region. We seek comment on this tentative conclusion.

1. Definition of ''Information Services''

47. The 1996 Act defines ''information service'' as ''the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.'' We seek comment on what services are included in the statutory definition of information services. In this regard, we note that in the *Computer III* proceeding, the Commission established rules for BOC provision of ''enhanced services,'' pursuant to which the BOCs were permitted to provide certain enhanced services prior to the passage of the 1996 Act.

48. The Commission's existing regulatory framework distinguishes between ''basic'' services and ''enhanced'' services. Basic services are common carrier transmission services, and are subject to Title II regulation. Enhanced services, which combine common carrier services with non-common carrier services, are not subject to Title II regulation. Under the Commission's rules, the term ''enhanced services'' refers to ''services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.''

49. We seek comment on whether all activities that the Commission classifies as ''enhanced services'' fall within the statutory definition of ''information service.'' Prior to passage of the 1996 Act, neither the Commission nor the MFJ court resolved the question of whether enhanced services were equivalent to information services under the MFJ. We note that the Joint Explanatory Statement states that the definition of ''information services'' used in the 1996 Act was based on the definition used in the MFJ. If parties contend that ''information services'' differ from ''enhanced services'' in any regard, they should identify the distinctions that should be drawn between the two categories, describe any overlap between the two categories, and delineate the particular services that would come within one category and not the other.

2. InterLATA Nature of Information Services

50. Section 272(a)(2)(C) requires that a BOC provide interLATA information services only through a separate affiliate. In contrast, the 1996 Act does not establish any separate affiliate requirement for the provision of intraLATA information services. Under the Commission's existing regulatory scheme, enhanced services have not been regulated under Title II. Thus, the Commission previously has not made a regulatory distinction between intraLATA and interLATA information services, as the 1996 Act now does.

51. In order to determine which activities are subject to the separate affiliate requirement, we invite parties to comment on how we should distinguish between an interLATA information service and an intraLATA information service. In general, BOC provision of information services

involves both basic underlying transmission components, which transmit end-user information without change in the form or content of the information, and enhanced or information service functionality, which generates, acquires, stores, transforms, processes, retrieves, utilizes or makes available end-user information. We seek comment regarding whether an information service (such as voicemail) should be considered an interLATA service only when the service actually involves an interLATA telecommunications transmission component. In the alternative, should we classify as an interLATA information service any information service that potentially involves an interLATA telecommunications transmission component (e.g., the service can be accessed across LATA boundaries)? We ask parties to comment with specificity upon the types of services that should be classified as interLATA or intraLATA information services.

52. We further request comment regarding whether and how the manner in which a BOC structures its provision of an information service affects whether the service is classified as interLATA, and thus subject to the separate affiliate and nondiscrimination requirements of the Communications Act. For example, if the non-transmission computer facilities that a BOC uses to provide an information service are located in a different LATA from the end-user, should that service be classified as an interLATA information service? Alternatively, must an interLATA information service incorporate non-transmission components or functionalities that are located in different LATAs?

53. We seek comment on the relevance of what BOCs have done in the past in determining now what activities may only be offered through a separate affiliate. We note that, prior to the 1996 Act, some BOCs received MFJ waivers in order to employ transmission services that crossed LATA boundaries for the provision of certain enhanced services. We seek comment regarding whether the fact that a BOC in the past applied for or received an MFJ waiver for the provision of a particular enhanced service presumptively renders that service an interLATA information service subject to the separate affiliate requirements of section 272.

54. All of the BOCs currently are providing enhanced services in some or all of their in-region states, pursuant to comparably efficient interconnection (CEI) plans approved by the Commission's Common Carrier Bureau. Because the MFJ barred BOC provision of interLATA services, we seek comment regarding whether, when a BOC has not applied for or received an MFJ waiver to provide a particular enhanced service, but instead is providing that enhanced service pursuant to a CEI plan approved prior to the enactment of the 1996 Act, we should presume that enhanced service to be an intraLATA information service that is not subject to the separate affiliate requirements of section 272. To the extent that existing services offered pursuant to approved CEI plans are not subject to section 272, we seek comment regarding whether passage of the 1996 Act directly or indirectly affects how we should treat such services.

3. Impact of the 1996 Act on Existing Commission Requirements for Information Services

55. Because the 1996 Act does not establish regulatory requirements for BOC provision of intraLATA information services, we conclude that, with respect to these services, our existing *Computer II, Computer III,* and *ONA* requirements remain in place to the extent that they are consistent with the 1996 Act. The Commission developed those requirements to address the same concerns that Congress sought to address through the establishment of separate affiliate and nondiscrimination requirements in sections 271 and 272. We note that the combination of our *Computer II, Computer III,* and *ONA* proceedings established various unbundling and interconnection requirements for BOC provision of enhanced services. Under *Computer II,* the BOCs and other facilities-based carriers must unbundle their basic services from their enhanced services. Under *Computer III* and *ONA,* the BOCs must further unbundle the manner in which they provide basic services and make these unbundled basic services available to competing ESPs. Under our rules, these interconnection and unbundling requirements associated with the provision of enhanced services continue to apply to the BOCs regardless of whether they provide enhanced services on an integrated or a separated basis.

56. We conclude that we should continue to enforce those existing *Computer II, Computer III,* and *ONA* requirements that are consistent with the 1996 Act, and we ask commenters to specify whether, and to what extent, the existing requirements are inconsistent with the 1996 Act. If parties contend that the statute supersedes our *Computer II, Computer III,* and *ONA* unbundling and interconnection requirements for BOC provision of intraLATA information services, they should identify the specific provisions of section 271 and 272 that they believe supersede our requirements, as well as the specific unbundling and interconnection requirements they believe these provisions impose upon the BOCs.

57. We recognize that some of the anticompetitive concerns we sought to address through the establishment of the *Computer II, Computer III,* and *ONA* requirements may now be addressed by new statutory provisions or by the anticipated competition that implementation of the statute should foster. We consequently seek comment on which, if any, of our *Computer II, Computer III,* and *ONA* rules may have been rendered unnecessary by the 1996 Act. Parties should also address the possible impact of the statutory requirements on our pending *Computer III Further Remand Proceedings.*

D. Overlap Between InterLATA Information Services and Services Subject to Other Statutory Requirements

58. Under the 1996 Act, electronic publishing is specifically included within the category of information services. InterLATA provision of electronic publishing, however, is specifically exempted from the separate affiliate requirements of section 272. Instead, section 274 establishes specific separate affiliate and nondiscrimination requirements which apply to the provision of electronic publishing services by the BOCs.

59. The 1996 Act defines ''electronic publishing'' to mean:

> the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

The 1996 Act lists specific services that do not fall within the definition of electronic publishing. These excepted services include, among other things: common carrier provision of telecommunications service, information access service, information gateway service, voice storage and retrieval, electronic mail, certain data and transaction processing services, electronic billing or advertising of a BOC's regulated telecommunications services, language translation or data format conversion, ''white pages''

directory assistance, caller identification services, repair and provisioning databases, credit card and billing validation for telephone company operations, 911–E and other emergency assistance databases, video programming and full motion video entertainment on demand.

60. We will examine the meaning of the phrase ''electronic publishing'' in greater depth in a separate proceeding on the section 274 separate affiliate and nondiscrimination requirements. For the purposes of this proceeding, we seek comment in order to distinguish information services that are subject to the section 272 requirements from electronic publishing services that are subject to the section 274 requirements. We anticipate that this issue will arise with respect to services that are neither clearly encompassed by the statutory definition of ''electronic publishing'' nor specifically listed in the delineated exceptions to that definition. We seek comment on whether, where such classification questions arise, we should classify as ''electronic publishing'' services those services for which the carrier controls, or has a financial interest in, the content of information transmitted by the service. We note that under the MFJ, ''electronic publishing'' was defined as ''the provision of any information which a provider or publisher has, or has caused to be originated, authored, compiled, collected, or edited, or in which he has a direct or indirect financial or proprietary interest, and which is disseminated to an unaffiliated person through some electronic means.'' *United States* v. *Western Elec. Co.*, 552 F. Supp. 131, 178, 181 (D.D.C. 1982).

61. The 1996 Act defines ''telemessaging'' as ''voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.'' We tentatively conclude that telemessaging is an information service. Unlike electronic publishing and alarm monitoring services, which are information services that are specifically exempted from the section 272(a) separate affiliate requirements, BOC provision of telemessaging services is not specifically exempted from these requirements. Therefore, we tentatively conclude that BOC provision of telemessaging on an interLATA basis is subject to the section 272(a) separate affiliate requirements, in addition to the section 260 safeguards, which apply to all incumbent LECs, including the BOCs. We seek comment on this tentative conclusion.

IV. Structural Separation Requirements of Section 272

62. Section 272(b) of the Communications Act establishes five structural and transactional requirements for the separate affiliate (or affiliates) established pursuant to section 272(a). Specifically, the 1996 Act requires that the separate affiliate:

(1) shall operate independently from the [BOC];

(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate;

(3) shall have separate officers, directors, and employees from the [BOC] of which it is an affiliate;

(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC]; and

(5) shall conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

We discuss each of these requirements below.

63. We note that section 272(a)(1) requires a BOC to provide services subject to the section 272 separate affiliate requirements through ''one or more affiliates.'' As we tentatively concluded above, a BOC may, if it chooses, conduct all, or some combination, of its manufacturing activities, interLATA telecommunications services, and interLATA information services in a single separate affiliate. A BOC's potential incentive and ability to favor its affiliate and to improperly allocate costs may vary, however, depending on the activity involved. For this reason, the structural and transactional requirements of section 272(b) may need to be implemented differently with respect to the three activities enumerated in the statute. We seek comment on whether the 1996 Act permits us to, and if so, whether we should, interpret or apply any of the section 272(b) requirements differently with respect to BOC provision of services regulated under Title II (namely, provision of interLATA telecommunications services) as opposed to nonregulated activities (namely, manufacturing and interLATA information services). In addition, we seek comment on how such different regulatory requirements could be imposed on the three activities if all three are provided through one affiliate.

A. Section 272(b)(1)

64. Section 272(b)(1) states that the separate affiliate ''shall operate independently from the [BOC].'' The 1996 Act does not elaborate on the meaning of the phrase ''operate independently.'' Under principles of statutory construction, a statute should be interpreted so as to give effect to each of its provisions. Accordingly, we tentatively conclude that we should interpret the ''operate independently'' requirement in section 272(b)(1) as imposing requirements beyond those listed in subsections 272(b)(2)–(5). We seek comment on this tentative conclusion. We also seek comment on what requirements the Commission should adopt to implement the statutory requirement that affiliates operate independently.

65. In the *Computer II* proceeding, the Commission required AT&T to provide CPE and enhanced services through separate subsidiaries. The Commission extended the *Computer II* requirements to the BOCs after divestiture. *Computer II* mandated ''maximum separation,'' based on a determination that structural separation was an effective means of ensuring that the BOCs treated unaffiliated ESPs and CPE vendors identically to their own affiliated enhanced service and CPE operations. Under *Computer II*, the BOC's enhanced services subsidiary could not construct, own, or operate its own transmission facilities, and was required to obtain basic transmission capacity from the regulated carrier pursuant to tariff. In addition, the Commission prohibited the regulated entity and unregulated subsidiaries from using in common any leased or owned physical space or property on which was located transmission equipment or facilities used to provide basic transmission services. In *Computer II*, the Commission also required the BOC to provide unregulated services through computer facilities that were separate from those used to provide regulated services. In addition, the Commission prohibited the regulated entity and the unregulated subsidiaries from developing software for each other. In *Computer II*, the Commission also prohibited a subsidiary that provided both CPE and enhanced services from marketing any other equipment to affiliated entities—e.g., transmission or other network equipment. We noted, however, that BOC manufacturing affiliates could continue to sell directly to affiliated carriers.

66. In the *Competitive Carrier* proceeding, the Commission also established certain separation

requirements that independent LECs need to meet in order to be regulated as non-dominant in the provision of interstate interexchange services. These requirements are less stringent than the *Computer II* separate subsidiary requirements. In *Competitive Carrier*, the Commission required, in order for independent LECs to be non-dominant, that they provide interstate interexchange services through an affiliate and that the affiliate: 1) maintain separate books of account; 2) not jointly own transmission or switching facilities with the exchange telephone company; and 3) obtain any exchange telephone company services at tariffed rates and conditions. We seek comment on whether the ''operate independently'' requirement in section 272(b)(1) should be interpreted as imposing one or more of the separation requirements established in *Computer II* or *Competitive Carrier*.

67. We note that section 274(b) states that ''[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC],'' and then prescribes specific activities that the electronic publishing affiliate can and cannot perform. We seek comment on the relevance of the ''operated independently'' requirement in section 274(b) when construing what Congress intended in section 272(b)(1). For example, among other restrictions, section 274(b) prohibits a BOC from ''perform[ing] hiring or training of personnel on behalf of a separated affiliate,'' as well as ''perform[ing] research and development on behalf of a separated affiliate.''

B. Section 272(b)(2)

68. Section 272(b)(2) states that the affiliate shall maintain separate books, records, and accounts in the manner prescribed by the Commission. As noted above, we will address the implementation issues associated with this section in a separate rulemaking.

C. Section 272(b)(3)

69. Section 272(b)(3) states that the affiliate ''shall have separate officers, directors, and employees from the [BOC] of which it is an affiliate.'' In *Computer II*, the Commission required the separate subsidiary to have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offered./ Under *Computer II*, however, the Commission permitted certain administrative services to be shared on a cost reimbursable basis. Specifically, the Commission permitted the sharing of the following administrative services: accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services. We tentatively conclude that section 272(b)(3) prohibits the sharing of in-house functions such as operating, installation, and maintenance personnel, including the sharing of administrative services that are permitted under *Computer II* if those services are performed in-house. We seek comment on whether section 272(b)(3) prohibits the BOC and an affiliate from sharing the same *outside* services, such as insurance or pension services. We also seek comment on what other types of personnel sharing may be prohibited by section 272(b)(3).

D. Section 272(b)(4)

70. Section 272(b)(4) states that the affiliate ''may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the [BOC].'' This restriction appears to be designed to protect subscribers to a BOC's exchange and exchange access services from bearing the cost of default by BOC affiliates. We tentatively conclude that a BOC may not co-sign a contract, or any other instrument with a separate affiliate that would allow the affiliate to obtain credit in a manner that violates section 272(b)(4). We seek comment on this tentative conclusion and on what other types of activities are prohibited by this provision. Parties are invited to comment on whether we should establish specific requirements regarding the types of activities that are contemplated by arrangements that are consistent with the requirements of section 272(b)(4). To the extent that there are a range of options, we seek comment on the relative costs and benefits of each.

E. Section 272(b)(5)

71. Section 272(b)(5) states that the affiliate ''shall conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.'' As previously noted, we will address the implementation issues associated with this accounting requirement in a separate rulemaking. We seek comment, however, in this NPRM about whether implementation of the ''arm's length'' requirement specified in section 272(b)(5) necessitates any non-accounting safeguards.

V. Nondiscrimination Safeguards

A. Nondiscrimination Provisions of Section 272

72. After a BOC affiliate enters competitive markets, that BOC will become subject to the economic incentives of the marketplace and therefore may have an incentive to favor its competitive affiliate or to take actions that could weaken the affiliate's rivals. As previously noted, a BOC's control of essential local exchange facilities provides a BOC with the opportunity to take these actions. In brief, a BOC could provide inferior service to, charge higher prices to, withhold cooperation from, or fail to share information with its rivals in competitive markets. If a BOC were to provide inferior service to a rival, the quality of the rival's interLATA telecommunications service or information service would be degraded, making the rival less attractive to customers and lowering the prices the rival could charge. If a BOC were to charge higher prices to the rival, the rival would have to charge higher prices to customers and consequently lose market share or accept lower profits. In another example, a BOC could possibly withhold cooperation from an interexchange carrier that needs the BOC's assistance to introduce an innovative new service, until the BOC's affiliate is ready to initiate the same innovative service. A BOC could also share information with its manufacturing affiliate or set standards that enable its manufacturing affiliate to produce equipment at a lower cost or with superior compatibility with the BOC's network as compared to that of competing manufacturers. A BOC's behavior in one area could affect a rival in its provision of multiple services. For example, a BOC's provision of degraded local service could affect the rival's provision of telecommunications and information services.

73. Sections 272(c)(1) and (e) set forth nondiscrimination safeguards that apply to BOC provision of manufacturing, interLATA telecommunications services, and interLATA information services. Section 272(c)(1) sets forth broad nondiscrimination safeguards that govern a BOC's dealings with its section 271(a) affiliate and is subject to the sunset provisions set forth in section 272(f). Section 272(e), on the other hand, establishes more specific duties that must be fulfilled by the BOC and its affiliates that are subject to section 251(c), and is specifically excepted from the sunset provisions that apply to the other requirements in section 272. We seek comment on whether, before

sunset, the non-accounting requirements of section 272(e) are subsumed completely within the requirements of section 272(c)(1). In addition, we invite parties to comment on any additional interplay between sections 272(c)(1) and 272(e) that are not specifically addressed below.

74. A number of terms and requirements in section 272(c)(1) overlap with the terms and requirements of section 272(e)(1)–(4). In addition, some of these terms appear in other sections of the 1996 Act, in particular, section 251. We seek comment on the interplay between the definitions of the terms ''services,'' ''facilities,'' and ''information'' in various subsections of 272, and between section 272 and section 251(c). We seek comment on what regulations, if any, are necessary to clarify the types or categories of services, facilities, or information that must be made available under section 272(c)(1) and (e) in light of section 251(c). In particular, we seek comment on whether Congress meant something different by the terms ''services'' and ''facilities'' as used in section 271(c)(1) and (e). Additionally, variations on some of these terms appear in the four subsections of section 272(e), and we seek comment on the significance of these differences. We seek comment on whether further defining these terms, and the term ''goods,'' would enable competing providers to detect violations of this section by enabling them to compare more accurately a BOC's treatment of its affiliates with a BOC's treatment of unaffiliated competing providers. We note that, for example, a requesting entity may have equipment with different technical specifications from a BOC affiliate's equipment. Therefore, we further seek comment on whether the terms of sections 272(c)(1) and (e) could be construed to require a BOC to provide a requesting entity with a quality of service or functional outcome identical to that provided to its affiliate even if this would require the BOC to provide goods, facilities, services, or information to the requesting entity that are different from those provided to the BOC affiliate.

75. The 1996 Act allows certain entities to interconnect with the local exchange carrier's network and to ''acquire access to network elements on an unbundled basis'' under just, reasonable, and nondiscriminatory terms and conditions.'' In *Computer III,* the Commission imposed unbundling and interconnection requirements which allowed ESPs to acquire unbundled basic services from the BOCs, AT&T, and GTE in order to provide enhanced services. Sections 272(c)(1) and 272(e) require that varying categories of entities receive nondiscriminatory treatment from the BOCs. The unbundling required by our *Computer III* and *ONA* rules, and the provisions of sections 251, 272(c)(1), and 272(e) are all available to different categories of entities. We seek comment on the impact of the variations between these categories of entities when implementing sections 272(c)(1) and (e), and the applicability of these sections to ESPs that are currently able to obtain unbundled network services under *Computer III* and *ONA*.

B. Applicability of Pre-Existing Nondiscrimination Requirements

76. Although the 1996 Act imposes specific nondiscrimination requirements on BOCs and their section 272(a) affiliates, we note that certain statutory provisions that predate the 1996 Act also impose nondiscrimination requirements on all common carriers. Under section 201, all common carriers have a duty ''to establish physical connections with other carriers,'' and to furnish telecommunications services ''upon reasonable request therefor.'' Section 201 also requires that ''[a]ll charges, practices, classifications, and regulations . . . shall be just and reasonable.'' In addition, section 202 makes it unlawful for any common carrier ''to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services,'' or ''to make or give any unreasonable preference or advantage to any particular person, class of persons, or locality.'' Pursuant to these statutory provisions, the Commission established requirements for interconnection between local exchange carriers and interexchange telecommunications service providers, and for interconnection between BOCs and ESPs. We seek comment on the relationship between the nondiscrimination obligations imposed by sections 272(c)(1) and 272(e) and the Commission's pre-existing nondiscrimination provisions. In particular, we seek to determine what non-accounting nondiscrimination rules, if any, are necessary to implement the section 272(c)(1) and 272(e) nondiscrimination requirements.

77. The nondiscrimination provisions of sections 272(c)(1) do not apply to the conduct of BOC affiliates, and the nondiscrimination provisions of section 272(e) do not apply to BOC affiliates that are not subject to section 251(c). By its terms, section 272(c) applies to the conduct of a BOC alone. Section 272(e) applies to the conduct of a BOC or a BOC affiliate that is subject to section 251(c) (i.e. an affiliate that is an incumbent LEC). For this reason, a BOC might have the incentive and ability to transfer network capabilities of its local exchange company to the operations of its competitive affiliates to avoid the nondiscriminatory provision of these capabilities as required by sections 272(c)(1) and (e). Section 272(a), however, requires any BOC affiliate that is a local exchange carrier subject to section 251(c) to be separate from the section 272(a) affiliates required for the provision of competitive activities. We tentatively conclude, therefore, that any transfer by a BOC of existing network capabilities of its local exchange entity to its affiliates is prohibited by section 272(a), and we seek comment on this tentative conclusion. In addition, section 153(4)(B) states that the definition of a BOC includes ''any successor or assign of any such company that provides wireline telephone exchange service.'' Thus, we seek comment regarding whether, in the alternative, a transfer by a BOC of network capabilities to a competitive affiliate would qualify that affiliate as a successor or assign of the BOC under section 153(4)(B), thus subjecting the competitive affiliate to the nondiscrimination requirements of sections 272(c)(1) and 272(e).

78. If parties do not believe that section 272(a) and section 153(4)(B) prevent such transfers of local exchange network capabilities, we seek comment on whether additional regulations are necessary to prevent discriminatory practices in the provision of these capabilities by BOC affiliates. Because a BOC affiliate's provision of interLATA telecommunications services is subject to sections 201 and 202 of the Communications Act, we seek comment as to whether those nondiscrimination obligations would provide sufficient protection against discriminatory practices by a BOC interLATA telecommunications affiliate, or whether we should impose additional non-accounting safeguards to prevent a BOC from discriminatorily providing these network capabilities through its interLATA telecommunications affiliate. In contrast, information services affiliates and manufacturing affiliates, because they are not ''common carriers'' under the Communications Act, are not subject to sections 201 and 202. Therefore, we seek comment as to whether other provisions of the Communications Act permit us to, and if so whether we should, place any additional nondiscrimination requirements on affiliates that engage in

these activities. We also seek comment on whether nondiscrimination provisions that are established in other sections of the Communications Act, for example the restrictions on manufacturing affiliates in section 273 or those on electronic publishing affiliates in section 274, affect our treatment of other services under sections 272(c)(1) and 272(e), particularly when one affiliate engages in multiple activities.

C. Section 272(c)(1)

79. Section 272(c)(1) provides that, in its dealings with its affiliate, a BOC ''may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'' As noted above, section 202 of the Communications Act makes it unlawful for any common carrier ''to make any *unjust or unreasonable* discrimination in charges, practices, classifications, regulations, facilities, or services.'' We seek comment, therefore, on whether Congress intended to impose a stricter standard for compliance with section 272(c)(1) by enacting this flat prohibition on discrimination.

80. We tentatively conclude that the prohibition against discrimination in section 272(c)(1) means, at minimum, that BOCs must treat all other entities in the same manner as they treat their affiliates, and must provide and procure goods, services, facilities and information to and from these other entities under the same terms, conditions, and rates. We seek comment on this tentative conclusion, as well as on what regulations, if any, are necessary to implement this provision. Comments should be specific in terms of needed regulations, the problem they would address, and how they would address the identified problem. We also seek comment on whether a BOC can treat unaffiliated entities differently with respect to the activities at issue in section 272(c)(1), as long as such disparate treatment is justified upon an appropriate showing of differences between the unaffiliated entities (e.g., such as differences in the unaffiliated entities' network architecture). We also seek comment on whether the nondiscrimination safeguards should vary based on whether the affiliate is providing interLATA telecommunications services, interLATA information services, or manufacturing. In particular, we seek comment on whether, in addition to any tariffing or structural separation requirements proposed in this NPRM, any specific non-accounting safeguards are needed to enforce the nondiscriminatory pricing requirement of section 272(c)(1).

81. Section 272(c)(1) states, *inter alia*, that a BOC may not discriminate in the provision of goods, services, facilities, and information. As BOCs enter competitive markets, they may have additional incentives and opportunities to discriminate in favor of their affiliates in violation of section 272. As indicated above, a BOC could provide unaffiliated telecommunications carriers or information service providers with inferior connections, or could disclose information to its affiliates before disclosing this information to unaffiliated carriers, providers, or manufacturers.

82. The Commission has previously adopted a regulatory scheme to ensure that the BOCs do not discriminate in the provision of basic services used to provide enhanced services or in disclosing changes in the network that are relevant for the competitive manufacture of CPE. We believe that the existing *Computer III* regulatory scheme contains non-accounting safeguards that provide protection against the type of BOC behavior that section 272(c)(1) seeks to curtail. The *Computer III* requirements provide for nondiscriminatory access to unbundled network services as well as nondiscriminatory access to the same quality of service, installation, and maintenance. In addition, BOCs are required to provide information to third parties regarding information on changes to the network and new network services. BOCs are also required to report on the quality and timeliness of installation and maintenance. We seek comment on whether any of the nondiscrimination safeguards that the Commission applied to the BOCs in the *Computer III* and *ONA* proceedings, which were adopted in lieu of the structural separation requirements of *Computer II*, are sufficient to implement section 272(c)(1).

83. We further seek comment on the scope of the term ''goods, services, facilities and information'' for which the 1996 Act prohibits discrimination. We note that our *Computer III* requirements do not specifically address ''goods,'' and therefore seek comment on what regulations, if any, would be necessary to define that term. We also seek comment on whether the separate customer proprietary network information (CPNI) provisions of the 1996 Act affect the requirement to provide information on a nondiscriminatory basis in this section.

84. Section 272(c)(1) requires, *inter alia*, that the BOCs not discriminate with regard to their procurement of goods, services, facilities, and information. We note that this provision prohibits, for example, a BOC from purchasing manufactured network equipment solely from its affiliate, purchasing the equipment from the affiliate at inflated prices, or giving any preference to the affiliate's equipment in the procurement process and thereby excluding rivals from the market in the BOC's service area and undermining competition. We seek comment on how the BOCs could establish nondiscriminatory procurement procedures designed to ensure that other entities are treated on the same terms and conditions as a BOC affiliate in the procurement of goods, services, facilities, and information. We also seek comment on the nature and extent of rules necessary to ensure that such procedures are implemented.

85. Section 272(c)(1) also prohibits a BOC from discriminating in the establishment of standards. We seek comment on what ''standards'' are encompassed by this provision. We also seek comment on what procedures, if any, we should implement to ensure that the BOC does not discriminate between its affiliate and other entities in setting standards. For instance, should BOCs be required to participate in standard-setting bodies in the development of standards covered by this section? We note that, for example, a BOC could act anticompetitively by creating standards that require or favor equipment designs which are proprietary to its affiliate. A BOC's knowledge of both its affiliate's and its competitors' networks might also allow a BOC to adopt or modify equipment standards that its affiliates would be able to comply with more easily, or at less cost, than could unaffiliated carriers. We seek comment on what regulations, if any, are necessary to implement this nondiscrimination safeguard.

86. We note that the difference in language between section 272(c) and sections 272(a) and (e) might appear to allow a BOC affiliate that provides local exchange services to avoid compliance with section 272(c). Although sections 272(a) and 272(e) apply to a BOC and an affiliate subject to 251(c), section 272(c) refers only to the ''dealings'' by a ''*Bell operating company*'' with its section 272(a) affiliates. Section 153(4), however, states that a ''Bell operating company'' includes ''any successor or assign [of a BOC] * * * that provides wireline telephone exchange service.'' Reading these sections together, we

tentatively conclude that Congress did not intend for a BOC to be able to move its incumbent local exchange operations to an affiliate in order to avoid complying with section 272(c). Thus, we tentatively conclude that, if a BOC affiliate is engaged in local exchange activities and is therefore subject to section 251(c), then the local exchange affiliate would be subject to 272(c) requirements when dealing with BOC affiliates engaged in competitive activities.

D. Section 272(e)

87. Section 272(e) of the Communications Act places several additional obligations on BOCs and BOC affiliates that are subject to the requirements of section 251(c). Sections 272(f)(1) and 272(f)(2) provide that the requirements of section 272(e) do not sunset. Some of the provisions in section 272(e), however, could be interpreted as subject to sunset because their requirements are contingent on the existence of a separate affiliate. Section 272(e)(2) states that the BOC ''shall not provide any facilities, services, or information concerning its provision of exchange access to the *affiliate described in subsection (a)* unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions.'' Similarly, section 272(e)(4) states that the BOC ''may provide any interLATA or intraLATA facilities or services to its *interLATA affiliate* if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' If the BOCs did not maintain section 272(a) separate affiliates after that requirement expired, it is unclear whether the nondiscrimination requirements of sections 272(e) (2) and (4) would be maintained. We seek comment on whether Congress intended to sunset the requirements in sections 272(e) (2) and (4) if the BOCs eliminated their section 272(a) separate affiliates. Commenters claiming that the requirements of those sections survive the elimination of the section 272(a) separate affiliates should explain in detail how these requirements should be applied in those circumstances.

1. Section 272(e)(1)

88. Pursuant to section 272(e)(1), ''[a BOC] and an affiliate that is subject to the requirements of section 251(c) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.''

89. In the 1996 Act, ''affiliate'' is defined as:

> a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

We tentatively conclude we should interpret ''an unaffiliated entity'' to include any entity, regardless of line of business, that is not affiliated with a BOC under the foregoing statutory definition. We seek comment on this tentative conclusion.

90. We seek comment on the scope of the term ''requests'' under this subsection. We seek comment on whether these requests should include, *inter alia*, initial installation requests, as well as any subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of these services.

91. We tentatively conclude that section 272(e)(1) requires BOCs to treat unaffiliated entities nondiscriminatorily in the provision of exchange services or exchange access in terms of timing, but does not create any additional rights beyond those granted to unaffiliated entities through the 1996 Act, pre-existing provisions of the Communications Act, or other Commission rules. We seek comment on this tentative conclusion.

92. We additionally seek comment on how to implement the phrase ''a period no longer than the period in which it provides such * * * service to itself or to its affiliates'' and whether rules are needed to enforce this requirement. We note that, in offering new and advanced services, slow provision of telephone exchange service or access service may delay the offering of services by unaffiliated entities and thus reduce their ability to compete. We seek comment on what mechanisms, if any, we should establish in order to ensure that a BOC fulfills service requests in compliance with this section. We further seek comment on whether reporting requirements for service intervals analogous to those imposed by *Computer III* and *ONA* would be sufficient to implement this provision.

2. Section 272(e)(2)

93. Section 272(e)(2) states that a BOC and an affiliate that is subject to the requirements of section 251(c) ''shall not provide any facilities, services, or information concerning its provision of exchange access to [a section 272(a) affiliate] unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions.'' We seek comment on what regulations, if any, we should adopt to implement this statutory requirement.

94. We seek comment on the scope of the term ''facilities, services or information concerning [the] provision of exchange access.'' We also seek comment on how to interpret the phrase ''other providers of interLATA services in that market.'' We further seek comment on the relevance of previous Commission proceedings or provisions of the MFJ governing BOC provision of facilities, services or information when implementing this section.

3. Section 272(e)(3)

95. Section 272(e)(3) provides that a BOC and an affiliate that is subject to the requirements of section 251(c) ''shall charge [a section 272(a) affiliate], or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carrier for such services.'' We tentatively conclude that the BOCs' provision of telephone exchange and exchange access services under tariffed rates, including their affiliates' purchase at these rates pursuant to tariff or imputation of these rates to the BOCs, is sufficient to implement this provision. We also seek comment on the appropriate mechanism to enforce this provision in the absence of tariffed rates for the specified services. We seek comment on what additional regulations, if any, are necessary to implement this statutory provision.

4. Section 272(e)(4)

96. Section 272(e)(4) states that a BOC and an affiliate that is subject to the requirements of section 251(c) ''may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' We seek comment regarding the scope of the term ''interLATA or intraLATA facilities or services.'' For example, does it include information services and all facilities used in the delivery of such services? We seek comment on what additional regulations, if any, are necessary to implement this statutory provision.

VI. Marketing Provisions of Sections 271 and 272

97. Section 272(g)(1) provides that ''[a] Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.'' We seek comment on what regulations, if any, are necessary to implement this provision.

98. Section 271(e) restricts joint marketing by certain large telecommunications carriers:

> Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

Section 272(g)(2) states that ''[a BOC] may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).'' Sections 271(e) and 272(g)(2) appear to be parallel provisions that are intended to prevent BOCs and the largest interexchange carriers from marketing local and long distance services jointly prior to the BOCs' entry into in-region interLATA service, if the interexchange carrier is purchasing incumbent LEC services pursuant to section 251(c)(4) for resale. We note that, on its face, this provision does not preclude a covered interexchange carrier from jointly marketing local exchange services provided through interconnection of the interexchange carrier's facilities with an incumbent LEC pursuant to section 251(c)(2), or through purchase of unbundled network elements pursuant to section 251(c)(3). We tentatively conclude that the term ''market or sell'' in section 272(g)(2) should be construed similarly to the term ''jointly market'' in section 271(e). We seek comment on this tentative conclusion. We also seek comment on whether these sections encompass such prohibitions as, for example, advertising the availability of interLATA services combined with local exchange services, making these services available from a single source, or providing bundling discounts for the purchase of both services.

99. Section 272(g)(2) allows the BOC to market and sell the interLATA services of its affiliate after the BOC enters the interLATA market pursuant to section 271(d). Section 272(g)(3) provides that ''[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).'' Section 272(b)(3) requires the BOC and its affiliate to maintain separate officers, directors, and employees, and section 272(b)(5) requires a section 272(a) affiliate to conduct ''all transactions with the [BOC] * * * on an arm's length basis with any such transactions reduced to writing and available for public inspection.'' We invite parties to comment on the corporate and financial arrangements that are necessary to comply with sections 272(g)(2), 272(b)(3), and 272(b)(5). We seek comment on whether the affiliate must purchase marketing services from the BOC on an arm's length basis pursuant to section 272(b)(5). We further seek comment on whether, instead of allowing BOC personnel to market its affiliate's services at arm's length, it is necessary to require a BOC and its affiliate to jointly contract to an outside marketing entity for joint marketing of interLATA and local exchange service in order to comply with the provisions of section 272(b)(3).

100. We seek comment on additional issues raised by the marketing provisions of the 1996 Act. We seek comment on the interplay between the joint marketing provisions in sections 271 and 272 and the CPNI provisions set forth in section 222 that are the subject of a separate proceeding. We also seek comment on whether the joint marketing provision in section 274(c) has any indirect bearing on how we should apply the joint marketing provisions in sections 271 and 272.

VII. Enforcement of Sections 271 and 272

A. Mechanisms to Facilitate Enforcement of the Separate Affiliate and Nondiscrimination Safeguards of Sections 271 and 272

101. Enforcement of the statutory separate affiliate and nondiscrimination safeguards established by sections 271 and 272 and the rules that we may adopt to implement those provisions will be critical to ensuring the full development of competition in the local and interexchange telecommunications markets. We seek comment generally on the mechanisms necessary to facilitate the detection and adjudication of violations of these safeguards and, specifically, on how the Commission should exercise its enforcement powers under section 271(d)(6).

102. We seek comment on what requirements or mechanisms are necessary to facilitate detection and adjudication of violations of the separate affiliate and nondiscrimination requirements discussed above. For instance, should we impose reporting requirements on BOCs analogous to those requirements imposed by our CEI plans and ONA plans under *Computer III*? We recognize, however, that this will impose burdens on the BOCs as well as the Commission. Alternatively, would a third party compliance monitoring or reporting system be a more effective method of detecting violations of these provisions?

103. We seek comment on what mechanisms, other than reporting requirements imposed on BOCs or their affiliates, would facilitate detection and adjudication of violations of sections 271 and 272, by both the Commission and third parties. In particular, we seek comment on mechanisms that would allow third parties to identify the goods, services, facilities, or information that have been provided to BOC affiliates or other parties. For example, are the disclosure requirements under section 272(b)(5) a sufficient means of detecting violations? We seek comment on whether we should determine that a BOC or its affiliate would be in violation of sections 272(c)(1) and (e) if a BOC provides varying levels of service between its affiliate and third parties as well as between third parties themselves. We also seek comment on whether there are reasonable grounds by which a BOC or its affiliate could justify deviation from a rate, term or condition established under sections 272(c)(1) and (e). In proposing regulations for this section, commenting parties should state specifically what regulations or procedures should be required and how a specific provision of sections 272(c)(1) or (e) make them necessary.

B. Section 271 Enforcement Provisions

104. Section 271(d)(6) of the Communications Act gives the Commission specific authority to enforce the conditions that a BOC is required to meet in order for the Commission to grant the BOC authorization to provide in-region interLATA services. Specifically, section 271(d)(6) states:

> (A) COMMISSION AUTHORITY.—If at any time after the approval of an application under [section 271(d)(3)], the Commission determines that a [BOC] has ceased to meet

any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

(i) issue an order to such company to correct the deficiency;

(ii) impose a penalty on such company pursuant to title V; or

(iii) suspend or revoke such approval.

(B) RECEIPT AND REVIEW OF COMPLAINTS.—The Commission shall establish procedures for the review of complaints concerning failures by [BOCs] to meet conditions required for approval under [section 271(d)(3)]. Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

We seek to clarify the relationship between this section and the Commission's existing enforcement authority under sections 206–209 of the Communications Act. Section 206 provides that, ''any common carrier'' found to be in violation of the Communications Act shall ''be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation.'' Section 207 of the Communications Act permits any person ''damaged'' by the actions of any common carrier to bring suit for the recovery of these damages. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the Communications Act or its provisions. Section 209 specifies that the Commission will ''make an order directing the carrier to pay to the complainant'' any damages amount a complainant successfully establishes. We tentatively conclude that, in the context of ''complaints concerning failures by [BOCs] to meet the conditions required for approval under [section 271(d)(3)],'' section 271(d)(6) generally augments the Commission's existing enforcement authority. For example, we believe that, in a situation where a complainant successfully establishes conduct (such as a failure to provide nondiscriminatory access to operator call completion services) that would constitute both a failure by the BOC to meet the conditions of its approval, as well as the basis for financial harm, the Commission could impose any of the sanctions specified in section 271(d)(6)(A), and could also award damages pursuant to its preexisting authority under section 209. We seek comment on this tentative conclusion. We also seek comment on whether, in a situation where a complaint alleges that a BOC has ceased to meet the conditions for approval to provide in-region interLATA telecommunications services and seeks damages as a result of the underlying alleged violative conduct, a Commission determination that the BOC has ceased to meet the conditions and the imposition of a section 271(d)(6)(A) sanction would fulfill the Commission's duty to ''act on such complaint within 90 days.''

105. In order to approve a BOC's application to provide in-region interLATA services pursuant to section 271(d)(3), the Commission must determine that the BOC: meets the requirements of section 271(c)(1); satisfies the competitive checklist in section (c)(2)(B); complies with the requirements of section 272; and demonstrates that the approval of its application is consistent with the public interest, convenience, and necessity. Section 271(d)(6)(A) sets forth various actions the Commission may take at any time after the approval of an application, and after notice and opportunity for a hearing, if it determines that a BOC has ceased to meet any of these conditions. We believe that there are two ways in which the Commission may determine that a BOC has ceased to meet the conditions of its approval. First, the Commission could make such a determination via the resolution of an expedited complaint proceeding pursuant to section 271(d)(6)(B). Second, the Commission could make such a determination on its own motion. We seek comment on this interpretation.

106. In addition, we seek comment on what legal and evidentiary standards are necessary to establish that a BOC has ceased to meet the conditions required for its approval to provide in-region interLATA service. As noted above, in order to establish a violation of section 201, a complainant must show that the defendant's terms of service and charges are ''unjust and unreasonable.'' Similarly, in order to establish a violation of section 202(a), a complainant must demonstrate ''unjust and unreasonable discrimination.'' Sections 271(c)(1), (c)(2)(B), and 272, in contrast, set forth no such standards that we must apply to complaints arising under these sections. We seek comment, therefore, on the types of showings that should be required of a complainant and a defendant BOC in order to ensure a full and fair resolution, within the 90-day statutory window, of a complaint alleging that a BOC has ceased to meet the conditions required for approval to provide in-region interLATA services.

107. In the context of a complaint proceeding, we seek comment on what constitutes a *prima facie* showing that a BOC has ceased to meet any or all of the conditions for interLATA entry. Is it enough for complainants invoking the expedited complaint procedures under section 271(d)(6)(B) to plead, along with proper supporting evidence, ''facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation'' in order to establish a *prima facie* showing that the BOC has ceased to meet the conditions for approval in section 271(d)(3)? Is such a broad, generally applicable, standard more likely to engender frivolous complaints, or is it more likely to facilitate a complainant's ability to bring anti-competitive behavior by a BOC to the attention of the Commission? In the alternative, should the *prima facie* showing required be specific to the particular condition at issue, i.e., the requirements of section 271(c)(1), the conditions set forth in the competitive checklist of section 271(c)(2)(B), and the requirements of section 272? If so, commenters should describe what specific acts or omissions are sufficient to establish a *prima facie* showing that each of these conditions is no longer met.

108. Currently, in a typical complaint proceeding, the complainant generally has the burden of establishing that a common carrier has violated the Communications Act or a Commission rule or order. Ordinarily, this burden of proof does not, at any time in the proceeding, shift to the defendant carrier. In the case of section 202(a) complaints, however, once a complainant alleging a violation establishes that the services are like and that discrimination exists between them, the burden shifts to the defendant carrier to show that the discrimination is justified and, therefore, not unreasonable within the meaning of section 202(a). In some instances, parties who have initiated formal complaint proceedings with the Commission have expressed concern that defendant carriers, in particular the BOCs, have an inherent advantage in the proceedings because of their control over the information regarding their service offerings and related practices necessary for a full and fair resolution of the disputed issues. These parties have further complained that the discovery mechanism contained in the Commission's formal complaint rules of practice and procedure is cumbersome and seldom produces on a timely basis information of decisional significance. We, therefore, seek to assist parties in their pursuit of complaints before the Commission that BOCs have ceased to meet the conditions for interLATA entry, by ensuring the prompt and fair resolutions these complaints within the statutory 90-day period.

109.With this objective in mind, we believe it appropriate to inquire into whether the pro-competitive goals of the 1996 Act are advanced by shifting the ultimate burden of proof from the complainant to a defendant BOC, not just in complaints alleging discrimination under section 202(a), but in all complaints alleging that a BOC has ceased to meet any of the conditions for its approval to provide interLATA services under section 271(d)(3). Because the defendant BOC is likely to be in sole possession of information relevant to the complainant's case, and because the complaint must be acted upon in 90 days, we believe that shifting the burden may be an efficient way of resolving complaints invoking the expedited procedures of section 271(d)(6). We also find that by alleviating the burden on the complainant, burden-shifting may be a means of facilitating the detection of alleged anti-competitive behavior by the BOCs. We, therefore, seek comment on whether the burden should shift to the defendant BOC once the complainant makes a *prima facie* showing that a BOC has ceased to meet the conditions of section 271(d)(3), as it does when a complainant makes a *prima facie* showing of discrimination under section 202(a). If the burden should not shift upon a *prima facie* showing, we seek comment on what particular facts or circumstances established by the complainant, if any, would warrant shifting the burden of proof to a defendant BOC.

110. If we were to establish a rebuttable presumption, i.e., a shift in the burden of proof to the BOC upon a particular showing by the complainant, we seek comment on the type of evidentiary showing the defendant BOC must make in order to rebut the presumption that it has ceased to meet the conditions for approval. For example, is it enough for the BOC to establish the propriety of its conduct? Further, we invite parties to comment on whether the burden should shift to the defendant for any and all alleged violations of sections 271 or 272. Or, should rebuttable presumptions exist only for some of the requirements of 271 and 272, such as the competitive checklist requirements of section 271 and the nondiscrimination provisions of section 272? If commenters believe that a rebuttable presumption should exist for certain requirements but not others, they should explain with specificity why violations of some requirements warrant a rebuttable presumption and violations of others do not. In addition, we ask parties to comment on whether there are other mechanisms, instead of burden-shifting, that will facilitate the ability of a complainant to obtain a full and fair resolution of its complaint within the 90-day statutory window.

111. The Commission has effectively established a rebuttable presumption under sections 201(b) and 202(a) whereby the rates and practices of non-dominant carriers are presumed to be lawful. A complainant challenging a non-dominant carrier's rates or practices under these sections, therefore, must overcome this presumption of lawfulness in order to bring a successful action. A dominant carrier, on the other hand, is afforded no such presumption of lawfulness. We tentatively conclude that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether the BOC or BOC affiliate is regulated as a dominant or non-dominant carrier. We seek comment on this tentative conclusion.

112. Section 271(d)(6)(A) provides that if, at any time after approval of a BOC application, the Commission determines that the BOC has ceased to meet any of the conditions of its approval to provide interLATA services, the Commission may, after notice and opportunity for a hearing: (1) Issue an order to the BOC to ''correct the deficiency;'' (2) impose a penalty pursuant to Title V; or (3) suspend and revoke the BOC's approval to provide in-region interLATA services. Pursuant to section 503(b)(1)(B), a person who ''willfully or repeatedly'' fails to comply with any of the provisions of the Communications Act or any rule, regulation, or order issued by the Commission under the Communications Act, is liable to the United States for a forfeiture penalty. Section 503(b)(2)(B) authorizes the Commission to assess forfeitures against common carriers of up to one hundred thousand dollars for each violation, or each day of a continuing violation, up to a statutory maximum of one million dollars for a single act or failure to act. In exercising such authority, the Commission is required to take into account ''the nature, circumstances, extent, and gravity of the violation and, with the respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.''

113. We tentatively conclude that we will follow the procedures set forth in Title V to impose Title V penalties, including forfeitures, under this section. As to the non-forfeiture sanctions, we seek comment on whether the Commission should exercise its enforcement discretion and impose these sanctions on an individual case basis or whether we should establish specific legal and evidentiary standards for each type of sanction. Further, we seek comment on the appropriate ''notice and opportunity for a hearing'' for the imposition of these non-forfeiture sanctions both in the context of a complaint proceeding and on the Commission's own motion. We interpret ''opportunity for hearing'' not to require a trial-type hearing before an Administrative Law Judge (ALJ) (an APA hearing), and invite comment on this interpretation. In coming to this view, we note that section 271(d)(6)(A) does not require a ''hearing on the record,'' which would trigger these extensive procedural requirements under the APA. Moreover, although proceedings under sections 204 and 205 of the Communications Act are generally conducted as rulemakings, these sections use similar language with respect to hearing requirements, and proceedings pursuant to sections 204 and 205 generally occur through written responses. In addition, we note that, in allowing for forfeitures, section 271(d)(6)(A) specifically requires the Commission to impose forfeitures pursuant to Title V of the Communications Act. Section 503(b) of the Communications Act, the general forfeiture provision, although leaving the choice to Commission discretion, allows for either an adjudicatory proceeding before an ALJ (an APA hearing) or a paper hearing before the Commission pursuant to notice of apparent liability procedures. We also tentatively conclude that Congress, by imposing a 90-day deadline for complaints, did not intend to afford the BOCs trial-type hearings in enforcement proceedings pursuant to section 271(d). Finally, we also tentatively conclude that the filing of a complaint invoking the expedited procedures of section 271(d)(6)(B) may trigger a hearing under section 271(d)(6)(A) and that the written response by a BOC will generally afford the BOC sufficient hearing rights to allow the Commission to impose non-forfeiture sanctions. We invite comment on these tentative conclusions.

114. We seek comment broadly on whether there are other ways, in addition to the sanctions listed in section 271(d)(6)(A), by which the Commission can create incentives for the BOCs to ensure that they continue to meet the conditions required for approval under section 271(d)(3). For

example, would the adoption of alternative dispute resolution procedures, analogous to those mandated under section 273(d)(5) of the Communications Act, facilitate resolution of complaints alleging a violation of any of these conditions? As we note above, section 271(d)(6)(B) of the Communications Act prescribes expedited procedures for the review of complaints alleging that a BOC has ceased to meet the conditions required for approval to provide in-region interLATA services. Are there other ways to expedite the resolution of such complaints? We seek comment on what else the Commission can do to facilitate the ability of a complainant to obtain a determination that a BOC has ceased to meet the conditions, which can then provide a basis for pursuing a private right of action for the recovery of damages in federal district court under section 207 of the Communications Act.

VIII. Classification of LECS and Their Affiliates as Dominant or Non-Dominant Carriers

115. In this section, we seek comment on whether we should regulate the BOC affiliates as non-dominant carriers in the provision of in-region, interstate, domestic, interLATA services. We also seek comment on whether we should continue to apply to independent LECs (i.e., LECs, other than the BOCs) the existing separation requirements established in the *Competitive Carrier Fifth Report and Order,* which are a prerequisite for independent LECs to qualify as non-dominant carriers in the provision of interstate, domestic, interexchange services originating in their local exchange areas. Finally, we consider whether to apply the same regulatory classification to the BOC affiliates' and independent LECs' provision of in-region, international services as we adopt in this proceeding for their provision of in-region, interstate, domestic, interLATA services and in-region, interstate, domestic, interexchange services, respectively.

A. Background

116. Under our rules, non-dominant carriers are not subject to rate regulation, and may file tariffs that are presumed lawful on one day's notice and without cost support. Non-dominant carriers are also subject to streamlined section 214 requirements. In contrast, dominant carriers are subject to price cap regulation, as specified by Commission order, and must file tariffs on 14, 45, or 120 days' notice, with cost support data for above-cap and out-of-band tariff filings, and with additional information for new service offerings. Dominant domestic carriers must also obtain specific prior Commission approval to construct a new line, to extend a line or to acquire, lease or operate any line, as well as to discontinue, reduce, or impair service.

117.In the *Competitive Carrier First Report and Order* (45 FR 76148 (November 18, 1980)), the Commission classified LECs and pre-divestiture AT&T as dominant, with respect to both local exchange and interstate long distance services, and therefore subject to the ''full panoply'' of then-existing Title II regulation. In contrast, the Commission classified MCI, Sprint, and other ''miscellaneous common carriers'' as non-dominant carriers.

118. Later in the *Competitive Carrier* proceeding, the Commission reconsidered how it should regulate the provision of interstate, interexchange services by independent LECs. In the *Competitive Carrier Fourth Report and Order,* the Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant interexchange carriers. In the *Competitive Carrier Fifth Report and Order,* the Commission clarified that an ''affiliate'' of an independent LEC was ''a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company.'' The Commission further clarified that, in order to qualify for non-dominant treatment, the affiliate providing interstate, interexchange services must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with its affiliated exchange telephone company; and (3) acquire any services from its affiliated exchange telephone company at tariffed rates, terms and conditions. The Commission added that any interstate, interexchange services offered directly by an independent LEC (rather than through a separate affiliate) or through an affiliate that did not satisfy the specified conditions would be subject to dominant carrier regulation. The Commission observed that these separation requirements would provide some ''protection against cost-shifting and anticompetitive conduct'' by an independent LEC that could result from its control of local bottleneck facilities.

119. In the *Competitive Carrier Fifth Report and Order,* the Commission also addressed the possible entry of the BOCs into interstate, interLATA services in the future:

> The BOCs currently are barred by the [MFJ] from providing interLATA services * * *. If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.

120.Because the 1996 Act has superseded the MFJ's prohibition against the BOCs' provision of interLATA services, we determine in this proceeding whether we should regulate the BOCs or their affiliates as dominant in the provision of in-region, interstate, domestic, interLATA services. We also consider in this section whether we should modify our existing rules that require independent LECs to comply with the separation requirements described above in order to qualify for non-dominant regulatory treatment in the provision of interstate, domestic interexchange services that originate in their local exchange areas.

121. Our rules define a dominant carrier as one that possesses market power, and a non-dominant carrier as a carrier not found to be dominant (i.e., one that does not possess market power). As noted, in the *Competitive Carrier Fourth Report and Order,* the Commission defined market power alternatively as ''the ability to raise prices by restricting output'' and ''the ability to raise and maintain price above the competitive level without driving away so many customers as to make the increase unprofitable.'' In determining whether the BOC affiliates or independent LECs should be classified as dominant or non-dominant, it is first necessary to define the appropriate product and geographic markets for assessing the market power of BOC affiliates in the provision of in-region, interstate, domestic, interLATA services and the market power of independent LECs in the provision of interstate, domestic, interexchange services originating in areas where they control local exchange facilities. We also address the relevant product and geographic market definitions for assessing the market power of BOC affiliates and independent LECs in their provision of in-region, international services.

B. Definition of the Relevant Product and Geographic Markets

122. In the *Interexchange NPRM,* we sought comment on whether we should retain the relevant product and geographic market definitions adopted in the *Competitive Carrier* proceeding with respect to the provision of domestic interexchange services. Based on the analysis set forth in the *1992 Merger Guidelines,* we tentatively concluded that, under certain circumstances, we should use narrower market definitions than those adopted

in the *Competitive Carrier* proceeding. In this NPRM, we seek comment on how we should apply in this proceeding the market definition approaches that we proposed in the *Interexchange NPRM*, assuming they are adopted. We also seek comment on how, if we do not adopt the approach proposed in the *Interexchange NPRM*, we should define the relevant product and geographic markets for purposes of this proceeding.

1. Relevant Product Markets

123. In the *Competitive Carrier* proceeding, the Commission defined the relevant product market, for purposes of assessing the market power of domestic interexchange carriers covered by that proceeding, as ''all interstate, domestic, interexchange telecommunications services'' and concluded that there were no relevant submarkets. In the *Interexchange NPRM*, we questioned whether a narrower product market definition might provide a ''more refined analytical tool'' for evaluating whether a carrier or group of carriers together possess market power.

124. Under the *1992 Merger Guidelines*, ''[m]arket definition focuses solely on demand substitution factors—i.e., possible consumer responses.'' *1992 Merger Guidelines* at 20,571. However, ''[s]upply substitution factors—i.e., possible production responses—are considered . . . in the identification of firms that participate in the relevant market and the analysis of entry.'' *Id*. In the *Interexchange NPRM*, we noted that consideration of substitutability of demand supports the use of a narrower relevant product market than that defined in the *Competitive Carrier* proceeding. Based on this analysis, we stated that ''we believe that we should define as a relevant product market an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other, but for which there are no other close substitutes.''

125. We acknowledged, however, that it might be impracticable to delineate all relevant product markets for interstate, domestic, interexchange services. We also stated our belief that we need not do so, in light of our previous finding that substantial competition exists with respect to most interstate, domestic, interexchange service offerings. We tentatively concluded that we should address the question of whether a specific interstate, domestic, interexchange service (or group of services) constitutes a separate relevant product market ''only if there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to that service (or group of services).'' We sought comment on this tentative conclusion in the *Interexchange NPRM*.

126. Applying the approach proposed in the *Interexchange NPRM*, we note that, at this time, we are not aware of any evidence suggesting that there is a particular interLATA service or group of services that is or will be provided by the BOC affiliates or the independent LECs with respect to which ''there is or could be a lack of competitive performance.'' We therefore tentatively conclude that, if we adopt the approach to product market definition outlined above (and proposed in the *Interexchange NPRM*), we should treat all interstate, domestic, interLATA telecommunications services as the relevant product market for purposes of determining whether the BOC affiliates have market power in the provision of interstate, domestic, interLATA services; for independent LECs, we likewise tentatively conclude that we should treat all interstate, domestic, interexchange telecommunications services as the relevant product market. We seek comment on this tentative conclusion. We also seek comment on whether credible evidence exists that suggests that there is a particular interexchange service or group of services that is or will be provided by the BOC affiliates or the independent LECs with respect to which ''there is or could be a lack of competitive performance.'' Parties recommending that particular services be grouped in narrower relevant product markets should substantiate this contention with relevant evidence. Specifically, in order to make such a showing, in this proceeding or in the future, a party must present pricing or performance data or an analysis of structural factors that, in either case, show that the service or group of services is not competitive.

127. We also seek comment on alternative approaches to product market definition (including the product market definition established in the *Competitive Carrier* proceeding) that we should adopt in this proceeding if we decide not to adopt the approach proposed in the *Interexchange NPRM*. Parties should also discuss how these alternative approaches to product market definition should be applied in this proceeding.

128. In the *International Competitive Carrier Order* (50 FR 48191 (November 22, 1985)), the Commission determined that, for international service, demand and supply elasticity revealed distinct product markets, international message telephone service (IMTS) and non-IMTS. The Commission concluded that (a) AT&T was dominant in the provision of IMTS, and (b) all other IMTS providers (*e.g.*, Sprint and MCI), except the non-contiguous domestic carriers, were not dominant. No carrier, the Commission found, was dominant in the provision of non-IMTS service. The Commission subsequently found AT&T to be non-dominant in the provision of IMTS. We tentatively conclude that we should retain the same product definition for the provision of international services by the BOCs' affiliates and the independent LECs. We seek comment on this tentative conclusion.

2. Relevant Geographic Markets

129. In the *Competitive Carrier* proceeding, the Commission concluded that there was ''a single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) for interstate, domestic, interexchange telecommunications services, with no relevant submarkets.'' In the *Interexchange NPRM*, we observed that ''more sharply focused market definitions will aid us in evaluating whether the BOCs possess market power with respect to the provision of interLATA services in areas where they provide local access service.''

130. As previously noted, the *1992 Merger Guidelines* focus on demand substitution factors for purposes of market definition. In considering these factors in the *Interexchange NPRM*, we noted that, at its most fundamental level, interexchange calling involves a customer making a connection from a specific location to another specific location. We also expressed the view that most telephone customers do not view interexchange calls originating in different locations to be substitutes for each other. Accordingly, we tentatively concluded that ''the relevant geographic market for interstate, interexchange services should be defined as all calls from one particular location to another particular location.'' We sought comment on this tentative conclusion in the *Interexchange NPRM*.

131. We recognized, however, that it would be impracticable to conduct a market power analysis in each geographic market implied by this point-to-point market definition. We also stated our belief that, in the majority of cases, economic factors and the realities of the marketplace should cause point-to-point markets to behave in a sufficiently similar manner to allow us to evaluate broader, more manageable groups of markets for purposes of market power analysis. We tentatively concluded that we should generally continue to treat interstate,

interexchange services as a single national market when examining whether a carrier or group of carriers acting together has market power. We expressed the belief, however, that there may be special circumstances that require us to examine an area smaller than the entire nation, for purposes of market power analysis. We therefore proposed ''to examine a particular point-to-point market (or group of markets) for the presence of market power if there is credible evidence suggesting that there is or could be a lack of competition in that market (or group of markets) and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power (if it exists) in that market (or group of markets).''

132. In applying that approach, we believe that there are special circumstances that make it appropriate for us to examine an area smaller than the entire nation for purposes of assessing the market power of a BOC affiliate or independent LEC. As discussed above, it is possible that a BOC, through cost misallocation or discrimination, may be able to use its market power in local exchange and exchange access services to disadvantage the BOC affiliate's interexchange competitors. Such cost misallocation or discrimination conceivably could enable the BOC affiliate eventually to obtain the ability to raise unilaterally its price for in-region, interstate, domestic, interLATA services above competitive levels by restricting its output. With respect to each originating in-region location, the determination of whether a BOC affiliate or independent LEC possesses market power in that market will turn on the same issue—whether the BOC or independent LEC can leverage the market power arising from its control of access facilities sufficiently to give the BOC affiliate or independent LEC affiliate, respectively, market power in that point-to-point market in the provision of interstate, domestic, interLATA services or interstate, domestic, interexchange services, respectively. We believe that, given the BOCs' and independent LECs' current retention of monopoly control over bottleneck facilities, a BOC or independent LEC can exercise market power in either all or none of these point-to-point markets originating in the areas where the BOC or independent LEC controls local exchange facilities. We also recognize that geographic rate averaging of interstate long distance services alone may not be sufficient to offset the anticompetitive effects of a BOC's or independent LEC's use of the market power resulting from its control over local access facilities.

133. We tentatively conclude, therefore, that, at this stage, the BOCs' current monopoly control of bottleneck facilities constitutes ''credible evidence suggesting that there is or could be a lack of competition'' with respect to interstate, domestic, interLATA services originating in a BOC's in-region area. Consequently, we tentatively conclude that we should evaluate a BOC's point-to-point markets in which calls originate in-region separately from its point-to-point markets in which calls originate out-of-region, for the purpose of determining whether a BOC interLATA affiliate possesses market power in the provision of in-region, interstate, domestic, interLATA services. Similarly, we tentatively conclude that we should evaluate an independent LEC's point-to-point markets in which calls originate in its local exchange areas separately from its markets in which calls originate outside those areas, for the purpose of determining whether an independent LEC possesses market power in the provision of in-region, interstate, domestic, interexchange services.

134. We seek comment on this proposed approach. We invite parties to discuss why they believe we should examine smaller or larger areas for purposes of determining whether a BOC affiliate or independent LEC possesses market power in the provision of interstate, domestic, interLATA services or interstate, domestic, interexchange services, respectively.

135. We seek comment on alternative approaches to geographic market definition that we should adopt in this proceeding (including the geographic market definition established in the *Competitive Carrier* proceeding) if we decide not to adopt the approach proposed in the *Interexchange NPRM*. Parties should also discuss how these alternative approaches to geographic market definition should be applied in this proceeding.

136. In the *International Competitive Carrier Order*, the Commission determined that, for international service, every destination country constituted a separate geographic market based ''primarily on the need for a carrier to obtain an operating agreement prior to providing service to a given country.'' With the possible exception of routes where a BOC affiliate or independent LEC is affiliated with one or more foreign carriers, we believe that there are no critical distinctions on the basis of a BOC affiliate's or independent LEC's market shares, their respective sizes and resources, demand and supply elasticities, or conditions of entry from one destination country to another which would require a route-by-route analysis of these carriers' market positions. Further, the Commission recently determined that there is no evidence to ''suggest[ ] that entry barriers vary substantially among geographic markets.'' Thus, we tentatively conclude that, for purposes of this proceeding, we can analyze the market power of the BOC affiliates and independent LECs on a worldwide basis, and need not generally make route-by-route findings, with the exception of routes in which the carriers are affiliated with foreign carriers in the destination market. We seek comment on this tentative conclusion. We also invite parties to discuss why they believe we should examine smaller areas for purposes of determining whether a BOC affiliate or independent LEC possesses market power in the provision of in-region, international services.

C. Classification of BOC Affiliates

137. In this section, we consider whether we should relax the dominant carrier regulation that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by BOC affiliates. In order to do so, our rules require us to determine that the BOC affiliates will not possess market power in the provision of those services in the relevant product and geographic markets. We also consider whether to apply the same regulatory classification to the BOC affiliates' provision of in-region, international services as we impose on their provision of in-region, interstate, domestic, interLATA services.

138. As a preliminary matter, we note that there are two ways in which a carrier can profitably raise and sustain prices above competitive levels and thereby exercise market power. For convenience, we refer in the following discussion to a carrier's ability to engage in such a strategy as the ability to ''raise prices.'' First, a carrier may be able to raise prices by restricting its own output (which usually requires a large market share); second, a carrier may be able to raise prices by increasing its rivals' costs or by restricting its rivals' output through the carrier's control of an essential input, such as access to bottleneck facilities, that its rivals need to offer their services.

139. Courts, applying the Sherman Act, have long distinguished between the ability of a firm to restrict output and raise its price above the competitive

level and the ability of a firm to leverage its market power in one market to gain a competitive advantage in a second market. *See, e.g., United States* v. *Griffith*, 334 U.S. 100, 107–08 (1948) (holding that monopoly power had been illegally used ''to beget monopoly''); *Berkey Photo, Inc.*v. *Eastman Kodak Co.*, 603 F.2d 263, 275–76 (2d Cir. 1979), *cert. denied*, 444 U.S. 1093 (1980); *Viacom Intern'l Inc.* v. *Time Inc.*, 785 F. Supp. 371 (S.D.N.Y. 1992). Although a number of courts have disagreed with *Berkey's* conclusion that ''the use of monopoly power attained in one market to gain a competitive advantage in another is a violation of section 2 [of the Sherman Act], *even if there has not been an attempt to monopolize the second market*,'' *Berkey*, 603 F.2d at 276 (emphasis added), these courts have not questioned the distinction described above. *See, e.g., Alaska Airlines, Inc.* v. *United Airlines, Inc.*, 948 F.2d 536, 547 (9th Cir. 1991); *Fineman* v. *Armstrong World Indus., Inc.*, 980 F.2d 171, 206 (3d Cir. 1992). Economists likewise have recognized such a distinction by distinguishing between ''Stiglerian'' market power, which is the ability of a firm profitably to raise and sustain its price significantly above the competitive level by restricting its output, and ''Bainian'' market power, which is the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output. T.G. Krattenmaker, R.H. Lande, and S.C. Salop, *Monopoly Power and Market Power in Antitrust Law*, 76 Geo. L.J. 241, 249–253 (1987). We note that raising rivals' costs does not necessarily result in an increase in prices. If a BOC raises the costs of its affiliate's rivals so that the rivals raise their prices, the affiliate could choose not to raise its prices, in order to increase its market share. The exercise of this type of market power could also delay the introduction of new technologies or degrade the quality of service that a BOC affiliate's interLATA competitors would otherwise provide.

140. We seek comment on whether the BOC affiliates should be classified as dominant carriers in the provision of in-region, interstate, domestic, interLATA services under our rules only if we find that they have the ability to raise prices of those services by restricting their own output, or whether the affiliates should be classified as dominant if the BOCs have the ability to raise prices by raising the costs of their affiliates' interLATA rivals. We believe that our regulations associated with the classification of a carrier as dominant generally are designed to prevent a BOC affiliate from raising price by restricting its output rather than to prevent a BOC from raising price by raising its rivals' costs. For example, price cap regulation of a BOC affiliate's retail rates for in-region, interLATA services should prevent the affiliate from achieving higher retail interLATA prices, but generally would not prevent the BOC from raising its affiliate's rivals' costs through discrimination or other anticompetitive conduct. Although price cap regulation could limit a BOC affiliate's ability to raise its interLATA rates if the BOC caused the affiliate's rivals to raise their prices by increasing their costs, price regulation would not prevent the affiliate from profiting from the BOC's raising of rivals' costs through increased market share. Such behavior would be profitable if the BOC were thereby able to retard a rival's innovation or cause its affiliate's rivals to lose market share to the affiliate. We note that this form of anticompetitive conduct might well involve increasing the affiliate's own output. We also note that the definitions of market power cited by the Commission in the *Competitive Carrier Fourth Report and Order* referred to the concept of a carrier raising price by restricting its own output.

141. In determining whether a firm possesses market power, the Commission previously has focused on certain well-established market features, including market share, supply and demand substitutability, the cost structure, size, or resources of the firm, and control of bottleneck facilities. All but the last of these features, bottleneck control, appear to focus exclusively on whether the carrier has the ability to raise price by restricting its own output. With respect to the first index, market share, we believe that the fact that each BOC affiliate initially will have zero market share in the provision of in-region, interstate, domestic, interLATA services suggests that the affiliate initially will not be able profitably to raise and sustain its price by restricting its output. Because, however, the affiliate's zero market share results from its exclusion from the market until now, it says little about whether the affiliate would quickly achieve the ability to raise price by restricting output. Although our analysis below focuses on the possibility that a BOC affiliate would gain such ability through anticompetitive activity by the BOC, we recognize and seek comment on the possibility that an affiliate could gain such ability through means other than anticompetitive conduct. For example, the strength of a BOC's brand identity in its region alone might enable its affiliate to gain substantial market share quickly, thereby giving it the ability to raise price by restricting its output. As to supply substitutability, since all interLATA customers currently are served by the affiliates' competitors and could continue to be served by them after BOC affiliates enter the domestic interLATA market, we believe that the availability of this transmission capacity will constrain the BOC affiliates' ability to raise its domestic interLATA prices. Moreover, we recently found that the purchasing decisions of most customers of domestic interexchange services are sensitive to changes in price and would be willing to shift their traffic to an interexchange carrier's rival if the carrier raises its prices. We also believe that the cost structure, size, and resources of the BOC affiliates are not likely to enable them to raise prices for their domestic interLATA services. In the *AT&T Reclassification Order*, the Commission noted that the issue is whether a carrier's ''lower costs, sheer size, superior resources, financial strength, and technical capabilities'' '''are so great to preclude the effective functioning of a competitive market.''' We seek comment on this analysis.

142. As noted above, in assessing whether a BOC affiliate would quickly achieve market power in the provision of in-region, interstate, domestic, interLATA services, we must also consider the significance of the BOCs' current control of bottleneck access facilities. We noted earlier that a BOC's control of access facilities poses two principal problems as the BOC enters markets from which it has previously been prohibited—improper allocation of costs and unlawful discrimination. The BOCs' control of access facilities is a factor in both types of market power discussed above. In analyzing whether a BOC affiliate could raise its prices by restricting its own output, the primary inquiry is whether the safeguards in the 1996 Act and any Commission rules implementing these safeguards, coupled with other provisions of the Communications Act and Commission regulations, will sufficiently constrain a BOC's ability to improperly allocate costs, discriminate unlawfully, or engage in other anticompetitive conduct such that its affiliate would not quickly gain the ability to raise price by restricting its output of in-region, interstate, domestic, interLATA services. In analyzing whether a BOC could cause increases in the prices for in-region, interstate, domestic, interLATA services by raising the costs

of its affiliate's interLATA rivals, the inquiry focuses on whether the statutory and regulatory safeguards will prevent a BOC from engaging in unlawful discrimination or other anticompetitive conduct that would raise its affiliate's rivals' costs.

143. As noted above, improper allocation of costs by a BOC is of concern because such action may allow a BOC to recover costs incurred by its affiliate to provide interstate, domestic, interLATA services from subscribers to the BOC's local exchange and exchange access services, in order to give the affiliate an unfair advantage over its competitors. For purposes of market power analysis, however, we are concerned with improper allocation of costs only to the extent it enables a BOC affiliate to set retail interLATA prices at predatory levels (i.e., below the costs incurred to provide those services), drive out its interLATA competitors, and then raise and sustain retail interLATA prices significantly above competitive levels. A BOC may be more likely to attempt to improperly allocate costs to the extent the BOC and BOC affiliate share common facilities and personnel. As discussed above, section 272 imposes structural safeguards to prevent a BOC from improperly allocating costs among its affiliate's interLATA services and services provided by the BOC. Specifically, the statute requires a BOC affiliate to ''operate independently'' from the BOC, maintain separate books, records, and accounts from the BOC, and have separate officers, directors, and employees. In addition, a BOC affiliate must conduct all transactions with the BOC on an arm's length basis, and all such transactions must be reduced to writing and made available for public inspection. We believe that these safeguards will constrain a BOC's ability to improperly allocate costs and make it easier to detect any improper allocation of costs that may occur.

144. We believe that price cap regulation of the BOC's access services also reduces the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services. As the Commission previously explained, ''[b]ecause price cap regulation severs the direct link between regulated costs and prices, a carrier is not able to recoup misallocated nonregulated costs by raising basic service rates, thus reducing the incentive for the BOCs to allocate nonregulated costs to regulated services.'' We recognize that under our current interim LEC price cap rules, a BOC could select an X-factor option that requires it to share interstate earnings with its customers that exceed specified benchmarks and permit the BOC to make a low-end adjustment if interstate earnings fall below a specified threshold. Consequently, this regime may create some incentive for a BOC to allocate costs from interLATA services to access services in order to reduce the amount of profits the BOC is required to share with its interstate access service customers. Similarly, the possibility of future re-calibration of price cap levels also implies that price cap regulation does not fully sever the link between regulated costs and prices. We note, however, that we have tentatively concluded in the *BOC Accounting Safeguards NPRM* that we should apply our affiliate transaction rules to transactions between the BOCs and their interLATA affiliates, in order to make it more difficult for a BOC to allocate to its regulated local exchange and exchange access services costs that should be assigned to its affiliate's in-region, interLATA activities.

145. In addition, we note that, even if a BOC is able to allocate improperly the costs of its affiliate's interLATA services, it is questionable whether a BOC affiliate could successfully engage in predation. At least three interexchange carriers—AT&T, MCI, and Sprint—have nationwide or near-nationwide network facilities. These are large well-established companies with customers throughout the nation. It may be unlikely, therefore, that a BOC affiliate, whose customers presumably would be concentrated in one geographic region, could drive one or more of these companies from the market. Even if it could do so, there is a question whether the BOC affiliate would later be able to raise prices in order to recoup lost revenues. As Professor Spulber has observed, ''[e]ven in the unlikely event that [a BOC affiliate] could drive one of the three large interexchange carriers into bankruptcy, the fiber-optic transmission capacity of that carrier would remain intact, ready for another firm to buy the capacity at a distress sale and immediately undercut the [affiliate's] noncompetitive prices.'' We recognize that action taken in concert by two or more BOCs could have a more significant impact on interLATA competitors. In paragraph , infra, we seek comment on the effect, if any, that a merger of or joint venture between two or more BOCs should have on our determination of whether to classify one of the BOC's interLATA affiliate as dominant or non-dominant.

146. We seek comment on whether the structural safeguards in section 272, price cap regulation of the BOC's access services, and the accounting safeguards proposed in the *Accounting Safeguards NPRM* are sufficient to prevent the BOCs from improperly allocating costs between monopoly local exchange and exchange access services and their affiliates' competitive interLATA services to such an extent that their interLATA affiliates would quickly gain the ability profitably to raise and sustain prices of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting its output of these services. If so, we seek comment on whether regulation of a BOC's interLATA affiliate as a dominant carrier would prevent the BOC affiliate from engaging in such pricing practices. We seek comment on whether a BOC's ability improperly to allocate the costs between interLATA and exchange access services would enable the BOC to raise the costs of its affiliate's interLATA competitors.

147. In addition to improper allocation of costs, a BOC potentially could use its market power in the provision of local exchange and exchange access services to the advantage of its interLATA affiliate by discriminating against the affiliate's interLATA competitors with respect to the provision of exchange and exchange access services. As previously discussed, there are various ways in which a BOC could attempt to discriminate against unaffiliated interLATA carriers. For example, a BOC could provide its affiliate's interLATA competitors with poorer quality interconnection to the BOC's local network than it provides to its affiliate, or it could unnecessarily delay satisfying its competitors' requests to connect to the BOC's network. As a more specific example, the BOC may fail to cooperate with an interLATA carrier that is introducing an innovative new service until the BOC's interLATA affiliate is ready to initiate the same service. To the extent that interexchange customers believe that the BOC affiliate offers a higher quality of service, the BOC affiliate may be able to raise its interLATA rates. Moreover, even occasional disruptions of a competing carrier's services may cause customers to choose another carrier. We believe that these and other forms of discrimination may be difficult to police, particularly in situations where the level of the BOC's ''cooperation'' with unaffiliated interLATA carriers is difficult to quantify. To the extent customers value ''one-stop shopping,'' degrading a carrier's interexchange service may also undermine the attractiveness of the carrier's interexchange/local exchange package

and thereby strengthen the BOC's dominant position in the provision of local exchange services.

148. As previously noted, sections 272 (c) and (e) set forth both general and specific nondiscrimination safeguards that apply to BOC provision of in-region interLATA telecommunications service and other services. For example, section 272(e)(3) requires that a BOC charge its affiliate ''an amount for access to its telephone exchange service and exchange access that is no less than the amount [that the BOC charges] any unaffiliated interexchange carriers for such services.'' Section 272 also restricts the ability of a BOC to provide ''facilities, services, or information concerning its provision of exchange access to [its affiliate,] unless [it makes] such facilities, services, or information * * * available to other providers of interLATA services in that market on the same terms and conditions.'' Section 272(e)(1) explicitly prohibits a BOC from discriminating against unaffiliated carriers by delaying their requests for exchange service and exchange access. The statute also includes joint marketing restrictions to preclude, for example, a BOC affiliate from bundling long distance service with its affiliated BOC's local service, unless competing interexchange carriers have the same ability to bundle their long distance service with the BOC's local services. As noted, we recognize that the nondiscrimination requirements in section 272 will not eliminate the BOCs' incentive to discriminate against competing interexchange carriers. We seek comment, however, on whether and the extent to which these safeguards would prevent the BOCs from gaining the two types of market power discussed above. Specifically, we seek comment on whether these safeguards would prevent a BOC from raising the costs of its affiliate's interLATA rivals by discriminating against those competitors, and on whether these safeguards would prevent a BOC from discriminating to such an extent that its interLATA affiliate would quickly acquire the ability profitably to raise and sustain the price of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting their output.

149. There is at least one other way, in addition to the improper allocation of costs and discrimination, in which a BOC could use the market power that arises from its control of local bottleneck facilities to give its affiliate a competitive advantage in the provision of in-region, interstate, domestic, interLATA services. Absent appropriate regulation, a BOC could potentially raise the price of access to all interexchange carriers, including its affiliate. Equivalently, a BOC could fail to pass through to interexchange carriers a reduction in the cost of providing access services. Price cap regulation would not be effective in eliminating the effect of a price squeeze initiated under these circumstances. This would cause competing interLATA carriers to raise their retail interLATA rates in order to remain profitable. The BOC affiliate could then capture additional market share by not raising its prices to reflect the increase in access charges. This process is known as a price squeeze. Although the BOC affiliate would report little or no profit, the BOC firm as a whole would receive higher access revenues from unaffiliated interexchange carriers and increased revenues from the affiliate's interLATA services causes by its increased share of interLATA traffic. If the BOC were to raise its access rates high enough, it would be impossible for the interexchange competitors to compete effectively. Thus, the entry of a BOC's affiliate into the provision of in-region, interstate, domestic, interLATA services gives the BOC an incentive to raise its price for access services in order to disadvantage its affiliate's rivals, increase its affiliate's market share, and increase the profits of the BOC overall. One constraint on the BOC's ability to engage in such conduct is the Commission's price cap regulation of the BOCs' access services. We seek comment on whether price cap regulation of the BOCs' access services prevents a BOC from raising its affiliate's rivals' costs by raising the price of access. We also seek comment on whether price cap regulation will sufficiently constrain a BOC from raising the price of access to such an extent that its interLATA affiliate would quickly gain the ability profitably to raise and sustain the price of in-region, interstate, domestic, interLATA services significantly above competitive levels by restricting its output. Parties arguing that price cap regulation is not a sufficient constraint on such anticompetitive behavior should also comment on what, if any, mechanisms could be implemented to address this issue.

150. Based on the preceding discussion of the ramifications of the BOCs' control of local facilities, we seek comment on whether the statutory and regulatory safeguards currently imposed on the BOCs and their affiliates are sufficient for us to relax the dominant carrier regulation that under our current rules would apply to in-region, interstate, domestic, interLATA services provided by the BOC affiliates. Parties should address this issue with respect to both types of market power discussed above—raising price by restricting output and raising price by raising rivals' costs. Parties contending that the safeguards are not sufficient, and therefore that we should classify the BOC affiliates as dominant, should also comment with specificity on whether we should impose price cap regulation on those affiliates.

151. Parties should also address whether regulating BOC affiliates as dominant carriers, including imposing price cap regulation on their in-region, interstate, domestic, interLATA services, would provide any additional protection against a BOC affiliate gaining market power in the provision of these services, beyond that provided by the safeguards established by the 1996 Act, our implementing rules, and our existing regulations. We thus seek comment on whether imposing dominant carrier regulation, including price cap regulation, on a BOC affiliate would limit the incentive and ability of the BOC parent to engage in improper allocation of costs, discrimination, or other anticompetitive conduct. As previously discussed, dominant carrier regulation of the BOC interLATA affiliates may subject the affiliates' interLATA services to price cap regulation, as specified by Commission order, would require the affiliates to file interLATA tariffs with cost support data and on longer notice periods, and would impose more stringent section 214 requirements on the affiliates than those that apply to non-dominant carriers. Although we currently review complaints against dominant carriers under a different standard than complaints against non-dominant carriers (non-dominant carriers rates and practices are presumed lawful, while non-dominant carriers receive no presumption of lawfulness), we have tentatively concluded in this NPRM that, in the context of complaints alleging that a BOC has ceased to meet the conditions required for the provision of in-region interLATA services, we will not employ a presumption of reasonableness in favor of the BOC or BOC affiliate, regardless of whether it is regulated as a dominant or non-dominant carrier. Commenters should discuss which, if any, of the regulations that would be applicable to BOC affiliates as dominant carriers would constrain the ability of the BOCs to engage in improper allocation of costs, discrimination, or other anticompetitive conduct to the extent

that the affiliate would gain market power. Commenters should also address any other costs or benefits of imposing dominant carrier regulation on BOC affiliates. Finally, parties that favor dominant carrier regulation of the BOCs' in-region interLATA affiliates should comment on whether there are additional, administratively workable and less burdensome safeguards that would permit us to regulate the affiliates as non-dominant carriers.

152. The entry of the BOCs into in-region interLATA services does not mark the first occasion when this Commission has considered the safeguards that are needed when a LEC provides a competitive service that uses the LEC's exchange access service. In the *Competitive Carrier* proceeding, the Commission examined the safeguards that would be required when an independent LEC provided interstate, domestic, interexchange services. The Commission initially concluded in the *Competitive Carrier First Report and Order* that it would regulate the independent LECs' interstate long distance services as dominant carrier offerings because of their control over bottleneck local exchange and exchange access facilities. Subsequently, the Commission relaxed its regulation of interstate, domestic, interexchange services provided by an affiliate of an independent LEC, subject to the conditions discussed above, but affirmed its regulation of such services under dominant carrier rules if the independent LEC offered the service directly.

153. The Commission adopted a similar approach to BOC entry into the provision of enhanced services. As noted, the Commission in the *Computer II* rulemaking initially imposed rigorous structural separation requirements on the BOC and its enhanced services affiliate. The Commission later replaced these structural separation safeguards with the non-structural safeguards adopted in *Computer III.* Based on its experience in administering the *Computer II* requirements, the Commission concluded that non-structural safeguards could furnish adequate protections against the risk of the BOCs engaging in anticompetitive improper allocation of costs and discriminatory practices in order to achieve an unfair advantage over competing enhanced services providers. Although the U.S. Court of Appeals for the Ninth Circuit vacated portions of the Commission's *Computer III* decisions in three separate decisions, *see supra* n.88, the most recent decision found that the Commission had justified its elimination of structural separation. *California* v. *FCC,* 39 F.3d 919, 923 (9th Cir. 1994).

154. Our experience with regulating the independent LECs' provision of interstate, domestic, interexchange services and the BOCs' provision of enhanced services suggests that our existing safeguards have worked reasonably well and generally have been effective, in conjunction with our regular audits of the BOCs, in deterring the improper allocation of costs and unlawful discrimination. To be sure, we have found instances where individual BOCs may not have complied with our non-structural safeguards in providing non-regulated services. Our experience to date, however, has not disclosed a systematic pattern of anticompetitive abuses by independent LECs or the BOCs that would indicate that our safeguards are ineffective.

155. We recognize, however, that our experience in regulating the independent LECs' provision of interstate, domestic, interexchange services and the BOCs' provision of enhanced services may not be directly relevant to our analysis of the effectiveness of our existing and proposed safeguards that would apply to the BOCs' provision of in-region, interstate, domestic, interLATA service. The BOCs' local exchange and exchange access bottleneck facilities extend over much larger geographic areas than the independent LECs' facilities. Moreover, because the BOCs are likely to offer local exchange and interLATA services as integrated offerings to end users, they may have a greater incentive and ability to use their control over local bottlenecks to obtain anticompetitive advantages over their interLATA rivals. Indeed, to the extent that both the BOCs and their competitors offer local and long distance services as a unified package, BOC practices that reduce the attractiveness of their competitors' long distance offerings would make the package of services as a whole less attractive. We invite parties to comment on this assessment.

156. As noted, two pairs of BOCs have proposed to merge their operations, which would result in merged BOCs of greater size and with larger in-region areas. We seek comment on what effect, if any, a merger of or joint venture between two or more BOCs should have on our determination whether to classify the interLATA affiliate of one of those BOCs as dominant or non-dominant. Parties should also discuss what effect, if any, such a proposal to merge or to enter into a joint venture should have on this determination.

157. We also seek comment on whether, if we decide not to adopt the domestic market definition approaches discussed in the previous section of this NPRM, we should classify the BOC affiliates as dominant or non-dominant in the provision of in-region, interstate, domestic, interLATA services. Parties are invited to discuss how alternative approaches to market definition should affect how we classify the BOC affiliates in the provision of those services.

158. With respect to in-region, international services, we tentatively conclude that we should apply the same regulatory treatment for the BOC affiliates' provision of in-region, international services as we apply for their provision of in-region, interstate, domestic, interLATA services. The relevant issue in both contexts is whether the BOC affiliate can leverage its market power in local exchange and exchange access services to raise prices (by restricting its own output or by raising the costs of its rivals) in another market (the domestic interLATA or international market). We find no practical distinctions between a BOC's ability and incentive to use its market power in the provision of local exchange and access services to improperly allocate costs, discriminate against, or otherwise disadvantage unaffiliated domestic interexchange competitors as opposed to international service competitors. We thus tentatively conclude that we should apply the same regulatory treatment for BOC affiliates' provision of in-region, international services as we adopt for their provision of in-region, interstate, domestic, interLATA services. We seek comment on this tentative conclusion.

159. This tentative conclusion presumes that a BOC or BOC affiliate does not have an affiliation with a foreign carrier that has the ability to discriminate in favor of the BOC or an affiliate of the BOC through control of bottleneck services or facilities in a foreign destination market. Our proposal to adopt the same regulatory classification for a BOC affiliate's provision of in-region, international services as for its provision of in-region, interstate, domestic, interLATA services does not modify our decision to regulate a U.S. international carrier as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign market. The safeguards that we apply to carriers that we classify as dominant based on a foreign carrier affiliation are contained in Section 63.10(c) of the our rules and are designed to address the incentive and ability of the foreign carrier to

discriminate in favor of its U.S. affiliate in the provision of services or facilities necessary to terminate U.S. international traffic. This framework for addressing issues raised by foreign carrier affiliations will apply to the BOCs' provision of U.S. international services as an additional component of our regulation of the U.S. international services market.

160. Finally, we observe that most of the section 272 safeguards will cease to apply to a BOC three years after the BOC or its affiliate is authorized to provide interLATA services under section 271(d), unless the Commission extends such period by rule or order. To the extent effective local competition develops, the need for many of the section 272 safeguards will wane. We have no way of knowing at this time, however, the rate at which local competition will occur. We also intend to monitor the performance of the BOCs in the interexchange marketplace, including their affiliates' market share in the provision of in-region, interLATA services and in-region, international services. We may therefore consider in a later proceeding, if necessary, the impact that the removal of the section 272 safeguards pursuant to section 272(f)(1) would have on our regulation of BOC provision of in-region, interstate, domestic interLATA services and in-region, international services.

D. Classification of Independent LECs or Their Affiliates

161. In this section we consider whether we should modify our existing rules that require independent LECs (exchange telephone companies other than the BOCs) to comply with certain specified separation requirements in order to qualify for non-dominant regulatory treatment in the provision of in-region, interstate, domestic, interexchange services. We also consider whether to apply the same regulatory classification to the independent LECs' provision of in-region, international services as we adopt in this proceeding for their provision of in-region, interstate, domestic, interexchange services. For purposes of this analysis, we tentatively conclude that, because control of local exchange and exchange access facilities is our primary rationale for imposing a separate affiliate requirement on independent LECs, we should limit application of these requirements to incumbent independent LECs that control local exchange and exchange access facilities. For purposes of determining which independent LECs are ''incumbent,'' we propose to use the definition of ''incumbent local exchange carrier'' as provided in Section 251(h) of the Communications Act. Section 251(h) provides that a LEC is an incumbent LEC, with respect to a particular area, if: (1) the LEC provided telephone exchange service in that area on the date of enactment of the 1996 Act (February 8, 1996), and (2) the LEC was deemed to be a member of NECA on the date of enactment or the LEC became a successor or assign of a NECA member after the date of enactment. By limiting application of the separate affiliate requirements to incumbent independent LECs, we will avoid imposing unnecessary regulation on new entrants in the local exchange market, such as interexchange carriers, cable television companies, and CMRS providers, that will not have control of local exchange and exchange access facilities. We seek comment on this tentative conclusion.

162. Under the current rules as set forth in the *Competitive Carrier Fifth Report and Order,* independent LEC provision of interstate, domestic, interexchange services is subject to non-dominant treatment if such services are offered through an affiliate that meets certain requirements. For purposes of qualifying for regulation as a non-dominant carrier, an ''affiliate'' of an independent LEC is ''a carrier that is owned (in whole or in part) or controlled by, or under common control with, an exchange telephone company.'' Specifically, in order to qualify for non-dominant treatment, the affiliate must: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company services at tariffed rates and conditions. If an independent LEC provides interstate, domestic, interexchange services directly, those services are subject to dominant regulation. The *Fifth Report and Order* separation requirements apply to all independent LECs, regardless of their size. We note that some of our accounting rules relating to the *Competitive Carrier Fifth Report and Order* separation requirements do recognize a distinction between larger and smaller independent LECs. At this time, there are no independent LECs that are regulated as dominant in the provision of interstate, domestic, interexchange services. In other words, every LEC that provides such services has elected to do so through an affiliate satisfying the *Competitive Carrier* requirements, rather than providing those services directly subject to dominant regulation.

163. We believe that it is appropriate at this time to review the regulatory treatment of independent LEC provision of interstate, domestic, interexchange services. Although the 1996 Act does not alter the application of the *Competitive Carrier* separation requirements to independent LECs, it does remove the restriction on BOC provision of interLATA services, and specifies a new regulatory regime to govern BOC provision of these services. In addition, in our recent *Interexchange NPRM,* we addressed whether we should modify or eliminate the separation requirements currently imposed upon independent LECs in order to qualify for non-dominant treatment in the provision of interstate, domestic, interexchange services that originate *outside* the areas in which they control local access facilities. We have concluded, in the *Interim BOC Out-of-Region Order,* that, for now, we would remove dominant carrier regulation for BOC out-of-region, interstate, domestic, interexchange services when offered through an affiliate that meets the *Competitive Carrier* separation requirements. In light of these regulatory changes, and in order to effect a comprehensive review of the appropriate regulatory framework to govern the provision of interstate, domestic, interexchange services by local exchange companies (or their affiliates), we believe it is important to evaluate whether we should continue to classify independent LECs as dominant in the provision of in-region, interstate, domestic, interexchange services, if they provide those services directly. We also believe it is appropriate to evaluate the continuing necessity of applying the *Competitive Carrier* requirements to the provision of those services by independent LECs.

164. In the previous section, we sought comment on whether the BOC's interLATA affiliates should be classified as dominant carriers under our rules only if we find that they have the ability to raise prices of in-region, interstate, domestic, interLATA services by restricting their own output of these services, or, in the alternative, whether the affiliates should be classified as dominant if the BOCs have the ability to raise prices by raising the costs of their affiliates' interLATA rivals. We recognized that a BOC's control of local exchange and exchange access facilities potentially gives a BOC an incentive and ability to disadvantage its affiliate's interexchange competitors through improper allocation of costs, discrimination, or other anticompetitive conduct. We therefore sought comment on whether, despite the statutory and regulatory safeguards currently imposed on the BOCs, a BOC would be able to

disadvantage its affiliate's rivals to such an extent that the affiliate would quickly gain the ability profitably to raise price above competitive levels by restricting its output, and, in the alternative, whether the safeguards would prevent the BOCs from raising their rivals' costs.

165. We believe that we should apply a similar analysis for determining whether we should continue to classify an independent LEC as dominant if it provides in-region, interstate, domestic, interexchange services directly (rather than through an affiliate complying with the *Competitive Carrier* requirements). We therefore seek comment on whether, absent the *Competitive Carrier* requirements, an independent LEC would be able to use its market power in local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-region, interstate, domestic, interexchange services significantly above competitive levels by restricting output. We also seek comment whether, absent the *Competitive Carrier* requirements, an independent LEC would be able to raise its rivals' costs.

166. We believe that, regardless of our determination of whether the independent LECs should be classified as dominant or non-dominant if they provide in-region, interstate, domestic, interexchange services directly, some level of separation may be necessary between an independent LEC's interstate, domestic, interexchange operations and its local exchange operations. This separation may be necessary in order to minimize the potential that an independent LEC could use its control of local bottleneck facilities to improperly shift costs or discriminate against interexchange competitors. Such anticompetitive conduct would be of concern irrespective of whether such an exercise provides a basis for classifying the BOC affiliates as dominant carriers under our current rules. Accordingly, we seek comment on whether we should require independent LECs to provide in-region, interstate, domestic, interexchange services subject to the *Competitive Carrier* separation requirements or a variation of those requirements. We seek comment on whether the existing *Competitive Carrier* requirements are sufficient safeguards to apply to independent LECs to address any potential competitive concerns. Commenters proposing to modify or add to these requirements should address the extent to which there is a possibility of improperly allocating costs or other discriminatory or anticompetitive conduct, and if so, specifically how the proposed modification or addition would mitigate such conduct.

167. We also invite comment on whether there are certain circumstances that warrant different regulatory treatment among the independent LECs. For example, does the size of an independent LEC make a difference in determining what type of separation requirements should apply? We believe that, in principle, the size of a LEC will not affect its incentives to engage in cross subsidization between its monopoly services and its competitive services. It may be the case, however, that for small or rural independent LECs, the benefits to rate-payers of a separate affiliate requirement may be less than the costs imposed by such a requirement. For example, certain of our accounting rules, such as cost allocation manual filings and annual independent audit requirements, apply only to larger LECs (those with annual operating revenues of $100 million or more), in recognition that the costs of compliance with such requirements could be potentially burdensome on smaller independent LECs. We therefore seek comment on whether there is some minimum independent LEC size below which the separation requirements, if any are retained, should not apply.

168. For the reasons expressed earlier, we tentatively conclude that we should apply the same regulatory approach that we adopt for an independent LEC's provision of interstate, domestic, interexchange services originating within its local service area to an independent LEC's provision of international services originating within its local service area. The rules we adopt in this proceeding will be designed to protect against leveraging of market power from one market (the local exchange and exchange access market) to gain market power in other markets (the domestic interexchange and international services markets). We seek comment on this proposed approach.

169. As indicated above, our proposal to adopt the same regulatory approach for an independent LEC's provision of in-region, international services does not modify our decision to regulate a U.S. international carrier as dominant on those U.S. international routes where an affiliated foreign carrier has the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in the foreign market. In addition, our proposal for the regulation of the independent LECs would not modify the regulatory treatment of the noncontiguous domestic carriers to the extent they are regulated as dominant due to a lack of competition in their IMTS markets.

170. Finally, we seek comment on whether any or all of the separate affiliate requirements that we may ultimately decide to apply, or to continue to apply, to independent LECs should be subject to some type of sunset, such as the sunset provision applicable to BOCs under Section 272(f)(1) of the Communications Act.

IX. Conclusion

171. We seek comment on the foregoing issues regarding the implementation of Sections 271 and 272 of the 1996 Act and our proposed regulatory regime to govern the BOC affiliates' provision of in-region interstate, interLATA services pursuant to the terms of the 1996 Act. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggest alternative policies.

X. Procedural Issues

A. Ex Parte Presentations

172. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that they are disclosed as required. *See generally* 47 CFR §§ 1.1200, 1.1202, 1.1204, 1.1206.

B. Regulatory Flexibility Analysis

173. Section 603 of the Regulatory Flexibility Act, as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as ''small-business concern'' under the Small Business Act, which defines ''small-business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation * * *.'' This proceeding pertains to the BOCs and other ILECs which, because they are dominant in their field of operations, are by definition not small entities under the Regulatory Flexibility Act. We therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this NPRM, including this certification and

statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register notice.

C. Initial Paperwork Reduction Act of 1995 Analysis

174. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due August 15, 1996; OMB comments are due September 27, 1996. 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.

D. Comment Filing Procedures

175. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before August 15, 1996, and reply comments on or before August 30, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

176. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than eighty (80) pages and reply comments be no longer than forty (40) pages, including exhibits, appendices, affidavits, or other attachments. Empirical economic studies, technical drawings, and copies of relevant state orders will not be counted against these page limits. These page limits will not be waived and will be strictly enforced. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. *See* 47 CFR § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length, although a summary that does not exceed three pages will not count toward the page limit for comments or reply comments. This summary may be paginated separately from the rest of the pleading (*e.g.*, as ''i, ii''). We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must clearly identify, in their Table of Contents, the specific paragraphs or sections of this NPRM to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the Table of Contents of this NPRM, such comments must be included in a clearly labelled section at the beginning or end of the filing. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. Parties may not file more than a total of ten (10) pages of *ex parte* submissions, excluding cover letters. This 10 page limit does not include: (1) Written *ex parte* filings made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written materials filed in response to direct requests from Commission staff. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

177. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

178. Written comments by the public on the proposed and/or modified information collections are due August 15, 1996, and reply comments must be submitted not later than August 30, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. 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 fain__t@al.eop.gov.

XI. Ordering Clauses

179. Accordingly, *it is ordered* that pursuant to Sections 1, 2, 4, 201–205, 215, 218, 220, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201–205, 215, 218, 220, 271, 272, and 303(r), a Notice of Proposed Rulemaking is hereby adopted.

180. *It is further ordered* that, the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the regulatory flexibility certification, 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.* (1981).

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19135 Filed 7–25–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 21

[CC Docket No 92–297, FCC 96–311]

Establishing Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Fourth Notice of Proposed Rulemaking.

SUMMARY: In this *Fourth Notice of Proposed Rulemaking (FNPRM),* the Commission proposes to designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to LMDS for both hub-to-subscriber and subscriber-to-hub transmissions. In addition, the Commission seeks comment on eligibility of LECs and cable operators to obtain LMDS licenses in the geographic areas they serve. These actions are taken to provide maximum flexibility to a full range of LMDS service providers, and to provide consumers with more choices in service providers, new services, and innovative technologies.

DATES: Comments must be submitted on or before August 12, 1996, and reply comments must be submitted on or before August 22, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Regarding 31 GHz frequency band issues: Bob James, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680; regarding eligibility issues: Walter Strack, Wireless Telecommunications Bureau, (202) 418–0600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fourth Notice of Proposed Rulemaking* in CC Docket 92–297, adopted July 19, 1996, and released July 22, 1996. The complete text of the *Fourth Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1919 M Street, N.W., Room 246, Washington, D.C. 20554.

SYNOPSIS OF FOURTH NOTICE OF PROPOSED RULEMAKING

1. In the first *Notice of Proposed Rulemaking (NPRM),* 58 FR 6400 (January 28, 1993), the Commission considered three petitions for rulemaking proposing a redesignation of the 28 GHz band. That band currently is designated for fixed point-to-point and fixed satellite service use. It found that redesignation of the point-to-point use of the band to point-to-multipoint use could stimulate greater use of a band that largely has lain fallow. However, the Commission asked for comment from satellite entities regarding the effect of redesignation on any proposed fixed satellite use of the band. Non-geostationary orbit (NGSO) and Geostationary orbit (GSO) FSS systems were proposed. In addition, entities planning mobile satellite services requested spectrum for their uplink feeder links.

2. In the *Third Notice of Proposed Rulemaking (Third NPRM),* 60 FR 43740 (August 23, 1995), the Commission proposed a band segmentation plan that it tentatively concluded would permit both LMDS and Fixed Satellite Service (FSS) systems to operate in the 28 GHz frequency band. It also proposed to accommodate feeder links for certain Mobile Satellite Service (MSS) systems in this band. The *Report and Order* which is issued in combination with the instant *FNPRM* makes a final decision on segmentation of the 28 GHz band among fixed satellite, mobile satellite uplinks, and LMDS. That decision will be published in this publication in due course.

3. The *FNRPM* requests comment on two matters. First, it proposes to designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to LMDS for both hub-to-subscriber and subscriber-to-hub transmissions. This action stems from efforts to accommodate a variety of LMDS system designs, services and transmission media in the adjacent 28 GHz band, and is being taken on the Commission's own motion. This proposed designation of spectrum for LMDS would provide consumers access to more choices in service providers, new services, and innovative technologies, while accommodating those LMDS system designs requiring a wide separation between the transmit and receive frequencies when operated in a two-way mode.

4. In order to ensure that there is adequate two-way interactive capacity for the various proposed LMDS systems, the Commission recognizes the need to designate additional spectrum for LMDS. The Commission observed that there is significant consumer demand for alternate providers of local exchange services, internet access, LANs and video teleconferencing, and that the LMDS proponents note that this demand can be more immediately satisfied, in an economically and technically efficient manner, by LMDS than by many of the alternate transmission media, thus making these services more accessible rapidly to a wider segment of the population. Accordingly, the Commission believes that the proposed designation of 300 MHz of spectrum would ensure consumers access to new and competitive services and technologies. Further, through written *ex parte* comments, several LMDS proponents highlighted some technical difficulties with using the 31 GHz band, *e.g.,* need for two antennas to deliver the desired service, effects on performance level, and increased system costs. The Commission requests that parties address its proposal to make the LMDS service a primary protected use in the 31.0–31.3 GHz band, the technical issues LMDS operators might encounter in using this band, and possible measures that may be used in overcoming such technical issues. The Commission also requests comment on how to assign this additional spectrum to LMDS entities. Should it be treated as a separate block and assigned independently of other LMDS spectrum? Or should it be combined with spectrum assigned in the associated *Report and Order* for LMDS operations and assigned as a single block? The Commission proposes to assign the 31 GHz spectrum and the 1000 MHz designated in the attached *Report and Order* as a single block.

5. An additional issue concerns existing licensees operating in the 31 GHz band, some of which are engaged in traffic signal communications, *i.e.,* traffic light monitoring and control. Such existing usage appears to be relatively light and geographically concentrated. Overlaying LMDS operations in those areas where there are such uses raises the potential for interference problems which could degrade the utility of such systems and perhaps adversely affect LMDS operations. However, the Commission's current rules explicitly provide that authorized operations at 31 GHz are not afforded any rights or obligations with respect to interference with other licensed operations. Thus, any operations that an entity believes are critical in nature and should otherwise warrant interference protection should be operated in a frequency band where such necessary protection is provided for in our rules. One band where these types of operations are permitted is the 23 GHz band. However, because systems in the 23 GHz band receive interference protection, new systems are subject to the prior coordination requirements of Section 101.103(d). The Commission asks for comment on what effect these

requirements will have on 31 GHz systems moving to the 23 GHz band. In addition, the Commission notes that mobile operations are permitted in the 31 GHz band but are not permitted in the 23 GHz band. There appear to be no existing mobile operations in the 31 GHz band; nevertheless, the Commission asks for comment on what effect, if any, this will have in moving current fixed operations to the 23 GHz band. Given that incumbents are only authorized to operate on a non-interference basis, should they be entitled to any recovery for reasonable relocation costs? If so, should any of the 28 GHz band applicants be required to contribute to the recovery of such reasonable costs?

6. The Commission's proposal to make LMDS a protected service in this band presupposes that incumbent licensees continue to operate on a unprotected basis, in this instance, ''secondary'' to LMDS. In the event one of the unprotected operations interferes with, or receives interference from, an LMDS system, the unprotected licensees must take steps to remedy the problem, or accept the resulting interference if it is operating the affected receiver or transmitter. Although the incumbent licensees have assumed all the risks of receiving interference, given the nature of some of these operations, the Commission seeks comment on whether there are any methods by which incumbent 31 GHz operations could be accommodated without delaying, causing interference to, or limiting the usefulness of LMDS services in this band. In light of the proposed ''secondary'' nature of the non-LMDS fixed services in this band, the Commission also seeks comment on whether it should accept any new applications, modifications, or renewal applications in the 31 GHz band.

7. Consistent with its intent to allow the rapid deployment of LMDS, the Commission encourages cooperation among the LMDS providers and existing licensees in exploring any methods which would allow the services to coexist, but that would not impose any economic or technical burdens on the LMDS providers. For example, would the LMDS licensees have sufficient capacity to accommodate the existing licensees as customers of their services? Or are there existing mechanisms that will permit all of these services to share the entire band without imposing any economic burdens on LMDS? Or are there other options the Commission should consider? In commenting on this request, the Commission asks that any recommendation advocating sharing include the supporting technical analysis.

8. Second, the *FNPRM* seeks comment on eligibility of LECs and cable operators to obtain LMDS licenses in the geographic areas they serve. Throughout this proceeding commenters have had opportunities to address whether open eligibility for LMDS licenses would be likely to impede or hasten competition. The current record of this proceeding, however, was developed prior to enactment of the Telecommunications Act of 1996 (1996 Act). One of the key objectives of the 1996 Act is to expedite the introduction of competition to incumbent LECs and cable companies. In carrying out this statutory mandate, the Commission considers it important to obtain specific comment on how our policies towards LMDS eligibility would best promote the competitive objectives of the 1996 Act.

9. The proposed rules contemplate only a single LMDS licensee in each service area. Accordingly, in the same market, there will be no competition among multiple LMDS licensees, although some competition may develop among providers of similar services via alternative transmission technologies. It therefore is appropriate to consider measures to ensure that the unprecedented amount of spectrum assigned to each LMDS license will be used to enhance the competitive provision of services in these highly concentrated markets. The Commission seeks comment on whether it should temporarily restrict eligibility for incumbent LECs and cable companies that seek to obtain LMDS licenses in their geographic service areas.

10. In the *NPRM* that initiated this proceeding, the Commission proposed to license two equal competitors in every LMDS service area and not to restrict the ability of specific types of telecommunications providers to obtain LMDS licenses. In the *Third NPRM*, the Commission proposed only a single LMDS license for each service area and sought additional comment on the eligibility issue regarding Commercial Mobile Radio Service (CMRS) providers, MMDS licensees, LEC and cable participation in LMDS.

11. In determining whether it would be in the public interest to restrict LEC or cable eligibility to obtain a LMDS license within their respective service areas, the Commission considers whether LMDS will provide a unique and important new source of competition to incumbent cable and telephone companies. The record of this proceeding strongly supports the conclusion that LMDS is a potentially important source of competition to both LECs and cable operators. 28 GHz LMDS licenses will permit use of up to 1.3 GHz of spectrum by a single provider, and equipment is relatively close to marketability. While it is not possible to identify all potential uses of LMDS, licensees could use this unparalleled amount of spectrum to construct sophisticated networks that will incorporate aspects of many current telecommunications offerings. It also appears that LMDS is uniquely positioned to provide competitive telecommunications services and video program delivery because of its large potential for two-way broadband capabilities. In considering eligibility for LECs and cable operators within their geographic service areas one must weigh the potential for competition presented by open entry against the possibility that this spectrum may be used to forestall rather than promote competition. Open eligibility may delay or eliminate an opportunity to increase the number of competitors in the local exchange telephony and multichannel video programming markets. On the other hand, a bar on eligibility could prevent LECs and cable operators from using LMDS to compete against each other more effectively and rapidly or to provide new services not now offered by any firm. It also is possible that by restricting eligibility we prevent some potential providers from realizing efficiencies of scale and scope that could be realized if, for example, a LEC could use LMDS to expand the area it serves and to expand the range of services it offers. As a deregulatory principle, this Commission does not seek to interfere in or distort decisions based on sound business judgment by imposing unnecessary regulation. The Commission seeks comment on these issues.

12. The Commission asks parties to comment with specificity on projected uses of LMDS spectrum, including the degree to which LMDS is uniquely suited to entry into the local exchange and multichannel video programming markets. Do LMDS licenses represent a unique and necessary resource for de-concentrating the market power of incumbent LECs and cable operators? If an LMDS license is such a resource, can it have a deconcentrating effect if it is held by an incumbent LEC or cable operator, given the range of services that can be provided using LMDS? For example, would a LEC's use of an LMDS license to provide video services reduce the market power of the incumbent cable operator? Are there other realistic means of entry into these markets? In addressing this point, the Commission

asks parties to discuss other realistic means of entry in terms of (1) the availability of similar spectrum-based services; (2) technological factors; (3) economic cost; and (4) timing.

13. The Commission also asks for comment on whether there are any inherent cost advantages possessed by incumbent LECs or cable operators in holding LMDS licenses to provide service within their geographic service areas. Are there any economies of scope, or other efficiencies, such as efficiencies in billing and marketing of the services? Are any of these efficiencies unique to LMDS or could a LEC or cable operator realize them using above 40 GHz band, MMDS, OVS or other wireless or wireline facilities? Are there cost advantages in use of LMDS spectrum outside the markets served by incumbents? Can these cost advantages be quantified?

14. Are there any other advantages that incumbent LECs and cable operators have in providing LMDS service? For example, does their size, experience in that telecommunications market or financial status make incumbent LECs, or more specifically the RBOCs, uniquely positioned to be strong LMDS providers? If so, will limiting incumbent LEC and cable operators from bidding on LMDS licenses only in their current service areas discourage investment in LMDS or the development of LMDS technology? Excluding incumbent LECs and cable operators, are there a sufficient number of other providers with the necessary resources and expertise to construct and operate LMDS systems? Will incumbent eligibility restrictions have any negative effects on competition in the multichannel video programming and local exchange markets—for example by making it more difficult for incumbent LECs to compete with cable operators for the provision of video services?

15. The Commission also asks for comment on whether an incumbent LEC or cable operator offering LMDS services within its respective geographic service area would be likely to offer it at a higher price than new entrants. Would this depend on whether the LMDS service offered by the incumbents is substitutable for the services they currently offer? Commenters are also asked to address whether it would be more cost-effective for incumbents to acquire LMDS spectrum to supplement their own existing services rather than to face immediate competition by allowing LMDS spectrum to be acquired by a potential competitor.

16. Finally, the Commission seeks comment on how the auction process can be expected to influence the concerns prompting our consideration of incumbent eligibility. Will an auction ensure the highest and best use of the spectrum—even if an incumbent wins the license? Or, is there an economic incentive for an incumbent to bid successfully at auction and to warehouse the spectrum? Or divert it to less competitive uses? Does this economic incentive exist when the spectrum can be used for services other than those provided by the incumbent? In any case, would payment of a winning auction bid and the cost of compliance with the build-out rules proposed in the *Second Further Notice of Proposed Rulemaking*, 59 FR 7964 (February 17, 1994), prove a sufficient check against such warehousing?

17. If the Commission determines that the benefits of open entry are outweighed by our desire to encourage alternative sources of competition, should it adopt any restrictions, and if so, how should they be structured? One option is to prohibit incumbent LECs and cable companies from bidding on or acquiring licenses, each within its geographic service area. Alternatively, the Commission could limit incumbent LECs and cable companies' use of the LMDS spectrum. For example, LEC participation in LMDS could be limited to the provision of no more than a certain percentage of non-video programming, and cable participation in LMDS could be limited to the provision of no more than a certain percentage of video services. The advantage to this approach is that it is narrower than a complete eligibility restriction, and it would allow incumbent providers to use the spectrum to provide competing services, as well as supplemental incumbent services. The disadvantage to this approach is that it may impair the deployment of LMDS as a market-driven flexible broadband service and is inconsistent with the Commission's flexible spectrum policy. The Commission seeks comment on these and any other alternatives.

18. In order to adopt any restrictions on incumbent cable and LEC participation, the Commission needs to define ''incumbent'' since LATA lines and cable franchise areas are not coincident with BTA boundaries. One possibility would be to use the cellular/PCS cross-ownership rule, which implicates similar competitive concerns. Consistent with this rule, an incumbent LEC or cable operator would be considered ''in-region'' if 20 percent or more of the population of a BTA is within a LEC's telephone service area or a cable company's franchised service area. The Commission asks for comment on this option and on any alternative. It also seeks comment on whether the same definition should be applied to both types of incumbents.

19. The Commission also seeks comment on what should constitute an attributable interest in an incumbent LEC or cable operator. In the past, the Commission has used several different formulations of attribution in different contexts. For these purposes, the Commission proposes to consider a 10 percent or more interest, when factored through a multiplier, to be attributable. It also proposes to consider a 10 percent or more interest in an affiliate of an incumbent, when factored through a multiplier, to be considered attributable. This attribution level tracks Section 652 of the 1996 Act, 47 U.S.C. § 572, and it has the same goals as does the Commission in this proceeding.

20. In addition, if the eligibility of incumbent LECs and cable operators is limited, the Commission seeks comment on how these restrictions should be addressed in the context of the proposal in the *Third NPRM* to allow partitioning and disaggregation. It requests comment on whether competitive harm would result from a LMDS licensee disaggregating its license and assigning any excess spectrum to an incumbent LEC or cable operator within their geographic service areas. Similarly, comment is requested on whether any competitive harm would result from a LMDS licensee partitioning some of its service area to an incumbent LEC or MSO within their geographic service area.

21. Finally, if the Commission were to propose any restrictions, to believes that such restrictions should continue only until there is increased competition in the video and telephony markets. In the cable context, Section 623(l) of the Communications Act sets forth a four pronged test for determining when a cable operator faces effective competition. The Commission seeks comment on whether this effective competition test is a reliable indicator of appropriate levels of multichannel video programming competition for these purposes. The Commission focuses especially on Section 623 L(1), which can be relatively easy to satisfy in rural areas. For LECs, there is no standard test for effective competition in the local exchange market. The ''Competitive Checklist,'' set forth in Section 271(c)(2)(B) of the 1996 Act, is one part of the mechanism used to determine when the Regional Bell Operating Companies (RBOCs) may enter the in-region long distance market. Comment is requested on whether the Competitive Checklist or all the prerequisites for BOC in-region entry

serves as a reliable indicator of appropriate levels of local exchange competition for determining when LECs should be allowed to hold LMDS licenses. In addition, since the ''Competitive Checklist'' does not apply to LECs which are not RBOCs, comment is requested on how it could be used with other LECs. The Commission also seeks comment on alternative sunset provision. For example, it could limit eligibility for such entities to a fixed period of time (such as, 3 or 5 years) with automatic sunset and optional renewal of these restrictions. Commenters are requested to provide information on the following questions: what alternative criteria should the Commission use to sunset these restrictions? Should the Commission consider the number of facilities-based competitors? Are there local competitors throughout the service area? If the Commission does not use the ''Competitive Checklist'', does the list suggest factors that the Commission should incorporate into any sunset criteria we may adopt?

22. Because it plans to begin the LMDS licensing process this year, the Commission realizes that the imposition of any eligibility restrictions now, even if they sunset at some future point, may effectively preclude incumbent LECs and cable operators from participation in that initial licensing process. However, incumbents could offer LMDS services at a future date by acquiring all or part of the LMDS spectrum in a BTA in a post-auction transaction, if we adopt our competitive bidding rules proposed in the *Third NPRM*. The Commission requests comment on these issues.

Comment Dates

23. 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 August 12, 1996, and reply comments on or before August 22, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eight copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

24. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Fourth Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided in section (VI)(C).

I. Reason for Action

25. This Fourth Notice of Proposed Rulemaking (*FNPRM*) requests comment on two issues: (1) whether the Commission should designate, on a primary protected basis, the 31.0–31.3 GHz (31 GHz) band to Local Multipoint Distribution Service (LMDS); and (2) whether the Commission should restrict eligibility of local exchange carriers (LEC) and cable operators to hold LMDS licenses in the geographic areas they serve.

26. With regard to the first issue, the Commission determines that a further NPRM is necessary to accommodate a variety of LMDS system designs, services, and transmission media in the adjacent 28 GHz band. The additional spectrum would facilitate interactive systems, thus providing new and innovative communications services for residential and business users, including small businesses. Moreover, the additional spectrum potentially could benefit small businesses unable to participate in competitive bidding for licenses because additional spectrum not needed by a LMDS licensee could potentially be leased to smaller businesses. The 31 GHz band currently is licensed only on a secondary basis, and has few incumbents. Nevertheless, the Commission requests comment on whether there are any methods of accommodating these services.

27. With regard to the second issue, the current record of this proceeding was developed prior to the enactment of the Telecommunications Act of 1996. One of the key objectives of the Act is to expedite the introduction of competition to incumbent LECs and cable companies. In carrying out this mandate, the Commission believes it important to obtain specific comment on how its policies towards LMDS eligibility would best promote the competitive objectives of the Act. In addition, the comments received after the close of the record in this proceeding, including comments from small entities such as WebCel, convince us that further comment is warranted.

II. Objectives

28. The objective of this *NPRM* is to request public comment on the proposals made herein for the efficient licensing of LMDS services, for the development and implementation of a new technology to provide innovative telecommunications services to the public.

III. Legal Basis for Proposed Rules

29. The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and sections 4(i), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

IV. Description and Estimate of Small Entities Subject to the Rules

30. The regulations on which the Commission seeks comment, if adopted, would apply to any small entity seeking a LMDS license. In addition, the regulations would impact small entities who are incumbent licensees in the 31.0–31.3 GHz frequency band.

31. The SBA definitions of small entity for LMDS are the definitions applicable to radiotelephone companies and to pay television services. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The definition of a small pay television service is one which has annual receipts of less than $11 million. In the Final Regulatory Flexibility Analysis for the *Report and Order, supra*, we were unable to make a meaningful estimate based on the 1992 Census Bureau data.

32. Likewise, we believe that the entities who are incumbent licensees in the 31.0–31.3 GHz frequency band may also be comprised of a majority of small entities. Such licensees are public safety entities, the majority of whom are municipalities or other local governmental entities. The SBA data base does not include governmental entities. We are required to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates

that this ratio is approximately accurate for all governmental entities. There are twenty-seven (27) incumbent licensees in the 31.0–31.3 GHz band. Accordingly, we estimate that 96 percent, or 25 to 26 of these licensees, are small entities.

33. We request comment on the description and the number of small entities that are significantly impacted by this proposed rule.

V. Reporting, Recordkeeping, and Other Compliance Requirements

34. The proposals under consideration in this *FNPRM* would not involve any reporting or recordkeeping requirements.

35. Incumbent licensees in the 31.0–31.3 GHz band would have new compliance requirements vis-a-vis LMDS licensees. Our rules provide that licensees therein operate on a non-interference basis, meaning that they have no rights to protection from interference, nor any obligations to not interfere with other similar incumbent operations. The Fourth NPRM proposes that LMDS be designated as a primary protected use of the band, ensuring that LMDS licensees would have interference protection from other authorized users of the band.

VI. Significant Alternatives Considered and Rejected

36. The Commission considered and rejected the alternative of placing all LMDS spectrum in the 28 GHz band, rather than placing a portion of the available spectrum in the 31 GHz band. The Commission concluded that LMDS requires additional spectrum to successfully deploy the variety of services proposed. It also concluded that these proposed services could be successfully implemented with non-contiguous bands of spectrum, whereas the satellite services could not. To the extent LMDS entities are small businesses, as discussed in the Final Regulatory Flexibility Analysis, *infra*, such entities are affected by this decision. However, some small entities commenting on the final band plan concurred with this approach (*e.g.*, CellularVision, RioVision).

37. In addition, the Commission considered and rejected the alternative of proceeding with open eligibility in licensing, for the reasons stated herein. This action is responsive to the many small entities commenting in this proceeding who requested that restrictions be placed upon, or considered for, local exchange carriers and major cable companies, e.g., WebCel.

VII. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

38. None.

Ordering Clause

39. Authority for issuance of this *Fourth Notice of Proposed Rulemaking* is contained in Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 21

Communications Common Carriers, Federal Communications Commission, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19347 Filed 7–26–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 96–067; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a joint petition filed by Lamborghini and Vector requesting that each company be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1995 through 1997, and that lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted and that alternative standards of 12.8 mpg be established for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997, for Lamborghini and Vector.

DATES: Comments on this proposed decision must be received on or before September 27, 1996.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the Nation to conserve energy.

The statute at 49 U.S.C. 32902(d)(2) permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on Lamborghini and Vector

Vector Aeromotive Corporation (Vector) and Automobili Lamborghini S.p.A. (Lamborghini) are small automobile manufacturers that each produce a single model of high priced, uniquely designed exotic sport vehicles. Lamborghini is an Italian manufacturer of passenger cars, which concentrates exclusively on the production of high quality, high performance, prestige sports cars. Lamborghini currently produces one model, the Diablo. Vector, a domestic low volume manufacturer, also marketing exotic high performance

sports cars, was originally founded as the ''Vector Car'' Company. The assets of Vector Car in were purchased by the Vector Aeromotive Corporation in 1987, and Vector completed redesign and engineering of its first production car, the Vector W8. During MYs 1991–1993, Vector manufactured a total of 22 Vector W8 passenger automobiles for worldwide sales. It did not produce any vehicles in MY 1995.

Need for a Joint Petition for Lamborghini and Vector

Although they manufacture different automobile lines, Lamborghini and Vector are both controlled by V-Power Corporation. V-Power is the largest shareholder of Vector, owning 57 percent of the stock; the remaining 43 percent of Vector is publicly traded on NASDAQ. V-Power also owns 50 percent of Lamborghini, with the remaining 50 percent held by Micom/Stedco Ltd. For each of MYs 1995 through 1997, Lamborghini's and Vector's combined worldwide production will be less than 10,000 automobiles. As both companies are controlled by V-Power, any alternative CAFE standard would apply to Lamborghini and Vector together, and a single petition should be submitted for a single alternative standard, applicable to the combined fleet of these companies.

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are to be submitted ''not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.'' (49 CFR 525.6(b).)

NHTSA received a petition from Vector Aeromotive Corporation on May 24, 1995 seeking an exemption for the 1995–1998 model years. On May 31, 1995, Vector withdrew this petition. On August 9, 1995, Vector submitted a joint petition on behalf of itself and Lamborghini seeking exemption from the passenger automobile fuel economy standards for MYs 1995–1997. On March 14, 1996, the petitioner provided amended data for Lamborghini/Vector vehicles for MYs 1996 and 1997, indicating improved fuel economy values.

The Lamborghini/Vector joint petition was filed less than 24 months before the beginning of MY 1997 and was therefore untimely under 49 C.F.R. 526.6(b). This section requires that petitions ''be submitted not later than 24 months before the beginning of the affected model year, unless good cause for late submission is shown.''

Lamborghini/Vector has provided NHTSA with information regarding the lateness of the joint petition. Lamborghini, which had been acquired by Chrysler in 1988, was sold to MegaTech Ltd. in February 1994. In September 1994, six months after acquisition of Lamborghini, MegaTech Ltd., which owned 100 percent of Lamborghini, distributed 50 percent of Lamborghini's stock to V-Power (owner of Vector) and 50 percent to Micom/Stedco Ltd. (an Indonesian shipping and manufacturing firm).

Chrysler's sale of Lamborghini, which Lamborghini contends occurred without prior notice, placed significant demands on this small company. As Lamborghini was no longer a part of Chrysler, it could not rely on compliance by Chrysler models to permit delayed compliance, as part of a phase-in, with the Environmental Protection Agency/California Air Resources Board (EPA/CARB) Tier I emission certifications. Lamborghini's separation from Chrysler also required that it comply with the phase-in requirements of Federal motor vehicle safety standard No. 214, ''Side Impact Protection,'' before it had anticipated having to do so. These developments, combined with the advent of Lamborghini's relationship with Vector and the subsequent redesign of the Vector W8 to use a Lamborghini engine, placed considerable demands on the limited resources of Lamborghini/Vector. NHTSA notes that prior to the submission of the petition of May 24, 1995, Vector had never before submitted such a petition to the agency. Similarly, Lamborghini had not been eligible to submit an exemption petition since it was acquired by Chrysler in 1988. Preparing a joint petition required considerable interaction between these two previously unrelated companies. Given these circumstances, in conjunction with the significant drain on resources required for compliance with other regulations as noted above, the agency believes that sufficient good cause has been shown by Lamborghini/Vector to allow late filing of the joint petition for exemption for MY's 1995–97.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Lamborghini/Vector

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Lamborghini/Vector in MYs 1995–1997, the agency considered whether there were technical or other improvements that would be feasible for these vehicles, and whether or not the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets ''technological feasibility'' as meaning that technology which would be available to Lamborghini/Vector for use on its MY 1995 through 1997 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets ''economic practicability'' as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MYs 1995 through 1997 automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lamborghini and Vector automobiles. Since NHTSA assumes that Lamborghini and Vector will continue to build exotic high performance cars, design changes that would remove items traditionally offered on these cars, such as reducing the displacement of their engines, were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

The nature of Lamborghini and Vector vehicles generally do not result in high fuel economy values. Also, Lamborghini and Vector lag in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

Lamborghini/Vector state that the requested alternative fuel economy values represent the best possible CAFE that Lamborghini/Vector can achieve for MYs 1995 through 1997. However, the joint alternative fuel economy values decrease from 12.8 mpg in MY 1995 to

12.6 mpg in MY 1996 (a decrease of 0.2 mpg) and from 12.6 mpg in MY 1996 to 12.5 mpg in MY 1997 (a decrease of 0.1 mpg). The fuel economy will decrease over the three years because Lamborghini/Vector projects that Vector sales will increase over MYs 1996 and 1997 while Lamborghini sales will remain constant. Therefore, fuel economies will decrease because of the projected increased sales of Vectors, which have lower fuel economy values than Lamborghini's.

Despite these qualifications, the following describes how Lamborghini and Vector plan to maximize their respective vehicles' fuel economy by using state of the art materials and technologies for their vehicles.

Lamborghini and Vector vehicles share a common engine designed and produced by Lamborghini. This engine is a 5.7 liter V–12 with a 10:1 compression ratio that produces 492 horsepower at 6,800 revolutions per minute and 428 foot-pounds of torque at 5,200 rpm. Fuel is delivered to the engine through a computer-controlled multipoint fuel injection system. Aluminum alloy is used for all major castings like the engine crankcase, cylinder heads, induction manifold, gearbox, and axle. The Lamborghini V–12 is a highly efficient engine which produces extremely high output for its displacement.

In keeping with the high performance character, Lamborghini and Vector vehicles are designed to provide a structure that is both strong and lightweight. Vector uses a semi-monocoque structure and a steel roll cage with body panels fabricated from carbon-reinforced composite fiber glass. Front suspension consists of independent, unequal length A-arms with concentric coil shock absorbers and anti-dive characteristics. Rear suspension is parallel link, concentric coil springs with anti-squat characteristics. The hydraulic brake system includes vacuum assist, quad cylinder calipers and ventilated discs.

The Lamborghini Diablo chassis uses space frame construction with the unstressed panels, such as the doors and trunk, made of aluminum alloy and plastic composite. Composite and steel beams were recently adopted for the energy absorbing bumpers.

All Lamborghini/Vector vehicles have a rear engine driving rear wheels through five speed manual transmissions. Additionally, Vector W8 vehicles are equipped with ZF transaxle and constant velocity driveshaft joints. Both the Lamborghini Diablo and the Vector W8 rely on wide low aspect ratio tires to provide maximum traction and performance.

Lamborghini/Vector vehicles achieve a very high level of performance by incorporating an efficient powerplant with a lightweight structure. Much of the technology used to improve fuel economy in other vehicles is already employed by Lamborghini/Vector to enhance performance. Any further improvements in fuel economy in these vehicles through the use of a smaller powerplant or tires with less rolling resistance would be contrary to the essential characteristics of the vehicles and their position in the marketplace.

Model Mix

The Vector W8 and Lamborghini Diablo are similarly sized vehicles sharing a common V–12 engine. Therefore, any opportunity to improve fuel economy by changing model mix would be dependent on introduction of new models or engines. In any event, changing the model mix would have a negligible effect on fuel economy due to the inherently low fuel economy of these ultra high performance coupes.

The Effect of Other Vehicle Standards

The new, California emissions standards apply to Lamborghini and Vector in MY 1995 and the similarly stringent Federal Clean Air Act Amendments apply in MY 1996. Lamborghini/Vector achieved lower fuel economy due to compliance with these standards.

Federal Motor Vehicle Safety Standards and other NHTSA standards also have an adverse effect on fuel economies of Lamborghini and Vector vehicles. These standards include 49 CFR part 581, *Bumper Standard,* Standard No. 214, *Side impact protection*, and Standard No. 208, *Occupant crash protection*. These standards tend to reduce achievable CAFE levels, since they result in increased vehicle weight. Engineering resources are necessarily devoted to meeting the standards, since, in order to remain in the market, Lamborghini/Vector must meet these mandatory standards.

The Need of the Nation To Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Lamborghini/Vector to achieve an average fuel economy in MYs 1995 through 1997 above the levels set forth in this proposed decision. Granting an exemption to Lamborghini/Vector and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the Nation to conserve energy. In fact, there would not be any increase since Lamborghini/Vector cannot attain those generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 1995 through 1997 fleets of Lamborghini/Vector vehicles at the combined projected CAFE of 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997 is insignificant compared to the fuel used each day by the entire U.S. motor vehicle fleet for passenger cars in 1994.

Maximum Feasible Average Fuel Economy for Lamborghini/Vector

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for Lamborghini/Vector to improve the fuel economy of their MY 1995 through 1997 fleets above an average of 12.8 mpg for MY 1995, 12.6 mpg for MY 1996, and 12.5 mpg for MY 1997. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Lamborghini/Vector's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Proposed Level and Type of Alternative Standard

NHTSA tentatively concludes that the maximum feasible average fuel economy for Lamborghini/Vector is 12.8 mpg in MY 1995, 12.6 mpg in MY 1996, and 12.5 mpg in MY 1997. The agency also tentatively concludes that it would be appropriate to establish a separate standard for Lamborghini/Vector for the following reasons. The agency has already granted petitions submitted by Rolls Royce for alternative standards of 14.6 mpg for MY's 1995–96 and 15.1 mpg for MY 1997. NHTSA has also granted a petition from Mednet, Inc. (successor company to Dutcher Motors) for an alternative standard of 17.0 mpg for MYs 1996–98. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1995, 1996, and 1997.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of

Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' The proposed exemption is not generally applicable, since it would apply only to Lamborghini Automobili and Vector Aeromotive as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for Lamborghini/Vector for MYs 1995 through 1997, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on ''The Need of the Nation to Conserve Energy'' that because of the small size of the Lamborghini/Vector fleet, the incremental usage of gasoline by Lamborghini/Vector's customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed exemption, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 would be amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(13) would be added to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(13) Automobili Lamborghini S.p.A./Vector Aeromotive Corporation.

Model year	Average fuel economy standard (miles per gallon)
1995	12.8
1996	12.6
1997	12.5

Issued on: July 22, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–19070 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 74–14; Notice 99]

RIN 2127–AG24

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from the Ford Motor Company, this document proposes a limited extension of the compliance date of a recent rule improving safety belt fit by requiring that Type 2 safety belts installed for adjustable seats in vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less either be integrated with the vehicle seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different sized occupants. The extension would apply only to trucks with a GVWR of more than 8,500 pounds.

DATES: *Comment Date:* Comments must be received by September 12, 1996.

Proposed Effective Date: If adopted, the proposed amendments would become effective September 1, 1997.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Clarke Harper, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–2264, facsimile (202) 366–4329, electronic mail ''charper@nhtsa.dot.gov''.

For legal issues: Edward Glancy, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail ''eglancy@nhtsa.dot.gov''.

SUPPLEMENTARY INFORMATION: On August 3, 1994, NHTSA published a final rule amending Standard No. 208, *Occupant Crash Protection,* to improve safety belt fit and thus the rate of belt use by requiring that Type 2 safety belts installed for adjustable seats in vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less either be integrated with the vehicle seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different sized occupants (59 FR 39472). The final rule specified that this amendment become effective September 1, 1997.

On December 22, 1995, the Ford Motor Company (Ford) petitioned the agency to extend the effective date of this new requirement for vehicles with a GVWR between 8,500 and 10,000 pounds. Ford requested that the effective date be extended to January 1, 1998.

In its petition, Ford stated that, due to unexpected developmental problems with a new truck platform, it will be unable to begin production by September 1, 1997 as expected. Therefore, it will be necessary to continue to produce the current truck platform it will replace for four months beyond the effective date of the new belt fit requirement. Ford requested the leadtime extension to avoid having to redesign the existing platform for only a four-month production.

In its petition, Ford stated that the extension would affect 45,000 F-series pickup trucks. The GVWRs of these vehicles are between 8,500 and 10,000 pounds. Because Ford comprises approximately 45 percent of the light truck market, NHTSA estimates that the requested leadtime extension would affect a total of 100,000 vehicles. These trucks include cargo vans, pick-ups and incomplete vehicles. Ford stated that redesign of this limited number of vehicles to meet the September 1, 1997 effective date would cost $4.5 million, resulting in a per vehicle cost of $100. In the final rule, NHTSA estimated that the belt fit requirement would cost $5.51 per light truck. For NHTSA cost estimates, the development and certification costs are amortized over the lifetime of the redesigned model, which usually results in a low per vehicle cost.

Ford argued that the driver population of the affected vehicles is predominantly male and is less in need of belt fit adjustability than the driver population of the average vehicle. In support of this argument, Ford said that two-thirds of the affected vehicles are commercial vehicles (a large percentage of which are driven by males) and that 92 percent of the remaining one-third are driven also by males. Ford also noted that males tend to be taller than females, and improved belt fit is primarily intended to benefit shorter occupants.

After reviewing the petition, NHTSA has decided to propose to extend the effective date of the belt fit requirement until January 1, 1998 for trucks with a GVWR of more than 8,500 pounds. The reasons for this proposal are explained below.

NHTSA has examined the demographics of the occupants of the affected trucks, and agrees that the occupants of the affected trucks are more likely to be male and thus larger than those of the lower GVWR vehicles, and therefore their rate of belt use would be less likely to be affected by improvements in belt fit. Accordingly, the benefits from applying the belt fit requirement to those trucks would be less than the benefits of applying it to lower GVWR vehicles. An examination of 1993 through 1994 National Accident Sampling System (NASS) files shows that the mean value of occupant size was two inches taller for trucks affected by the Ford petition. In addition, for trucks below an unloaded weight of 5,500 pounds (approximately equal to 8,500 pounds GVWR), 12 percent of front seat occupants are under 5 feet 2 inches, while for trucks over 5,500 pounds unloaded weight, only six percent of front seat occupants are below this height.

In the final rule, NHTSA characterized the anticipated benefits of the belt fit requirement as follows:

> NHTSA believes that some occupants who find their safety belts to be uncomfortable react to their discomfort either by wearing their safety belts incorrectly or by not wearing them at all. NHTSA believes that improving safety belt fit will encourage the correct use of safety belts and could increase the overall safety belt usage rate. (59 FR 39472, at 39473)

As noted in the notice of proposed rulemaking preceding the final rule, complaints concerning belt fit received by the agency are often from shorter adults. (59 FR 21740, 21741; April 26, 1994) If the majority of the occupants of the trucks affected by the Ford petition are not in the group of people who most often report complaints with belt fit, there would be less opportunity to increase belt usage through improved belt fit.

Based on the Final Regulatory Evaluation of the safety belt fit rule (Docket 74–14, Notice 91), the potential maximum benefits for light trucks was 9 fatalities and 102 injuries per year, based on an annual production of 3.4 million vehicles. The estimated affected population for this proposal is 100,000 vehicles, therefore, the potential reduction in benefits would be 0.3 fatalities and 3 injuries per year. In addition, if Ford's argument that the affected vehicles are not widely used by persons who benefit from the belt fit rule is accurate, the potential reduction in benefits would be even less.

Finally, as noted in the Ford petition, the economic impact of requiring Ford to go ahead and comply would be much greater than the costs anticipated by the agency for compliance with the belt fit requirement. Using NHTSA's estimated per vehicle costs, the cost savings resulting from not requiring the 100,000 light trucks to comply would be $551,000 to $745,000, not counting redesign costs for the Ford vehicles that would shortly be taken off the market. If one were to accept Ford's estimation of $100 per vehicle cost savings for its 45,000 vehicles plus NHTSA's estimation of $5.51 to $7.45 per vehicle cost savings for the remaining 55,000 vehicles, the total estimated cost reduction would be $4.8 to $4.9 million.

Because the safety benefits for the affected trucks are likely to be very small, and the costs accentuated, a four-month extension of leadtime would be reasonable.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures: NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. As explained earlier, the agency estimates a cost savings of $4.8 to $4.9 million.

Regulatory Flexibility Act: NHTSA has also considered the impacts of this

notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate a significant economic impact on any manufacturer from this proposal. For consumers, granting this extension would slightly reduce the cost of these trucks, especially the Ford trucks, compared to their cost if the extension is not granted.

Paperwork Reduction Act: In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

National Environmental Policy Act: NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism): NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform: This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S7.1.2 and adding a new S7.1.2.3 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

7.1.2 Except as provided in S7.1.2.1, S7.1.2.2, and S7.1.2.3, for each Type 2 seat belt assembly which is required by Standard No. 208 (49 CFR 571.208), the upper anchorage, or the lower anchorage nearest the intersection of the torso belt and the lap belt, shall include a movable component which has a minimum of two adjustment positions. The distance between the geometric center of the movable component at the two extreme adjustment positions shall be not less than five centimeters, measured linearly. If the component required by this paragraph must be manually moved between adjustment positions, information shall be provided in the owner's manual to explain how to adjust the seat belt and warn that misadjustment could reduce the effectiveness of the safety belt in a crash.

* * * * *

S7.1.2.3 The requirements of S7.1.2 do not apply to any truck with a gross vehicle weight rating of more than 8,500 pounds manufactured before January 1, 1998.

* * * * *

Issued on July 22, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–19068 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 146
Monday, July 29, 1996

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

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
NY–135 Empire Livestock Marketing, Inc.—Oneonta; Oneonta, New York	Aug. 8, 1960.
OR–106 Enterprise Livestock Market, Inc., Enterprise, Oregon	Oct. 16, 1959.
PA–141 Empire Livestock Marketing, Inc.—Troy; Troy, Pennsylvania	Mar. 17, 1960.
TX–295 Duncan Auction, DeKalb, Texas	Aug. 3, 1972.
TX–321 Cattleman's Livestock Auction, Inc., Freer, Texas	Mar. 18, 1981.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the Federal Register without prior notice or other public procedure.

This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the Federal Register.

Done at Washington, D.C. this 19th day of July 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–19133 Filed 7–26–96; 8:45 am]

BILLING CODE 3210–KD–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and location of the meetings of the Telecommunications Access Advisory Committee.

DATES: The Telecommunications Access Advisory Committee will meet on August 14, 15, and 16, 1996. The meetings will begin at 9:30 a.m. and end no later than 5:00 p.m.

ADDRESSES: The meetings will be held at the Association of American Railroads Conference Center, 50 F Street, NW., Washington, DC. The meetings are open to the public. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real-time transcription will be available.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, D.C. 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov. This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: On May 24, 1996, the Access Board published a notice appointing 33 members to its Telecommunications Access Advisory Committee (Committee). 61 FR 26155 (May 24, 1996). The Committee will make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. These recommendations will be used by the Access Board to develop accessibility guidelines under section 255 (e) of the Telecommunications Act of 1996. The Committee is composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines.

At its first meeting, the Committee recommended that the American Speech-Language and Hearing Association and Motorola be added to the membership. The Access Board has appointed these organizations to the

Committee. Additionally, a listserv was created through the Trace Center. The address of the listserv is TAAC–L@TRACE.WISC.EDU. To subscribe, send an e-mail message to LISTPROC@TRACE.WISC.EDU with the message: subscribe TAAC–L <firstname lastname>. The Committee established future meeting dates are: September 25–27, November 6–8, December 16–18, and January 14–15. Subsequent meetings will be held at locations to be announced.

The Committee will meet on the dates and at the location announced in this notice. There will be a public comment period each day for persons interested in presenting their views to the Committee.

James J. Raggio,

General Counsel.

[FR Doc. 96–19199 Filed 7–26–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of petitions by Producing Firms, for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 06/20/96–07/17/96

Firm name	Address	Date petition accepted	Product
A&M Thermometer Corporation	17 Piney Park Road, Asheville, NC 28805.	07/05/96	Liquid-in-Glass.
Anchor Glass Container	One Anchor Plaza MP05, Tampa, FL 33634.	07/15/96	Glass Containers.
Bennington Iron Works, Inc.	Harmon Road, Bennington, VT 05201.	06/26/96	Fabricated Steel.
Crystal Springs Packing Co., Inc..	441 South Fir Street, Medford, OR 97501.	06/25/96	Pears.
Earnest Orchards Company	2310 Voorhies Road, Medford, OR 97501.	07/15/96	Pears and Apples.
GCC Cutting, Inc.	11500 Rojas J–2, El Paso, TX 79936.	07/11/96	Ladies Apparel.
HAIG Precision Manufacturing Corporation.	186 Gilman Avenue, Campbell, CA 95008.	07/10/96	Computer Component Fastners and Semiconductor Equipment.
Kleen-Rite, Inc.	4444 Gustine Avenue, St. Louis, MO 63116.	07/03/96	Cartridges to Filter Dry Cleaning Solution.
Mid-Western Machinery Company, Inc..	902 East 4th Street, Joplin, MO 64801.	07/12/96	Rock Drills and Rock Drill Repair Kits.
Naumes, Inc.	2 West Barnett Street, Medford, OR 97501.	07/17/96	Pears and Other Tree Fruit.
New Horizons Diagnostics Corporation.	9110 Red Branch Road, Columbia, MD 21045.	07/10/96	Human Diagnostic Kits, General Bacterial Screens and Germ Warfare Detection Equipment.
New Maryland Clothing Manufacturing Company, Inc..	3023 East Madison Street, Baltimore, MD 21205.	07/10/96	Men's and Women's Tailored Jackets of Wool and Woolblend.
Pro Star Sports, Inc.	4701 Deramus Street, Kansas City, MO 64120.	07/15/96	Weight Training Exercise Equipment.
Refrigiwear, Inc.	P.O. Box 39, Breakstone Drive, Dahlonega, GA 30533.	07/17/96	Jackets, Overalls, Coveralls and Vests of Man-Made Fiber for Cold Weather.
Reter Fruit Company	5 South Stage Road, Medford, OR 97501.	06/25/96	Pears and Apples.
Riedell Shoes, Inc.	122 Cannon River Avenue, Red Wing, MN 55066.	06/24/96	Ice Skating Boots, Roller Skating Boots, In-Line Skating Boots and Weightlifting Shoes.
Spin Magnetics, Inc.	201 Acuff Road, Lake Wales, FL 33853.	07/15/96	Transformers and Inductors.
Sportswear, Inc.	240 East Owen, P.O. Box 406, Puxico, MO 63960.	07/15/96	Placket Shirts, T-Shirts and Shorts and Pants of Knitted Cotton.
Sun Mountain Sports, Inc.	301 North First Street, Missoula, MT 59802.	07/09.96	Golf Bags and Accessories—Travel and Head Covers, Rainhoods and Loop Straps.
Two Seed Co., Ltd.	2325 West Vancouver, Broken Arrow, OK 74102.	07/11/96	Fishing Rods.
Universal Medical Instrument Corporation.	2906 Route 9, Ballston Spa, NY 12020.	07/10/96	Coated Guide Wires, Cardiovascular Catheters and Diagnostic Angiographic Needles for Medical Industry.
Wyoming Woolens	3103 Bid Trail Drive, Jackson, Hole, WY 83001.	07/10/96	Hats, Socks, and Outerwear—Coats, Jackets, Vests, Slippers, Gloves Mittens, Etc.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm

contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 17, 1996.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 96–19097 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from Berezniki Titanium-Magnesium Works (AVISMA), RMI Titanium Company (RMI, a U.S. importer of titanium sponge), Interlink Metals and Chemicals, Inc. (Interlink), and Titanium Metals Corporation (TIMET, a petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on titanium sponge from the Russian Federation (Russia). This notice of preliminary results covers the period August 1, 1994 through July 31, 1995. This review covers one manufacturer/exporter, AVISMA, and two trading companies, Interlink and Cometals, Inc. (Cometals). The review indicates the existence of dumping margins during this period.

We have preliminarily determined that sales have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

The Department published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (U.S.S.R.) on August 28, 1968 (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to the each of the former republics of the U.S.S.R. (57 FR 36070, August 12, 1992).

The Department published a notice of ''Opportunity To Request an Administrative Review'' of the antidumping duty finding for this review period on August 1, 1995 (60 FR 39150). On August 28, 1995, AVISMA, RMI, and Interlink requested that the Department conduct an administrative review of the antidumping finding on titanium sponge from Russia for one manufacturer/exporter, AVISMA, and one trading company, Interlink, covering the period August 1, 1994 through July 31, 1995. On August 31, 1995, TIMET requested that the Department conduct the same administrative review for AVISMA and another trading company, Cometals. We initiated the review on September 15, 1995 (60 FR 47930) and on October 12, 1995 (60 FR 53164) (Cometals was inadvertently omitted in the previous initiation notice).

The Department extended the time limit for the deadline for the preliminary results of review because it was not practicable to complete this review within the time limit mandated by Section 751(a)(3)(A) of the Act. See *Titanium Sponge From the Russian Federation; Antidumping Duty Administrative Review; Time Limits,* 61 FR 20795 (May 8, 1996).

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is titanium sponge from Russia. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

The period of review (POR) is August 1, 1994 through July 31, 1995, covering one manufacturer/exporter, AVISMA, and two trading companies, Interlink and Cometals.

Verification

As provided in section 782(i) of the Act, we verified the information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the public file of the Central Records Unit (Room B–099 in the Department of Commerce).

United States Price (USP)

AVISMA

In its questionnaire response, AVISMA stated that, prior to May 1995, it was not informed at the time of sale of the ultimate destination of merchandise that was sold by its resellers. For this reason, prior to May 1995, AVISMA is not considered to have shipped to the United States.

We determined that AVISMA's sales after May 1995 entered the United States under temporary importation bonds (TIBs). This entry information was provided to the Department by respondents and confirmed by the U.S. Customs Service (Customs). At this time, because merchandise entered under a TIB is not entered for consumption, such merchandise entered under TIB is not subject to the antidumping duty finding. *See Titanium Metals Corp.* v. *The United States*, Slip Op. 95–153, August 30, 1995.

Therefore, we preliminarily determine that AVISMA did not export for consumption any subject merchandise to the United States during the POR. If these preliminary results are adopted in our final results of review, AVISMA will continue to be subject to the current Russia-wide cash deposit rate of 83.96 percent, which is the rate established in the final results of the most recent administrative review of titanium sponge from Russia (61 FR 9676, March 11, 1996).

Interlink and Cometals

Because Interlink and Cometals are located in market-economy countries, we are calculating a separate rate for each reseller. In calculating USP for Interlink and Cometals, we used export price, as defined in section 772(a) of the Act. We excluded those sales made to the United States which entered the United States under TIBs. Petitioner and respondents provided information regarding TIB entries, and we are able to confirm this information regarding TIB entries, and we were able to confirm this information with Customs.

We calculated export price based on the price to unrelated purchasers in the United States. We made deductions, where appropriate, for rebates, ocean freight, warehouse expenses, insurance, brokerage and handling, inland freight, and U.S. duty charges. We made minor changes to U.S. expenses reported at verification. We valued inland freight, brokerage, ocean freight, and marine insurance expenses incurred in bringing the subject merchandise from the Russian plant to the resellers' warehouses using surrogate data based on Brazilian freight costs, where appropriate. *See Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, August 16, 1995, 60 FR 42504, 42506. We selected Brazil as the surrogate country for the reasons explained in the ''Surrogate Country Selection'' section of this notice.

No other adjustments to USP were claimed or allowed.

Surrogate Country Selection

For all companies located in non-market economy (NME) countries, section 773(c)(1) of the Act provides that the Department shall determine the normal value on the basis of the value of the factors of production if (1) the subject merchandise is exported from an NME country, and (2) the available information does not permit the calculation of normal value under section 773(a) of the Act. Because the Department considers Russia an NME country and AVISMA is located in Russia, we are not able to determine normal value on the basis of AVISMA's costs and prices. Therefore, we have applied surrogate values to the factors of production to determine normal value.

We calculated normal value based on factors of production provided by AVISMA, in accordance with sections 773(a)(3) and 773(c) of the Act and 19 CFR 353.52 of the Department's regulations. We determined that Brazil is comparable to the Russian Federation in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. In addition, Brazil is a significant producer of comparable merchandise. therefore, we chose Brazil as the most comparable surrogate on the basis of the above criteria and have used publicly available information relating to Brazil to value the various factors of production. *See* Memorandum to Wendy J. Frankel from David Mueller, *Titanium Sponge from Russia: Nonmarket Economy Status and Surrogate Country Selection*, November 7, 1995.

Normal Value

To determine the normal value, we valued the factors of production as follows (for further discussion, see the analysis memorandum for these preliminary results, on file in the Central Records Unit):

- To value raw materials, we used Brazilian import data from the United Nations *Trade Commodity Statistics* (*UN Trade Statistics*) for January through December 1994. We did not need to convert raw material factor values because they were reported in U.S. dollars. We adjusted certain factors' values to reflect the actual purity used in the production of the subject merchandise. For those raw materials for which we were unable to obtain publicly available information from Brazil, we used data provided for use in the final determination of sales at less than fair value (LTFV) for pure magnesium and alloy magnesium from the Russian Federation (magnesium from Russia) and in the respondents' December 4, 1995 submission.
- To value truck and railcar freight, we used the rates reported for use in the final determination of sales at LTFV for magnesium from Russia. We multiplied these rates by the distances from the supplier to the plant, as reported by AVISMA. Because these rates were reported in Brazilian currency, we adjusted the rates to reflect inflation through the POR using the wholesale price indices (WPI) published by the International Monetary Fund (IMF).
- For energy, natural gas was valued using information from the *UN Trade Statistics*. For electricity, we used the ''large industry user'' rate from Brazil's electricity tariff schedule that AVISMA would have received had it been an electricity consumer in Brazil during the POR. This decision was based on finding that AVISMA's level of electricity usage during the POR was similar to the profile of ''large industrial user'' in the final determination of sales at LTFV for magnesium from Russia. To confirm that AVISMA would have received this rate, we divided the total number of kilowatt hours used during the POR for titanium sponge production by the number of hours in the POR, which demonstrated that AVISMA's kilowatt use was higher than the minimum necessary to receive the ''large industrial user'' rate in effect in Brazil during the POR.

Although petitioner has alleged the existence of government subsidies in Brazil to reduce electricity rates for ferroalloy production (*See* Letter to Susan G. Esserman from DeKieffer, Dibble & Horgan, *TIMET's Response to Submission of Wilmer, Cutler & Pickering Regarding Surrogate Country Selection*, December 4, 1995), we have not found any past final affirmative determinations regarding electricity subsidization in Brazil. In fact, in a final negative determination of silicon metal from Brazil, the Department found no evidence of preferential electricity rates. *See Final Negative Countervailing Duty Determination: Silicon Metal from Brazil* (56 FR 26988, June 12, 1991) at 26990.

- For direct labor, we were unable to find any recent publicly available information on Brazilian labor rates. Therefore, we used the unskilled and skilled labor rates reported by the Foreign Commercial Service office in Belo Horizonte, Brazil and from the Bureau of International Labor Affairs of the U.S. Department of Labor. These labor rates were used in the final determination of sales at LTFV for magnesium from Russia. *See Calculation Memorandum: Final*

Antidumping Duty Determination, Pure Magnesium and Alloy Magnesium from the Russian Federation, March 22, 1995, at 2. Because the skilled labor rate was reported in Brazilian currency, we adjusted the rate to reflect inflation through the POR using the WPI published by the IMF.

• For factory overhead, we used expense ratios based on elements of constructed-value data reported in the antidumping duty administrative review of silicon metal from Brazil, covering the period July 1, 1994 through June 31, 1995. In order to calculate expense ratios for selling, general, and administrative (SG&A) expenses and profit, we calculated simple averages of the SG&A and profit ratios taken from the 1994 financial statements in the above-named review.

• For packing materials, we used information provided in the *UN Trade Statistics* from Brazil from January through December 1994. We included surrogate freight costs for the delivery of packing materials to the plant reported for use in the final determination of sales at LTFV for magnesium from Russia. We valued packing labor using the same labor rates as used in direct labor above.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act. Currency conversions were made at rates certified by the Federal Reserve Bank and Dow Jones Business Information Services.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Interlink Metals and Chemicals, Inc	8/1/94–7/31/95	0.00
Cometals, Inc	8/1/94–7/31/95	89.92
Russia-wide rate	8/1/94–7/31/95	83.96

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping dumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of titanium sponge from the Russian Federation entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for AVISMA, Interlink, and Cometals will be the rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review and have a separate rate, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) for Russian manufacturers or exporters not covered in the LTFV investigation or in this or prior administrative reviews, the cash deposit rate will continue to be the Russia-wide rate; and (4) the cash deposit rate for non-Russian exporters of subject merchandise from Russia who were not covered in the LTFV investigation or in this or prior administrative reviews will be the rate applicable to the Russian supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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

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

Dated: July 22, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19212 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–791–001]

Ferrochrome From South Africa; Final Results of Countervailing Duty Administrative Review

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

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

SUMMARY: On May 1, 1996, the Department of Commerce (the Department) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on ferrochrome from South Africa for the period January 1, 1994 through December 31, 1994 (61 FR 19259). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) (the Act). For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the

Final Results of Review section of this notice.

EFFECTIVE DATE: July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Melanie Brown, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 355.22(a) of the Department's *Interim Regulations,* this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. See Antidumping and Countervailing Duties: Interim regulations; request for comments, 60 FR 25130, 25139 (May 11, 1995). Accordingly, this review covers Chrome Resources (Pty) Ltd., Consolidated Metallurgical Industries Limited, Feralloys Limited, and Samancor, Limited. This review also covers seven programs.

Because this countervailing duty order was revoked effective January 1, 1995, pursuant to section 753 of the Act, (60 FR 40568 (August 9, 1995)), the Department conducted this administrative review to determine the appropriate assessment rate for entries made during the last review period prior to revocation (January 1, 1994 through December 31, 1994). We published the preliminary results of this review on May 1, 1996 (61 FR 19259). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

Scope of the Review

Imports covered by this review are ferrochrome from South Africa, which is currently classifiable under items 7202.41.00, 7202.49.10, and 7202.49.50 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based upon the responses to our questionnaire, we determine the following:

I. Program Conferring Subsidies

Regional Industrial Development Incentives

In the preliminary results, we found that Regional Industrial Development Incentives conferred countervailable benefits on the subject merchandise. Because no interested parties submitted written comments, we have not changed our finding from the preliminary results.

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Export Incentive Program
B. General Export Incentive Scheme
C. Industrial Development Corporation Loans
D. Preferential Rail Rates
E. Beneficiation Allowance/Electricity Rebate
F. Government Loan Guarantees

Because no interested parties submitted written comments, we have not changed our findings from the preliminary results.

Final Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we determine the net subsidies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (percent)
Chrome Resources (Pty) Ltd.	00.20
Consolidated Metallurgical Industries Limited	00.00
Feralloys Limited	00.00
Samancor, Limited	00.001

As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Chrome Resources (Pty) Ltd., Consolidated Metallurgical Industries Limited, Feralloys Limited, and Samancor, Limited, exported on or after January 1, 1994, and on or before December 31, 1994.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See section 355.22(a) of the *Interim Regulations.* Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, we will instruct Customs to liquidate at the cash deposit rate in effect at the time of entry all entries of subject merchandise from non-reviewed companies.

This countervailing duty order was subject to section 753 of the Act. See Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation, 60 FR 27693 (May 26, 1995). Because no domestic interested party exercised their right under section 753 (a) of the Act to request an injury investigation, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *Revocation of Countervailing Duty Orders,* 60 FR 40568 (August 9, 1995). Accordingly, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: July 22, 1996.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 96–19213 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 950207043–6128–02]

RIN 0625-ZA03

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Correction.

SUMMARY: In notice document 96–15013 beginning on page 30033 in the issue of

Thursday, June 13, 1996, make the following correction:

On page 30035 in the second column, the Geographic Markets listed as Project Funding Priorities were the Big Emerging Markets of Argentina, the Association of Southeast Asian Nations (ASEAN—Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam), Brazil, the Chinese Economic Area (Peoples Republic of China, Taiwan and Hong Kong), India, Korea (South), Mexico, Poland, South Africa and Turkey. Russia and the Newly Independent States were inadvertently omitted and should be added to this list of geographic markets.

Dated: July 23, 1996.

Jerome S. Morse,

Director, Resource Management and Planning Staff, Trade Development.

[FR Doc. 96–19187 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

The Globe Program Survey; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Harriet Chesi, 744 Jackson Place, Washington, D.C. 20503, (202)395–7600.

SUPPLEMENTARY INFORMATION:

I. Abstract

Global Learning and Observations to Benefit the Environment (GLOBE) is an international environmental science and environmental education program that joins students, teachers, and scientists from around the world to study the global environment. Information is needed from participating teachers and students to guide the continued growth of the GLOBE Program, helping to ensure that necessary program implementation changes are made on a timely basis and that the program meets its goals.

II. Method of Collection

Semi-annual surveys of teachers and students involved in the GLOBE Program will be conducted online on the Internet using the World Wide Web, with hard copy survey instruments used as needed.

III. Data

OMB Number: 0648–0310 (expired).

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Teachers and students at GLOBE schools.

Estimated Number of Respondents: 2572.

Estimated Time Per Response: 30 to 120 minutes.

Estimated Total Annual Burden Hours: 2157 hours.

Estimated Total Annual Cost to Public: $0 since respondents will not need to purchase equipment or materials to respond.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 23, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19217 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammal Stranding Report; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dean Wilkinson, Office of Protected Resources, F/PR2, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 402(b) of the Marine Mammal Protection Act (MMPA) requires that information on marine mammal strandings be collected. The marine mammal stranding reports provide baseline information on marine mammal mortalities, human interactions with marine mammals, and marine mammal population dynamics. The National Marine Fisheries Service (NMFS) uses the information to fulfill management responsibilities under the MMPA. The Marine Mammal Stranding Reports are submitted by members of the marine mammal stranding network—the vast majority of whom are volunteers who have been authorized by NMFS to respond to strandings.

II. Method of Collection

Stranding Network members submit basic biological data contained on the reporting form to NMFS Regional Offices for compilation and analysis.

III. Data

OMB Number: 0648–0178.

Form Number: NOAA Form 89–864.

Type of Review: Regular Submission.

Affected Public: There are approximately 350 institutional and individual members of the Marine

Mammal Stranding Network. Institutional members include aquaria, academic institutions, rehabilitation facilities, non-profit institutions, veterinary clinics, and Federal, State and local governments.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,333.

Estimated Total Annual Cost to Public: $1,300.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 23, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19218 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 072296C]

Endangered Species; Permits

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

ACTION: Notice of issuance of permit 1008 for incidental take (P609).

SUMMARY: Notice is hereby given that NMFS has issued Permit 1008 to the North Carolina Division of Marine Fisheries (NCDMF) for the incidental take of listed sea turtles.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

SUPPLEMENTARY INFORMATION: Notice was published on June 6, 1996 (61 FR 28854) that an application had been filed by NCDMF for the incidental take of listed sea turtles as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

NCDMF requested a five-year permit for the incidental take of sea turtles by shrimp trawling activities in North Carolina in a restricted area up to 1 nm offshore from Rich's Inlet (34°17.6'N) to Brown's Inlet (34°35.7'N). This permit replaces the NMFS 1992–1995 temporary rules which allowed shrimp trawlers to use shorter tow times in lieu of towing turtle excluder devices (TEDs), due to the heavy concentration of algae in this restricted area which clogs the TEDs and renders them inoperable. The exemption period will be from April 1 through November 30 from 1996–2000. Each year, when NCDMF determines that the algae concentration is heavy enough to render TEDs inoperable, they will issue a proclamation allowing shrimpers to apply for tow-time exemption permits. Tow times, measured from the time the trawl doors enter the water until the time they are removed from the water, would be limited to 55 minutes between April 1 and October 30, and 75 minutes for the month of November. NCDMF would consult with NMFS if the following lethal take occurred in any one year that was directly attributable to tow-time exemption tows: one Kemp's ridley, hawksbill, green, or leatherback turtle, or two loggerhead turtles. There are approximately 20–45 shrimp trawlers utilizing the restricted area. Tow times will be monitored from shore, and there will be 5% observer coverage in the restricted area for at least the first year of the permit. In addition, NCDMF will impose further restrictions as necessary, including terminating the tow-time option should algae concentrations decrease enough to make TEDs practicable.

On July 15, 1996, NMFS issued Permit 1008 for the above incidental take. Issuance of this permit, as required by the ESA, was based on a finding that: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking; (3) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

Dated: July 22, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–19131 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071696B]

Marine Mammals; Permit No. 927 (P79I)

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

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 927 submitted by the Institute of Marine Sciences, University of California, Santa Cruz, CA 95064 (Principal Investigators: Daniel P. Costa, Ph.D. and Michael E. Goebel) has been granted.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (531/980–4016); and

Alaska Region, NMFS, P.O. BOX 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: On May 30, 1996, notice was published in the Federal Register (61 FR 27052) that a request for a scientific research permit to take Northern fur seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: July 19, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–19130 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Notice of Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of meeting.

SUMMARY: Assistant Secretary of Commerce for Communications and Information will host a meeting for representatives from the private sector to discuss NTIA's recent and upcoming international activities and to seek input as NTIA develops its short- and long-term international agenda. In particular, NTIA would like to learn more about the private sector's priorities on substantive issues, geographic regions, and international organizations.

DATES: The meeting will be held on July 30, 1996, from 2:30 to 4:00 p.m.

ADDRESSES: The meeting will take place at the U.S. Department of Commerce, Room 4830, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 (All visitors must use the main entrance on 14th Street).

FOR FURTHER INFORMATION CONTACT: Ms. Roanne Robinson, Office of the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, Room 4898, 14th and Constitution Avenue, N.W., Washington, D.C., 20230. Telephone: (202) 482–0516; Fax: (202) 482–1635; E-Mail: RROBINSON@NTIA.DOC.GOV

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to space available. If you plan to attend or need special assistance, such as sign language interpretation or other reasonable accommodations, please call Roanne Robinson at (202) 482–0516.

Authority: National Telecommunications and Information Administration Organization Act of 1992, Public Law 102–538, 106 Stat. 3533 (1992) (codified at 47 U.S.C. 901 *et. seq.*)

Dated: July 24, 1996.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 96–19214 Filed 7–26–96; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. Four public sessions will be held in 1996. The OSD Historian will chair these meetings.

DATES: Friday, August 9, 1996 (Meeting will start at 9:00 a.m.)

ADDRESSES: The National Archives Building, The Archivist Reception Room 105, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: July 23, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 96–19099 Filed 7–26–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

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 August 28, 1996.

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, S.W., 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 3506 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: July 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Goals 2000 Comprehensive Local Reform Assistance.

Frequency: Annually.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,000.

Abstract: The Secretary proposes application requirements and selection

criteria for Goals 2000 Comprehensive Local Reform Assistance grants. These grants assist local education agencies in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

[FR Doc. 96–19115 Filed 7–26–96; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Information Management

Agency Information Collection Extensions

AGENCY: Office of Information Management, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) has submitted one information collection package to the Office of Management and Budget (OMB) for renewal under the Paperwork Reduction Act of 1995.

The package covers collections of information concerning the management and administration of DOE's Government-owned/contractor-operated facilities (GOCO), offsite contractors, grantees, and the public. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which contractors and grantees meet contractual requirements; that public funds are being spent in the manner intended, and that fraud, waste, and abuse are immediately detected and eliminated. These collections provide information on grant applications for state and local assistance for efficient use of energy, residential conservation programs, weatherization assistance, and energy programs concerning the schools and hospitals grant program.

DATES AND ADDRESSES: Comments regarding the information collection package should be submitted to the OMB Desk Officer at the following address no later than August 28, 1996, DOE Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed in this notice.).

FOR FURTHER INFORMATION CONTACT: Mary Ann Wallace, Records Management Team (HR–424), Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–4353.

SUPPLEMENTARY INFORMATION: The package listing contains the following information: (1) title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

Package Title: Program Management.

Current OMB No.: 1910–1400.

Type of Respondents: DOE management and operating contractors, offsite contractors, grantees, and the public.

Estimated Number of Responses: 35,244.

Estimated Total Burden Hours: 133,456.

Purpose: This information is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight of DOE contractors and grantees. The package contains 29 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 18, 1996.

S.W. Hall, Jr.,

Chief Information Officer.

[FR Doc. 96–19161 Filed 7–26–96; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket Nos. 96–35–NG, 96–36–NG, 96–38–NG, 96–31–NG, 96–37–NG, 96–40–NG, 96–42–NG, 96–39–NG]

Anadarko Trading Company, et. al; Orders Granting Authorization To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on July 18, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX IMPORT/EXPORT AUTHORIZATIONS GRANTED

DOE/FE authority order No.	Date issed	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1175	06/24/96	Anadarko Trading Company (96–35–NG).	108 Bcf/term	108 Bcf/term	Blanket for 2 years from and to Mexico.
1176	06/24/96	CMS Nomeco Oil & Gas Co. (96–36–NG).	.....	20 Bcf/term	Blanket for 2 years to Canada.
1177	06/24/96	Consumers Power Company (96–38–NG).	73 Bcf/term	.....	Blanket for 2 years from Canada.
1178	06/25/96	Crestar Energy Marketing Corp. (96–31–NG).	6,347 Mcf/per day	.....	Long-term until year 2001 from Canada.
1179	06/25/96	Teco Gas Marketing Company (96–37–NG).	50 Bcf/term	.....	Blanket for 2 years from Canada.
1180	06/26/96	Talisman Energy Inc. (96–40–NG)	60 Bcf/term (Combined total).	(*See* import)	Blanket for 2 years from and to Canada.

APPENDIX IMPORT/EXPORT AUTHORIZATIONS GRANTED—Continued

DOE/FE authority order No.	Date issed	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1181	06/26/96	The Washington Water Power Company (96–42–NG).	50 Bcf/term	.....	Blanket for 2 years from Canada.
1182	06/26/96	North Canadian Marketing Corporation (96–39–NG).	25,000 Mcf/per day.	.....	Long-term for 15 years beginning date of first delivery, not later than 09/30/96 from Canada.

[FR Doc. 96–19162 Filed 7–26–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–645–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

July 23, 1996.

Take notice that on July 18, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–645–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point and to realize natural gas volumes under FGT's blanket certificate issued in Docket No. CP82–553–000 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.

FGT proposes to construct, operate, and own a new delivery point at or near mile post 26.5 on its existing St. Petersburg Lateral in Polk County, Florida, for Chesapeake Utilities Corporation (Chesapeake). FGT also proposes to (i) add the delivery point to an existing firm gas transportation service agreement pursuant to FGT's FERC Gas Tariff Rate Schedule FTS–1 and (ii) realign ''Maximum Daily Quantities'' from the existing Bartow ''B'' Delivery Point and to realign ''Maximum Daily Transportation Quantities'' from the existing Winter Haven Division to the delivery point.

FGT states that the delivery point would include a 2-inch tap, electronic flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver gas up to 60 MMBtu per hour at line pressure. It is stated that Chesapeake would reimburse FGT for the $67,000 estimated construction costs. It is further stated that Chesapeake would construct, own, and operate related non-jurisdictional facilities, including a meter and regulation station.

FGT advises that the delivery point would be used by FGT to transport gas for the State of Florida for its Polk Correctional Institution. FGT explains that the State of Florida would acquire firm capacity from Chesapeake under FGT's Capacity Relinquishment program in accordance with section 18 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1, and FGT would transport gas to the delivery point on a self-implementing basis under its blanket transportation certificate issued by the Commission in Docket No. CP89–555–000, pursuant to Subpart G of Part 284 of the Commission's Regulations.

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 therefore, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–19112 Filed 7–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–137–000]

Northern Natural Gas Company; Notice of Technical Conference

July 23, 1996.

In the Commission's order issued July 23, 1996, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, August 1, 1996, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–19110 Filed 7–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–270–000]

Northern Natural Gas Company; Notice of Technical Conference

July 23, 1996.

In the Commission's order issued July 5, 1996, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, August 1, 1996, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 88 First Street, N.E., Washington, DC

20426. All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–19111 Filed 7–26–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1754–000]

Powerline Controls, Inc.; Notice of Issuance of Order

July 24, 1996.

Powerline Controls, Inc. (Powerline) submitted for filing a rate schedule under which Powerline will engage in wholesale electric power and energy transactions as a marketer. Powerline also requested waiver of various Commission regulations. In particular, Powerline requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Powerline.

On July 19, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Powerline should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Powerline is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Powerline's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 19, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–19188 Filed 7–26–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting; Notice

July 24, 1996

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 31, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 657th Meeting—July 31, 1996, Regular Meeting, (10:00 a.m.)

CAH–1.
  Docket# P–2431, 010, Wisconsin Electric Power Company
CAH–2.
  Docket# P–2535, 012, South Carolina Electric & Gas Company
CAH–3.
  Docket# P–2582, 003, Rochester Gas and Electric Corporation
CAH–4.
  Docket# P–4797, 047, Cogeneration, Inc.
CAH–5.
  Omitted,
CAH–6.
  Docket# P–2645, 029, Niagara Mohawk Power Corporation

Consent Agenda—Electric

CAE–1.
  Docket# ER96–1618, 000, Progress Power Marketing, Inc.
CAE–2.
  Docket# ER96–2027, 000, Midwest Energy, Inc.
CAE–3.
  Docket# ER96–1471, 000, Cleveland Electric Illuminating Company
CAE–4.
  Docket# TX96–2, 000, City of College Station, Texas
CAE–5.
  Docket# QF84–422, 001, Zond-Panaero Windsystem Partners I
  Other#s QF85–263, 001, Zond-Panaero Windsystem Partners II
CAE–6.
  Docket# QF88–364, 003, TPC 4, Inc.
CAE–7.
  Docket# TX95–1, 000, Enron Power Marketing, Inc.
  Other#s TX95–7, 000, Cleveland Public Power v. the Cleveland Electric Illuminating Company and Toledo Edison Company
  TX96–8, 000, Trigen St. Louis Energy Corporation
  TX96–9, 000, Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Ephrata, Hatfield, Kutztown, Pennsylvania, et al.
CAE–8.
  Docket# EC96–10, 000, Baltimore Gas and Electric Company and Potomac Electric Power Company
  Other#s ER96–784, 000, Baltimore Gas and Electric Company and Potomac Electric Power Company
CAE–9.
  Docket# TX94–7, 001, AES Power, Inc.
  Other#s TX94–7, 002, AES Power, Inc.
CAE–10.
  Omitted
CAE–11.
  Omitted
CAE–12.
  Docket# QF88–84, 006, LG&E-Westmoreland Southampton
  Other#s EL94–45, 001, LG&E-Westmoreland Southampton
CAE–13.
  Docket# ER96–1046, 001, Central Power and Light Company, West Texas Utilities Company and Public Service Company of Oklahoma, et al.
CAE–14.
  Docket# ER96–1366, 002, Aquila Power Corporation
CAE–15.
  Docket# EL96–29, 000, Wisconsin Power and Light Company
CAE–16.
  Docket# EL96–19, 000, Louisiana Public Service Commission, et al., v. System Energy Resources, Inc. and Entergy Services, Inc.
CAE–17.
  Docket# EL95–33, 000, Louisiana Public Service Commission v. Entergy Services, Inc.
CAE–18.
  Docket# EL95–69, 000, Sierra Pacific Power Company
CAE–19.
  Omitted
CAE–20A.
  Docket# EL96–9, 000, The Cleveland Electric Illuminating Company
  Other#s EL96–21, 000, Cleveland Public Power of the City of Cleveland, Ohio v. the Cleveland Electric Illuminating Company
CAE–20B.
  Docket# ER96–501, 000, Ohio Power Company
CAE–21.
  Docket# TX96–7, 000, City of Palm Springs, California
CAE–22.
  Docket# OA96–15, 000, Central Louisiana Electric Company, Inc.

Consent Agenda—Miscellaneous

CAM–1.
Docket# RM95–1, 000, Supplemental Standards of Ethical Conduct for Employees of the Federal Energy Regulatory Commission

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP96–275, 000, Tennessee Gas Pipeline Company
CAG–2.
Docket# RP96–283, 000, Columbia Gulf Transmission Company
CAG–3.
Docket# RP96–297, 000, Tennessee Gas Pipeline Company
CAG–4.
Docket# RP96–298, 000, Columbia Gas Transmission Corporation
CAG–5.
Docket# RP96–299, 000, Carnegie Interstate Pipeline Company
CAG–6.
Docket# RP96–301, 000, Florida Gas Transmission Company
CAG–7.
Docket# RP96–307, 000, Tennessee Gas Pipeline Company
CAG–8.
Omitted
CAG–9.
Docket# TM96–14–29, 000, Transcontinental Gas Pipe Line Corporation
CAG–10.
Docket# RP96–200, 004, Noram Gas Transmission Company
CAG–11.
Docket# RP96–290, 000, Michigan Gas Storage Company
CAG–12.
Docket# RP96–293, 000, Trunkline Gas Company
CAG–13.
Docket# RP96–296, 000, K N Interstate Gas Transmission Company
CAG–14.
Docket# RP96–300, 000, Williston Basin Interstate Pipeline Company
CAG–15.
Docket# RP96–302, 000, Northern Natural Gas Company
CAG–16.
Docket# RP96–303, 000, Williams Natural Gas Company
Other#s RP89–183, 063, Williams Natural Gas Company
CAG–17.
Docket# RP96–304, 000, Williston Basin Interstate Pipeline Company
CAG–18.
Docket# RP96–305, 000, Williston Basin Interstate Pipeline Company
CAG–19.
Docket# RP96–306, 000, Paiute Pipeline Company
CAG–20.
Docket# TM96–4–49, 000, Williston Basin Interstate Pipeline Company
CAG–21.
Docket# TM96–5–28, 000, Panhandle Eastern Pipe Line Company
CAG–22.
Docket# PR94–21, 000, LG&E Natural Pipeline Company
Other#s PR94–21, 001, LG&E Natural Pipeline Company
CAG–23.
Docket# PR96–3, 000, Equitable Storage Company
Other#s PR96–3, 001, Equitalbe Storage Company
CAG–24.
Docket# PR96–4, 000, Consumers Power Company
Other#s PR96–4, 001, Consumers Power Company
CAG–25.
Docket# RP95–90, 002, Tennessee Gas Pipeline Company
CAG–26.
Docket# RP95–182, 005, ANR Pipeline Company
Other#S
RP95–182, 003, ANR Pipeline Company
RP95–182, 006, ANR Pipeline Company
CAG–27.
Docket#
RP95–197, 012, Transcontinental Gas Pipe Line Corporation
CAG–28.
Docket#
RP96–143, 000, Williams Natural Gas Company
CAG–29.
Docket#
RP93–206, 006, Northern Natural Gas Company
CAG–30.
Docket#
RP95–185, 012, Northern Natural Gas Company
Other#S
RP93–206, 009, Northern Natural Gas Company
RP95–185, 005, Northern Natural Gas Company
RP95–185, 013, Northern Natural Gas Company
CAG–31.
Docket#
RP94–227, 006, Transwestern Pipeline Company
Other#S
RP95–271, 003, Transwestern Pipeline Company
CAG–32.
Docket#
RP94–294, 007, Panhandle Eastern Pipe Line Company
CAG–33.
Docket#
RP95–145, 002, Northwest Pipeline Corporation
Other#S
RP95–145, 004, Northwest Pipeline Corporation
CAG–34.
Docket#
RP95–161, 000, Northern Natural Gas Company
CAG–35.
Docket# TM96–4–25, 001, Mississippi River Transmission Corporation
CAG–36.
Docket#
RP94–149, 000, Pacific Gas Transmission Company
Other#S
RP94–145, 000, Pacific Gas Transmission Company
RP94–145, 004, Pacific Gas Transmission Company
RP94–149, 005, Pacific Gas Transmission Company
RP95–141, 002, Pacific Gas Transmission Company
CAG–37.
Docket# SA96–2, 001, Teco Pipeline Company
CAG–38.
Docket#
RP96–231, 002, Kern River Gas Transmission Company
CAG–39.
Docket#
RP91–143, 034, Great Lakes Gas Transmission Limited Partnership
Other#S
RP91–143, 035, Great Lakes Gas Transmission Limited Partnership
RP95–422, 003, Great Lakes Gas Transmission Limited Partnership
CAG–40.
Omitted
CAG–41.
Docket# TM96–1–8, 001, South Georgia Natural Gas Company
Other#S
RP95–38, 001, South Georgia Natural Gas Company
CAG–42.
Docket#
RP91–143, 033, Great Lakes Gas Transmission Limited Partnership
CAG–43.
Omitted
CAG–44.
Docket#
RP94–328, 001, K N Interstate Gas Transmission Company
Other#S RP95–81, 000, K N Interstate Gas Transmission Company
CAG–45.
Omitted
CAG–46. Docket# RP96–216, 000, New England Power Company v. Algonquin Gas Transmission Company
CAG–47.
Docket# OR96–12, 000, Total Petroleum, Inc. v. Citgo Products Pipeline Company and Williams Pipe Line Company
CAG–48.
Docket# OR89–2, 007, Trans Alaska Pipeline System
Other#S IS89–7, 000, Amerada Hess Pipeline Corporation
IS89–8, 000, Arco Pipeline Company
IS89–9, 000, BP Pipelines (Alaska) Inc.
IS89–10, 000, Exxon Pipeline Company
IS89–11, 000, Mobil Alaska Pipeline Company
IS89–12, 000, Phillips Alaska Pipeline Corporation
IS89–13, 000, Unocal Pipeline Company
CAG–49.
Docket# RP95–167, 000, Indicated Shippers v. Sea Robin Pipeline Company
CAG–50.
Docket# RP93–197, 000, Union Pacific Fuels, Inc. et al. v. Southern California Gas Company
Other#S RP93–194, 000, Southern California Utility Power Pool and Imperial Irrigation District v. Southern California Gas Company

RP94–51, 000, Shell Western E&P Inc. v. Southern California Gas Company
CAG–51.
Docket# IS96–16, 000, Sadlerochit Pipeline Company
CAG–52.
Docket# MG88–47, 009, Texas Gas Transmission Corporation
CAG–53.
Docket# CP92–522, 001, Tarpon Transmission Company
CAG–54.
Docket# CP66–111, 003, Great Lakes Gas Transmission Limited Partnership
Other#S CP96–26, 000, Great Lakes Gas Transmission Limited Partnership
CAG–55.
Omitted
CAG–56.
Docket# CP95–532, 000, Southern Natural Gas Company
CAG–57.
Docket# CP94–38, 000, Ouachita River Gas Storage Company, L.L.C.
CAG–58.
Docket# CP95–74, 002, Texas Eastern Transmission Corporation
CAG–59.
Docket# CP96–153, 000, Southern Natural Gas Company
CAG–60.
Docket# CP96–159, 002, Shell Gas Pipeline Company
CAG–61.
Docket# CP96–186, 000, ANR Pipeline Company
CAG–62.
Docket# CP94–29, 000, Paiute Pipeline Company

Other#s CP94–29, 001, Paiute Pipeline Company

CP94–29, 002, Paiute Pipeline Company
CAG–63.
Docket# CP95–194, 000, Northern Border Pipeline Company

Other#s CP95–116, 000, Northern Border Pipeline Company

CP95–194, 001, Northern Border Pipeline Company
CAG–64.
Docket# CP96–27, 000, Natural Gas Pipeline Company of America

Other#s CP96–27, 001, Natural Gas Pipeline Company of America
CAG–65.
Docket# CP96–178, 000, Maritimes & Northeast Pipeline, L.L.C.
CAG–66.
Docket# CP96–235, 000, Southern Natural Gas Company
CAG–67.
Docket# CP96–248, 000, Portland Natural Gas Transmission System

Other#s CP96–249, 000, Portland Natural Gas Transmission System
CAG–68.
Docket# CP96–358, 000, Mid-American Energy Company v. Natural Gas Pipeline Company of America
CAG–69.
Docket# CP96–194, 000, Texas Eastern Transmission Corporation

Other#s CP96–193, 000, Texas Eastern Transmission Corporation
CAG–70.
Docket# CP93–326, 000, Eastern American Energy Corporation

Other#s CP93–328, 002, Columbia Gas Transmission Corp.
CAG–71.
Docket# CP96–150, 000, Chevron U.S.A. Inc.

Other#s CP96–119, 000, Transwestern Pipeline Company
CAG–72.
Omitted
CAG–73.
Docket# CP96–217, 000, Cities of Tallahassee and Lakeland, Florida, et al., v. Florida Gas Transmission Company

Other#s CP96–139, 000, Florida Gas Transmission Company

Hydro Agenda

H–1.
Docket# P–2299, 024, Turlock Irrigation District and Modesto Irrigation District

Other#s P–2299, 031, Turlock Irrigation District and Modesto Irrigation District Order on License Amendment and Rehearing Requests.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket# RM96–14, 000, Release of Firm Capacity on Interstate Natural Gas Pipelines

Other#s RM96–14, 001, Release of Firm Capacity on Interstate Natural Gas Pipelines Notice of Proposed Rulemaking.

II. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 96–19372 Filed 7–25–96; 4:00 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5543–3]

Agency Information Collection Activities for Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) to allow the Agency to continue to collect data for the information requirements for boilers and industrial furnaces burning hazardous waste. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before September 27, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–FBIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. Deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically through the Internet to: RCRA-Docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–FBIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any Confidential Business Information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Copies of the draft ICR and public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is

the paper record maintained at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Jo Krolewski, Waste Treatment Branch (5302W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–7754.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners/operators of boilers and industrial furnaces that burn hazardous waste.

Title: Information Requirements For Boilers and Industrial.

Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements, and Part B Permit Application and Modification Requirements, EPA ICR #1361, OMB No. 2050–0073.

Abstract: On February 21, 1991 and August 25, 1992, EPA expanded controls on hazardous waste combustion to regulate air emissions from the burning of hazardous waste in boilers and industrial furnaces (BIFs), which were previously unregulated. 40 CFR Part 266, Subpart H established standards for the burning of hazardous waste in BIFs under the authority of the Resource Conservation and Recovery Act (RCRA). 40 CFR 270.22 established Part B application information requirements for BIFs burning hazardous waste, and § 270.66 established permit requirements for BIFs. Owners and operators of BIF facilities must comply with these regulations in addition to other regulations applicable to all hazardous waste facilities.

EPA requires this mandatory information collection to demonstrate that facilities meet the necessary regulatory requirements and to ensure that the environment is adequately protected. Regulations covering BIFs and general hazardous waste facilities are promulgated under authority of RCRA sections 1006, 2002, 3001 through 3007, 3010, and 7004, as amended. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

In fitting with our overall goal to significantly reduce paperwork burden, EPA, in its proposed rule, Revised Standards for Hazardous Waste Combustors (see 61 FR 17358), has made proposals that may result in future reductions to the recordkeeping and reporting burden for BIFs. The proposed rule revises §§ 266.102(e)(10) and 266.103(k), requiring BIFs to maintain files of all information required by §§ 266.102(e)(10) and 266.103(k) for a minimum of 5 years. This revision may result in reduced burden for BIFs because the current BIF regulation requires facilities to maintain information for the life of the facility. These recordkeeeping requirements would take affect 6 months from the final publication of the final rule for Revised Standards for Hazardous Waste Combustors.

In addition, EPA is proposing a comparable fuels exclusion (see 61 FR 17459) that could affect the reporting and recordkeeping burden for BIFs. EPA is proposing a comparable fuel exclusion that will exclude from the definition of solid and hazardous waste materials those that meet enumerated specification levels for concentrations of toxic constituents and physical properties. EPA's goal is to develop a comparable fuel specification which is of use to the regulated community but assures that an excluded waste is similar in composition to commercially available fuel that is not regulated under RCRA when burned. One of the benefits that would result from promulgating this type of exemption is the reduction of unnecessary regulatory burden. As a result of the comparable fuels exclusion, EPA believes that the BIF universe regulated under RCRA will decrease because some BIFs are combusting a hazardous waste that would be classified as comparable fuels. Thus, combustors that are no longer regulated as BIFs will no longer have to comply with BIF reporting and recordkeeping requirements, which results in burden reduction. The comparable fuels exemption will take effect 6 months from the final publication of the Revised Standards for Hazardous Waste Combustors.

EPA invites comment on the burden reduction provided by these modifications to the BIF requirements, as well as any other possible sources of burden reduction for BIFs. EPA would also like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that the total annual respondent burden for all activities covered in this ICR is approximately 554,166 hours. The Agency estimates the number of likely respondents to be 236 and the frequency of their response will be on occasion, depending on the individual reporting or recordkeeping requirement.

The average reporting and recordkeeping burden for facilities with new permitted BIF units are approximately 5,524 hours and 2,547 hours per year, respectively. The average reporting and recordkeeping burden for facilities with existing permitted BIF units are approximately 4,736 hours and 2,545 hours per year, respectively. The average reporting and recordkeeping burden for facilities with existing interim status BIF units are approximately 756 hours and 2,767 hours per year, respectively. These estimates include time for complying with requirements associated with general facility standards, recordkeeping, contingency plan and emergency procedures, closure, financial assurance, and conditions applicable to all permits; specific unit requirements for BIFs; and requirements related to submittal of general and specific unit information in the Part B permit application, and Part B permit modification requirements.

In addition, this burden estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 18, 1996.

James Berlow,

Acting Director, Office of Solid Waste.

[FR Doc. 96–19090 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

[AD–FRL–5543–8]

Request for Comments: Industrial Combustion Coordinated Rulemaking Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 27, 1996.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), Attention: Docket Number A–96–17, Room M–1500, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to Mr. Jim Eddinger, Combustion Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. *Copies of ICR.* The draft ICR and other relevant materials, including the draft supporting statement, are available electronically on the Technology Transfer Network (TTN). Choose the ''ICCR-Industrial Combustion Coordinated Rulemaking Process'' selection from the Technical Information Areas menu. To download the draft ICR from the main menu, select ''<R> Download Forms for Replies''. The TTN is one of the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,400 bits-per-second (bps) modem. The TTN is also accessible through the Internet at ''TELNET ttnbbs.rtpnc.epa.gov''. If more information on the TTN is needed, call the help desk at (919) 541–5384. The help desk is staffed from 11 a.m. to 5 p.m., Eastern time. A voice menu system is available at other times.

Copies of the ICR may also be obtained from the docket at the above address in Room M–1500, Waterside Mall (ground floor), phone number (202) 260–7548. A reasonable fee may be charged for copying. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, except for Federal holidays. Copies of the draft ICR may also be obtained free of charge by contacting one of the people listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Eddinger, Combustion Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, phone number (919) 541–5426, facsimile number (919) 541–0072; or, at the same address and facsimile number, Mr. Fred Porter, phone number (919) 541–5251; Mr. Sims Roy, phone number (919) 541–5263; Ms. Amanda Agnew, phone number (919) 541–5268; Mr. Walt Stevenson, phone number (919) 541–5264; or Mr. Bill Maxwell, phone number (919) 541–5430.

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action are those which own or operate the following combustion sources: Industrial/institutional/commercial boilers, process heaters, industrial/commercial and other solid waste incinerators (*not* including hazardous waste incinerators, medical waste incinerators, or municipal waste incinerators burning more than 40 tons/day of municipal solid waste), stationary gas turbines, or stationary internal combustion engines.

These combustion sources are operated in a wide variety of settings by many businesses and industries, including but not limited to the following: Petroleum refining; oil and natural gas extraction and transmission; asphalt and other petroleum-based products manufacturing; chemical and pharmaceutical manufacturing; lumber processing; furniture manufacturing; durable and consumer goods manufacturing; paper/pulp mills; agricultural products manufacturing; metal products production; machine/equipment manufacturing; electronic equipment industry; automobile and transportation equipment industry; secondary metals processing industry; mining; military bases; food production plants; meat processing plants; municipal water services; public utilities; independent power producers; telephone companies; small municipalities; construction businesses; commercial establishments; hotels; apartment complexes; laundries; hospitals; research companies; veterinary services; funeral services; medical centers; research centers; schools; colleges; and other institutions.

Title: Industrial Combustion Coordinated Rulemaking Information Collection Request.

Abstract: Sections 112 and 129 of the Clean Air Act (the Act) require EPA to develop regulations to limit emissions of toxic or hazardous air pollutants, and in some cases, emissions of certain criteria air pollutants as well, from several categories of combustion sources, including industrial boilers, commercial/institutional boilers, process heaters, industrial/commercial waste incinerators, other solid waste combustors, stationary gas turbines, and stationary internal combustion engines. These combustion sources are used pervasively for energy generation and waste disposal in a wide variety of industries and commercial and institutional establishments. They combust fuels including oil, coal, natural gas, wood, and non-hazardous wastes. Both hazardous air pollutants and criteria pollutants are emitted.

These regulations could affect hundreds of thousands of combustion sources nationwide and will have significant environmental, health, and cost impacts. The EPA has decided to coordinate the development of these regulations in a single effort termed the ''Industrial Combustion Coordinated Rulemaking'' (ICCR).

The overall goal of the ICCR is to develop a unified set of Federal air emissions regulations that will maximize environmental and public health benefits in a flexible framework at a reasonable cost of compliance, avoiding duplicative and overlapping regulatory requirements, within the constraints of the Act. A Federal Advisory Committee Act (FACA) advisory committee and a series of work groups, composed of stakeholders and EPA, are being established to develop recommendations that will assist EPA in implementing the ICCR. This will permit active stakeholder participation in all aspects of regulatory development.

Additional information about the ICCR, as well as information on how to participate in the ICCR, is available in the document ''Industrial Combustion Coordinated Rulemaking—Proposed Organizational Structure and Process.'' This document may be downloaded from the TTN or may be obtained by contacting one of the individuals mentioned above under **FOR FURTHER INFORMATION CONTACT**.

The organizational structure and process of the ICCR permits the Federal Advisory Committee (referred to as the Coordinating Committee) and the Source Work Groups (one for each of the various combustion sources) to identify, collect, and compile information necessary for regulatory development; undertake and perform various analyses of this information; identify and

develop a number of regulatory alternatives (i.e., possible regulations) for each combustion source; and undertake and perform assessments or analyses of the environmental and public health benefit, as well as the cost and economic impacts associated with each of the regulatory alternatives. The structure and process of the ICCR also permits each Source Work Group to develop recommendations regarding which regulatory alternative should serve as the basis for a regulation, as well as recommendation on all other aspects of the regulation, and present these recommendations to the Coordinating Committee. Finally, the structure and process of the ICCR permits the Coordinating Committee to review and consider these recommendations and then present recommendations to EPA. The EPA will retain its full and independent decision making authority and responsibility, but will give great weight and consideration to these recommendations.

The Clean Air Act requires development of six of the seven regulations by November 2000, which in turn necessitates proposal by November 1999—only three years from now. To ensure that the 1999 and 2000 dates are met, the necessary information to develop these regulations must be collected in 1996 and in early 1997, analyses of the information must be completed in 1997, regulatory alternatives must be identified and various analyses of the impacts associated with these alternatives must be completed in 1998, and the proposed rule(s) must be developed and proposed in 1999.

It should be noted that the EPA is under Court Order to develop regulations under section 129 of the Act for industrial and commercial waste incinerators, which is one of the source categories included in the ICCR. The litigants have agreed to an interim extension of the court-ordered proposal date for these regulations from May 30, 1996 to January 1997. As a condition associated with this extension, EPA must develop a formal ICR under section 114 of the Act by January 1997 to collect all the information the EPA feels is necessary to develop regulations for industrial and commercial solid waste incinerators. The EPA will meet with the litigants in January 1997 to discuss whether sufficient information to develop regulations for industrial and commercial solid waste incinerators is likely to be obtained more quickly and effectively by sending out the ICR questionnaire or by other means, such as through the ICCR.

It is the EPA's hope that through the efforts of the stakeholders participating in the ICCR, there will be no need—or only a limited need—for EPA to use the authority of section 114 of the Act (which requires mandatory response) to send the formal ICR to thousands of combustion sources. It should be the goal and the task of the Source Work Groups working under the ICCR FACA Advisory Committee to devise and implement a means for gathering the information necessary to develop regulations from all sources—including industry—in a voluntary and cooperative manner.

While initial response to the ICCR has been positive from all stakeholders, including industry, State/local agencies, environmental groups, etc., and EPA is committed to doing everything it can to ensure the success of the ICCR, EPA must be prepared and in a position to meet the statutory dates in the Act for adoption of the regulations. Consequently, EPA must proceed with development of an ICR for all the combustion sources included in the ICCR, and must proceed along this path in parallel with the Source Work Group activities under the ICCR. This will permit EPA to send out the ICR questionnaire to gather the necessary information and do the necessary analyses in time to meet the statutory and court-ordered deadlines if the ICCR Work Group information collection efforts do not succeed.

If the judgment in January 1997 is that the information collection efforts through the ICCR have failed or proven to be inadequate, then the EPA will implement the formal information collection effort by mid-January 1997. However, if it appears that the ICCR will be successful in collecting the needed information voluntarily, the ICR questionnaire will not be sent out, or a scaled back version could be used to collect only the information that has not been obtained by other means. Whether EPA will be required to send out the ICR questionnaire for the industrial and commercial waste incinerator category will depend on whether EPA can demonstrate to the litigant's satisfaction that the ICR is unnecessary because EPA is likely to obtain the information faster using some other process, such as voluntary collection efforts under the ICCR.

Request for Comments: The EPA would like to solicit comments on this ICR to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological techniques, or other forms of information technology, (e.g., permitting electronic submission of responses).

The EPA also would like to solicit comments that will assist the EPA in demonstrating to the plaintiff in the Industrial and Commercial Waste Incinerators rulemaking litigation that sending out the ICR will be unnecessary because EPA is likely to obtain the information faster under another process, such as the ICCR. For example, commenters who plan to participate in the ICCR voluntary collection efforts could submit copies of any collection plans they are developing for their own use or an outline of the type of data they plan to submit voluntarily to EPA under the ICCR process along with the schedule for such submission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is sent to ten or more persons unless it displays a currently valid OMB control number. The OMB control numbers for EPA's approved information collection requests are listed in 40 CFR part 9 and 48 CFR Ch. 15. This notice is the first step in obtaining approval for the ICR described below.

ICR Description: To develop regulations, the EPA will need information to determine the maximum achievable control technology (MACT) floor; identify regulatory alternatives (i.e., possible regulations) more stringent than the MACT floor; and analyze the environmental and public health benefit, as well as the cost and economic impacts of the alternatives. These analyses of impacts are the basis for decisions about which regulatory alternative(s) to propose as the regulation.

The proposed ICR has five parts: General facility information; combustor information; control device information; emissions information; and capital and annual costs. Part I, general facility information, would be completed once for each facility to determine the facility name, facility size, and location. This

information will be used to determine regional economic impacts and small business impacts. Location information is also an input to the environmental and public health benefits analyses, and is often a critical factor in determining the MACT floor.

Part II, combustor information, would be completed separately for each combustor at a facility to determine combustor size, design and operating data, usage patterns, types of fuels and wastes combusted, control devices, and pollution prevention methods in use. This information will be used to determine in which source category or subcategory the combustor belongs, to determine the MACT floor, and to identify various regulatory alternatives. The combustor design, fuel, and control device information can also be used to estimate emissions.

Part III, control device information, would be completed separately for each control device associated with each combustor. Information such as control efficiencies and operating temperatures will be used to estimate emissions, determine the MACT floor, and identify regulatory alternatives.

Part IV, emissions information, would be completed separately for each combustor to provide permit limits and emissions test data for sulfur dioxide, nitrogen oxide, hydrogen chloride, particulate matter, mercury, lead, cadmium, dioxins/furans, hazardous air pollutants, opacity, and visible emissions. This information will be used to determine the MACT floor and regulatory alternatives above the MACT floor, and to estimate emission impacts of the regulatory alternatives and assess the public health benefits of the regulations.

Part V, capital and annual costs, would also be completed separately for each combustor to provide information on combustion and control equipment installation costs, retrofit costs, and annual operating costs and revenues. This information will be used to estimate the costs of the regulatory alternatives and to determine the economic impacts of the regulations.

As discussed above, if necessary, the ICR would be mailed—either in total or in part, as appropriate—in hardcopy form to the intended recipients. An electronic version of the questionnaire is being considered to allow for electronic completion and submittal. Recipients of this ICR would be required to respond under the authority of section 114 of the Act. If a respondent believes the disclosure of certain information requested would compromise a trade secret, it would need to be clearly identified as such and will be treated as confidential until a determination is made. Any information subsequently determined to constitute a trade secret will be protected under 18 U.S.C. 1905. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public without further notice (40 CFR 2.203, September 1, 1976).

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The purpose of this ICR is to collect and evaluate existing information. The generation of new data (e.g., conducting an emission test) is not required to complete this questionnaire. This is a one-time data collection effort.

The time to complete this ICR will vary for each respondent depending on the number of combustion sources at the facility. Many respondents may have only one combustion source (a crematorium, for example), while other respondents may have 30 or more sources (a petroleum refinery or military base, for example). The ICR is expected to require 39 hours per combustion source to complete. The respondents are expected to have an overall average of 10 combustion sources per facility, and would require 390 hours to complete and submit the ICR. This cost has been estimated to be $12,500 per average facility.

The total number of respondents will be a sample of the total population which will be determined based on the information available from EPA data bases, State agencies, and other available references being gathered now and through the ICCR. Preliminary efforts have estimated the total number of sources to be over 500,000. The EPA plans to request that this ICR be considered for 20,000 recipients. If the average recipient has 10 combustion sources, the total respondent burden would be 7.78 million hours at a total cost of approximately $247 million. This equates to an average of $35.3 million per regulation to be developed.

While 20,000 recipients may seem like a large sample, this is *not* the case because of the large number of sources, the numerous and varied uses of these sources, the complexity of some of the sites—particularly the industrial sites—at which these sources are used, and the number of regulations that EPA is concurrently developing under the ICCR—seven at minimum. The estimate of 20,000 questionnaire recipients is less than 5 percent of the total number of sources. The population includes seven source categories, encompassing many types of industries, many geographic locations, multiple combustor designs and sizes, and a range of fuels and control levels. In order to adequately represent these parameters, a sample size of 20,000 may be needed, as further explained in the supporting statement for the ICR. Recipients will be selected from lists of sources obtained from EPA databases, State files, and other published directories.

The advantage of this ICR is that it will gather information for multiple source categories (industrial boilers, commercial/institutional boilers, process heaters, industrial/commercial waste incinerators, other solid waste combustors, stationary gas turbines, and internal combustion engines) in one combined effort, which will be much less burdensome for the respondents than if separate ICR's were required for each source category.

It is very possible that the per combustor and total respondent burdens may be greatly reduced if the ICCR Coordinating Committee and Source Work Groups are successful in collecting information through the ICCR. The ICR may be used only for a portion of the source categories included in the ICCR, or the ICR may be reduced in scope to focus only on areas of information that the Coordinating Committee and Source Work Groups were unable to obtain by other means. Again, the EPA is committed to the process of the ICCR, but must necessarily be prepared to use a formal ICR if the ICCR, or the information collect efforts of the Coordinating Committee and the Source work Groups under the ICCR, are not successful. The ICR must be developed in parallel with other information gathering efforts under the ICCR so that the EPA will be able to send out the ICR in time to meet the statutory and court-ordered deadlines if these other efforts are not successful.

Dated: July 23, 1996.

Bruce C. Jordan,

Director, Emissions Standards Division.

[FR Doc. 96–19195 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5542–8]

Notice of 90–Day Comment Period on the Proceedings of the Climate Change Analysis Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Negotiations under the Framework Convention on Climate Change (FCCC) are underway to address possible actions under the Berlin Mandate. These discussions are scheduled to reach a conclusion at the Third Meeting of the Parties which is planned for Fall of 1997. To provide input on a wide range of analytical issues related to these negotiations, the Departments of Agriculture, Commerce, Energy, and State, and the Environmental Protection Agency hosted the Climate Change Analysis Workshop on June 6–7 in Springfield, VA (''Workshop Announcement; Call for Papers Analysis of Issues Related to Next Steps on Climate Change,'' Federal Register, April 23, 1996, at 61 FR 17893–17894).

This workshop provided an opportunity for federal agencies to present the interim results of their ongoing analyses related to the economic and environmental impacts of issues arising in the context of these negotiations. The workshop also provided an opportunity for other interested individuals and organizations to present analytical studies that contribute to an improved understanding of the issues described above. Over 50 organizations presented papers at the workshop.

Copies of the papers presented at the workshop were distributed to all attendees. Additional copies can be viewed Monday through Friday between the hours of 8:00 a.m. and 5:30 p.m. at: U.S. Environmental Protection Agency, Office of Air and Radiation, Docket and Information Center, 401 M Street, Southwest, Washington, DC, Room M 1500 (phone: 202–260–7548). The docket number is A–96–35.

ADDRESSES: Comments on papers presented at the workshop can be sent to: U.S. Environmental Protection Agency, Air Docket, 401 M Street, SW (Mail code 6102), Washington, DC, 20460. Please include the docket number: A–96–35.

DATES: The comment period is now open and will close October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Jeremy Symons, U.S. Environmental Protection Agency, 401 M Street, NW, Mail Code 6202J, Washington, DC, 20460. Internet address: ''symons.jeremy@epamail.epa.gov''. Telephone: 202–233–9190.

Dated: July 19, 1996.

Richard Wilson,

Acting, Assistant Administrator for Air and Radiation.

[FR Doc. 96–19089 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

[BM–11–JUL–96–02]

Policy Statement Concerning Adjustments to the Insurance Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice of policy statement.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) announces that it has adopted a Policy Statement Concerning Adjustments to the Insurance Premiums. This policy statement establishes a semiannual review process, using the criteria announced in the Board's March proposal, as a basis for the Corporation's exercise of its discretion to adjust premiums in response to changing conditions. It also establishes a premium floor of 7.5 basis points for loans in accrual status until the Insurance Fund reaches the level specified in the Farm Credit Act of 1971, as amended (the Act); 12 U.S.C. 2277a-4. Finally, it adds two clarifications to the March proposal. The policy states the express authority of the Corporation to reduce premiums to zero on loans guaranteed by Federal or State governments. It also makes it clear that the Board will consider asset growth, not merely loan growth, when it does its semiannual review.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Nichols, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

Background

In 1987, Congress directed the Corporation to collect premiums to reach the secure base amount, which is defined as 2 percent of the aggregate outstanding insured obligations of all insured banks (excluding a percentage of State and Federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is ''actuarially sound.''

The statute specifies a limited form of risk-based premium assessments: 25 basis points for nonaccrual loans; 15 basis points for loans in accrual status (excluding certain State and Federally guaranteed loans); and a very modest premium for government-guaranteed loans. This formula was designed as an incentive for the Farm Credit System to make quality loans and at the same time build the Insurance Fund to a level that Congress believed would prevent a default on a System debt obligation. The Insurance Fund represents the Corporation's equity, i.e., the difference between its total assets ($1,023 million as of yearend 1995) and its total liabilities, including its insurance obligations ($121 million as of yearend 1995).

While Congress gave the Corporation the discretion to reduce the premium assessments before reaching the secure base amount in the Farm Credit System Reform Act of 1996, Pub. L. No. 104–105, 110 Stat. 162 (Feb. 10, 1996), it did not alter the original mandate to reach and maintain the secure base amount. In the policy statement, the Corporation concludes that under these circumstances, any reduction in premium must take into account its impact on the original mandate.

Neither the statute nor the legislative history provides guidance on how the Corporation is to balance the Congressional desire to reach the secure base amount with the new discretionary authority. Nor does the legislative history provide guidance as to the appropriate timeframe for reaching the secure base amount. However, it is clear from the legislative history creating the Corporation that Congress was focused on assuring that the taxpayer would not be required to rescue the Farm Credit System again, as they had been in the mid-eighties. Past experience demonstrates that under severe stress, the Farm Credit System suffered $4.6 billion in losses from 1985—1987 and had to borrow $1.3 billion in U.S. Treasury-guaranteed bonds to assist institutions experiencing financial difficulty. It is also clear that Congress intended that the Fund be built in anticipation of potential problems in the Farm Credit System by assessing each insured bank until the Insurance Fund reached 2 percent of outstanding

insured debt obligations. Recently, Congress reaffirmed the importance of the Insurance Fund's protection of investors and taxpayers when it provided reserve accounts for amounts above the secure base. The funds in these accounts cannot be refunded to insured banks until 8 years after the Insurance Fund exceeds the secure base amount and in no event before January 1, 2005. These funds will provide an additional layer of insurance protection.

It is instructive as well that in the eighties financial difficulties in the banking industry often were unanticipated as early as 2 years prior to failure. Thus, pushing achievement of the secure base amount off too far in the future ignores the real risks that exist in lending beyond the immediate time horizon. Also, it ignores the fact that problems in agricultural lending tend to hit many institutions at the same time. This would conflict with the Corporation's duty as a prudent insurer to consider such possibilities for the protection of the Farm Credit System's investors. Thus, achieving the secure base amount quickly while the Farm Credit System is in good health is important because it would be difficult to revert to the statutory assessment from a very low assessment during times of financial stress. Substantially higher assessments then could result in adverse effects on bank earnings and capital precisely when the Farm Credit System could least afford the extra cost. Finally, Congress recognized the importance of redressing inequities in initial assessments to capitalize the Farm Credit System Financial Assistance Corporation (FAC) when it recently authorized rebates to associations that paid these assessments from the Insurance Fund, totaling $56 million, to be paid 8 years after the secure base amount is reached. Delay in reaching the secure base amount due to reduced premiums paid by the banks delays resolution of this issue.

Congress believed that the premium assessment system should incorporate a higher rate for nonaccruing loans to provide an incentive to control risk-taking while at the same time covering the long-term costs of the insurer's obligations through a lower premium assessment on loans in accrual status. This limited form of risk-based premiums provides an incentive for sound credit extension and administration.

For these reasons, the policy statement concludes that, while the Corporation may reduce premiums, it should continue to assess sufficient premiums to reach the secure base in a reasonable time period. To continue providing an incentive to control risk-taking, the policy statement indicates that the Corporation does not intend to reduce the premium on loans in nonaccrual status. In determining whether to adjust premiums on loans in accrual status, the Corporation will consider a number of pertinent factors including: (1) The current level of the Insurance Fund and the amount and time needed to reach the secure base amount; (2) the condition of the Farm Credit System; (3) the probability and likely amount of any losses to the Insurance Fund; and (4) multiple scenarios reflecting the impact of the potential growth on the time frame required to achieve the secure base amount. In the final policy statement, the third factor has been modified to make it clear that the Board will consider asset growth. Assets would include investments as well as loans.

Furthermore, to ensure steady progress towards the secure base amount, the Corporation has decided to establish a premium floor, as described in the policy statement. Thus, premiums on loans in accrual status may be reduced below the statutory rate of 15 basis points but will not be reduced below the premium floor until the secure base amount is reached.

Public Comments

The policy statement was published for public comment in the Federal Register on April 17, 1996 (61 FR 16788). The Corporation received 48 comment letters, all from Farm Credit institutions or their representatives. Most of the letters commend the Corporation for addressing this issue in an expeditious manner. All but two of the comment letters are supportive of the policy statement.

One Farm Credit bank, commenting for a borrower association as well, urged the Board to take a different approach than the general guidelines listed in the policy statement. It recommended that the Board adopt ''more definite and concrete'' criteria to be used in setting the assessment level, and it would leave full discretion, using those criteria, to set any premium level from 15 basis points to zero. Also, five associations, commenting together, urged the Board not to set a premium floor. Another bank was generally supportive of the policy statement, but suggested a 5 basis point premium floor, rather than the 7.5 specified in the policy statement. Thirty-two (32) commenters support the premium floor, most agreed with the Board that it is important to reach the secure base amount in a reasonable time (this includes four Farm Credit banks). After considering the diverse views provided by the comments, the Board has decided to finalize the policy statement without modifying the general guidelines or the premium floor.

Two commenters sought a clarification concerning premiums on government-guaranteed loans. They suggested that the policy state expressly that premiums on guaranteed loans can be decreased to zero in the Board's discretion. The Board agrees that it has this authority and it has added a sentence to the policy to make that clear.

Some commenters expressed support for leaving the premium on loans in nonaccrual status at 25 basis points. None of the comments recommended a reduction. The final policy statement leaves the insurance premium for nonaccrual loans at 25 basis points.

One Farm Credit bank understood the policy statement to leave the premium on loans in nonaccrual status at 25 basis points even after the secure base is achieved, and indicated it would support this decision. Another sought a clarification on this issue and indicated its belief that once the secure base is achieved premiums must be reduced on nonaccrual loans. This policy statement only deals with the Corporation's discretionary authority to reduce premiums prior to the Insurance Fund reaching the secure base. Thus, it does not address the issue raised by these two commenters.

Five associations, commenting together, encouraged the Board not to consider the recently authorized Financial Assistance Corporation repayment as a factor in its deliberations. One bank, on the other hand, expressed its belief that it is an appropriate consideration. The Board continues to believe, as it states above in the supplementary information, that delay in reaching the secure base amount due to reduced premiums also delays the Congressionally authorized rebates.

Forty-three (43) commenters believe the Board should exercise its discretion to reduce the premiums. In many of these comments the inference was that a reduction would have no adverse effect on the Insurance Fund. Others stated their belief that there would be no adverse effect. Four commenters, all associations, recommended that the Board leave the premiums at their present level until the secure base amount is reached (one of these indicated that the institution would benefit from the FAC repayment). One commenter supported a reduction in the premiums, but not until 1997 so that the secure base could be reached sooner and then an even more meaningful

reduction could be enjoyed by all. The Board has finalized the policy statement and it is conducting its first semi-annual review, using the criteria set out in the policy. It will make its determination public in the near future.

Farm Credit System Insurance Corporation Policy Statement Concerning Adjustments to the Insurance Premiums

BM–11–JUL–96–02

Effective Date: July 11, 1996.
Effect on Previous Action: None.

Source of Authority: Section 5.55 of the Farm Credit Act of 1971, as amended (the Act); 12 U.S.C. 2277a–4.

Whereas, section 5.52 of the Act established the Farm Credit System Insurance Corporation (Corporation) to, among other things, insure the timely payment of principal and interest on Farm Credit System obligations (12 U.S.C. 2277a–1); and

Whereas, section 5.55 of the Act mandates that the Corporation collect premiums from all insured Farm Credit System banks until the Insurance Fund reaches the secure base amount, which is defined as 2 percent of the aggregate outstanding insured obligations of all insured banks (excluding a percentage of State and Federally guaranteed loans) or such other percentage of the aggregate amount as the Corporation determines is actuarially sound; and

Whereas, the Farm Credit System Reform Act of 1996, Pub. L. No. 104–105, 110 Stat. 162 (Feb. 10, 1996), amended section 5.55 of the Act to permit the Corporation to exercise its discretion to adjust the premium assessments applied to all insured Farm Credit System banks before the Insurance Fund reaches the secure base amount;

Whereas, any reduction in the premium schedule must take into account its impact on the original mandate to reach the secure base amount. *Now therefore,* the Corporation's Board of Directors (Board) adopts the following policy statement to govern adjustments to premiums in response to changing conditions.

The Board will review the premium assessment schedule at least semiannually in order to determine whether to exercise its discretion to adjust the premium assessments in response to changing conditions. The Board may reduce the premiums when the Farm Credit System demonstrates good health and sound risk management and other conditions warrant, and raise premiums to the statutory level if, for example, the Insurance Fund suffers a significant loss or if bank capital or collateral decreases significantly before the secure base amount is achieved.

As a basis for its decision the Board will consider the following:

1. The current level of the Insurance Fund and the amount of money and time needed to reach the secure base amount in light of potential growth;

2. The likelihood and probable amount of any losses to the Insurance Fund;

3. The overall condition of the Farm Credit System, including the level and quality of capital, earnings, asset growth, asset quality, loss allowance levels, asset liability management, as well as the collateral ratios of the 8 banks;

4. The health and prospects for the agricultural economy, including the potential impact of governmental farm policy and the effect of the globalization of agriculture on opportunities and competition for U.S. producers; and

5. The risks in the financial environment that may cause a problem, even when there is no imminent threat, such as volatility in the level of interest rates, the use of sophisticated investment securities and derivative instruments, and increasing competition from non-System financial institutions.

In its review of the premium assessments, the Board will consider multiple scenarios that reflect the impact of potential growth in Farm Credit System debt levels on the time required to achieve the secure base amount. The secure base amount should be achieved while the Farm Credit System is in good health with very few problem institutions. Therefore, the Board will not reduce the premium below 7.5 basis points on loans in accrual status until the secure base amount is achieved. Thus, the premium on loans in accrual status will be set between 7.5 basis points and the statutory rate of 15 basis points. The premium on guaranteed loans will be set between zero and the statutory rate of 1.5 basis points for Federal and 3 basis points for state. Furthermore, the Board will not reduce the premium on loans in nonaccrual status, to continue providing an incentive for sound credit extension and administration.

Adopted this 11th day of July, 1996 by order of the Corporation Board.

Dated: July 23, 1996.

Floyd Fithian,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 96–19170 Filed 7–26–96; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Extended Period for Public Comments on the Federal Emergency Management Agency's Notice of Intent to Conduct a Strategic Review of its Radiological Emergency Preparedness Activities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to extend the time period for public comments on FEMA's Notice of Intent to Conduct a Strategic Review of its Radiological Emergency Preparedness (REP) Activities, published in the Federal Register on July 8, 1996 (61 FR 35732–35733).

DATES: Comments from the public on this review of the REP Program are encouraged and invited on or before October 28, 1996.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472; (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: O. Megs Hepler, III, Director, Exercises Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2867.

SUPPLEMENTARY INFORMATION: On July 8, 1996, FEMA published in the Federal Register a notice of intent to conduct a strategic review of its REP activities and requested specific suggestions for accomplishing this review by August 22, 1996. In response to requests from REP community stakeholders, this notice extends the time period for public comments to October 28, 1996.

Dated: July 17, 1996.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 96–19193 Filed 7–26–96; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

TIME AND DATES: 1:00 p.m. Thursday, August 1, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Procedures for Resolution of Outstanding Examination or Supervisory Issues.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–19370 Filed 7–25–96; 4:00 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Cape Canaveral Cruise Line, Inc. and Cape Canaveral Cruise Line Tour and Travel, Inc., 101 George King Blvd., Cape Canaveral, Florida 32920.

Vessel: DOLPHIN IV

Dated: July 24, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19156 Filed 7–26–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Cape Canaveral Cruise Line, Inc., Ulysses Cruises, Inc. and the Kosmas Shipping Group, Inc., 101 George King Blvd., Cape Canaveral, Florida 32920.

Vessel: DOLPHIN IV

Dated: July 24, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19157 Filed 7–25–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessels: CROWN PRINCESS, REGAL PRINCESS, SUN PRINCESS

Princess Cruises, Inc., Princess Cruises Liberia, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessels: FAIR PRINCESS, GOLDEN PRINCESS, STAR PRINCESS

Princess Cruises, Inc., P & O Lines (Shipowners) Limited and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessels: ISLAND PRINCESS, PACIFIC PRINCESS, ROYAL PRINCESS, SKY PRINCESS

Dated: July 24, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19154 Filed 7–26–96; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Princess Cruises, Inc., Princess Cruise Lines, Inc., The Peninsular and Oriental Steam Navigation Company and Astramar S.p.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessels: CROWN PRINCESS, REGAL PRINCESS, SUN PRINCESS

Princess Cruises, Inc., P & O Lines (Shipowners) Limited, The Peninsular and Oriental Steam Navigation Company and Abbey National March Leasing (1) Ltd., 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessels: ISLAND PRINCESS, PRINCESS PACIFIC

Princess Cruises, Inc., Princess Cruises Liberia, Inc., The Peninsular and Oriental Steam Navigation Company and Birka Cruises Limited, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessel: GOLDEN PRINCESS

Princess Cruises, Inc., Princess Cruises Liberia, Inc., and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessel: FAIR PRINCESS

Princess Cruises, Inc., P & O Lines (Shipowners) Limited, The Peninsular and Oriental Steam Navigation Company and Howill Shipping Ltd., 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessel: ROYAL PRINCESS

Princess Cruises, Inc., P & O Lines (Shipowners) Limited and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessel: SKY PRINCESS

Princess Cruises, Inc., Princess Cruises Liberia, Inc., The Peninsular and Oriental Steam Navigation Company and Cosedia Marine, Inc., 10100 Santa Monica Blvd., Los Angeles, CA 90067.

Vessel: STAR PRINCESS

Dated: July 24, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19155 Filed 7–26–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burden on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board—Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

SUPPLEMENTARY INFORMATION:

General Information and Public Comment

On April 1, 1996, the Board announced for public comment a proposal for a three-year extension, with revisions, of three reports commonly referred to as the ''weekly condition/bank credit'' reports: (1) the ''Weekly Report of Assets and Liabilities for Large Banks'' (FR 2416; OMB No. 7100–0075), (2) the ''Weekly Report of Selected Assets'' (FR 2644; OMB No. 7100–0075), and (3) the ''Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks'' (FR 2069; OMB No. 7100–0030). The comment period expired on May 31, 1996. The Board received two comment letters, both from bank holding companies, one addressing both the FR 2416 and FR 2644 and the other addressing only the FR 2416. An overview of the three reports and of the revisions initially proposed for each is provided below, followed by a discussion of the comments that were received and final Board action on each.

Final approval under OMB delegated authority of the revision of the following reports:

1. *Report Title:* Weekly Report of Assets and Liabilities for Large Banks.

Agency Form Number: FR 2416

OMB Control Number: 7100–0075.

Frequency: Weekly.

Reporters: Large U.S. chartered commercial banks.

Annual Reporting Hours: 46,592.

Estimated Average Hours Per Response: Range: 1 to 40. Mean: 7.00. Median: 4.00.

Number of Respondents: 128.

Small businesses are not affected.

General Description of Report: This information collection is voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Effective Date: Data as of Wednesday, October 2, 1996.

2. *Report title:* Weekly Report of Selected Assets.

Agency Form Number: FR 2644.

OMB Control Number: 7100–0075.

Frequency: Weekly.

Reporters: U.S. chartered commercial banks.

Annual Reporting Hours: 47,476.

Estimated Average Hours Per Response: Range: 0.125 to 3. Mean: 0.83. Median: 0.75.

Number of Respondents: 1,100.

Small businesses are affected.

General Description of Report: This information collection is voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Effective Date: Data as of Wednesday, October 2, 1996.

3. *Report Title:* Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks.

Agency Form Number: FR 2069.

OMB Control Number: 7100–0030.

Frequency: Weekly.

Reporters: U.S. branches and agencies of foreign (non-U.S.) banks.

Annual Reporting Hours: 27,269.

Estimated Average Hours Per Response: Range: 4 to 8. Mean: 5.70. Median: 5.00.

Number of Respondents: 92.

Small businesses are not affected.

General Description of Report: This information collection is voluntary (12 U.S.C. § 3105(b)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Effective Date: Data as of Wednesday, October 2, 1996.

Overview

The ''Weekly Report of Assets and Liabilities for Large Banks'' (FR 2416) is a detailed balance sheet report that is collected as of each Wednesday from about 160 large U.S. commercial banks. The ''Weekly Report of Selected Assets'' (FR 2644) is a considerably less detailed report that is collected as of each Wednesday from a stratified sample of about 1,100 smaller U.S. commercial banks. The ''Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks'' (FR 2069) is a balance sheet report that is collected as of each Wednesday from a sample of about 68 institutions.

These three reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand-alone basis as the ''large domestic bank series.'' All three reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole. These series are used in estimating the banking sector of the Flow of Funds Accounts and bank components of domestic nonfinancial debt, a variable monitored by the Federal Open Market Committee (FOMC).

The Federal Reserve publishes the data in aggregate form in two statistical releases that are followed closely by other government agencies, the banking industry, the financial press, and other users. These are the weekly H.8, ''Assets and Liabilities of Commercial Banks in the United States'' (which provides a balance sheet for the banking industry as a whole), and the H.4.2, ''Weekly Consolidated Condition Report of Large Commercial Banks in the United States'' (which provides aggregates both for large commercial banks and for large U.S. branches and agencies of foreign banks).

Revisions to FR 2416 Under Initial Proposal

Item set. A substantial reduction was proposed in the number of items collected on the FR 2416, eighteen items on a gross basis and nine items on a net basis. The proposed reduction in items reflected an earlier reassessment, carried out in connection with a consolidation of three published bank credit releases into one, about the degree of balance sheet detail necessary to understand key developments in bank credit and bank funding activities. The proposed reduction in items also reflected the Federal Reserve's judgment that some of the deposit ownership detail collected, in part for purposes of constructing the monetary aggregates, could be adequately replaced with information available on the quarterly Report of Condition (Call Report) (FFIEC 031–034; OMB No. 7100–0036). Three items proposed to be added to the FR 2416 resulted from two changes to regulatory reporting, beginning with the March 1994 Call Report, each of which was made to comply with new accounting standards. The first caused a substantial part of bank securities holdings outside trading accounts to be marked to market, and the second resulted in banks reporting separate values for revaluation gains and losses on off-balance-sheet contracts, rather than a single net figure. Another item, trading liabilities, also was added to maintain consistency with the Call Report, to which this item was added since the last time the FR 2416 went through the clearance process. Items also were

proposed to monitor banks' activities in the mortgage-backed securities and commercial real estate markets and to measure more accurately their nondeposit funding activities. A new item on large time deposits held as assets by the reporting bank was proposed as an aid in the construction of the monetary aggregates.

Reporting panel. Under the initial proposal, FR 2416 panel revisions would continue to be guided by the ''flexible'' approach developed in 1988 in order to avoid widespread disruptions. A general cutoff applied to total domestic assets would continue to be used for panel selection in order to provide coverage of a little more than 50 percent of total assets in U.S. offices of U.S.-chartered commercial banks. Taking into account growth in the banking system as well as other factors, the current cutoff of $3.5 billion, which was established in 1990, would be raised to $6.0 billion. However, only those nonreporters whose growth places them well above the new cutoff would be added. Conversely, some current respondents slightly below the new cutoff would be retained, in some cases to provide adequate regional coverage and in other cases to minimize the disruptions caused by dropping and then reinstating respondents (those with assets near the cutoff) from one panel revision to the next. Under this approach, 118 existing reporters would be retained, 21 would be dropped, and 10 new reporters would be added, for a net reduction of 7 in the actual panel size.

Proposed Revisions to FR 2644

The proposal increased the item count for the FR 2644 by two, allowing the collection of additional information from smaller banks on their presence in the mortgage securities market and on their nondeposit funding activities, consistent with two of the proposed changes for the FR 2416. Also, a minor definitional change was proposed to two items to bring them into line with the FR 2416 and the Call Report. Proposed panel changes reflected switches between the FR 2416 and FR 2644 panels based on changes in relative size since the last report renewal.

Proposed Revisions to FR 2069

Consistent with the approach taken for the FR 2416, some asset and deposit liability items collected on the FR 2069 were proposed to be consolidated, resulting in a gross reduction of five items. At the same time, six additional items were proposed, resulting in an overall net addition of one item. Two of the new items were necessitated by the addition to the branch and agency Call Report (FFIEC 002; OMB No. 7100–0032) of a separate item for trading account securities and need to continue classifying banks' securities holdings between U.S. Government and other. As with the FR 2416, an item for trading liabilities also was added in order to be consistent with the branch and agency Call Report. Again consistent with the FR 2416, the proposal added items to measure gross revaluation gains and gross revaluation losses on off-balance-sheet contracts. The sixth new item, which also paralleled the treatment of the FR 2416, added an item on large time deposits held as assets by the reporting bank, as an aid in the construction of the monetary aggregates.

To strengthen the weekly estimates of balance sheet data for branches and agencies, it was proposed that the existing panel of 67 reporters be expanded to add 24 institutions having mainly European parent banks. Branches and agencies having European parents are significantly underrepresented in the current sample.

Implementation Date

It was proposed that the revised series be implemented as of October 2, 1996, the first Wednesday after the September Call Report date (September 30, 1996).

Public Comments

Two comment letters were received, one addressing both the FR 2416 and FR 2644 and the other addressing only the FR 2416. No comments were received on the FR 2069.

Loan Schedule

The commentator addressing both the FR 2416 and FR 2644 noted that the difficulty in preparing both these reports results from reporting detailed loan data according to regulatory classifications, which differ significantly from SEC classifications and from banks' own internal reporting classifications. The commentator suggests that reporting burden could be reduced substantially if detailed loan data could be reported on both the FR 2416 and the FR 2644 according to SEC Guide 3 classifications or to banks' own internal reporting classifications.

With respect to banks' own individual internal classifications, the Federal Reserve needs data reported under standard definitions by all banks in order to construct meaningful aggregates. It would be difficult, if not impossible, to construct meaningful aggregates from individual bank data reported according to what likely would be a variety of definitions and classifications.

With respect to SEC loan classifications, these are broader than what is now collected on the FR 2416. For example, domestic commercial and industrial loans, loans to financial institutions, and agricultural loans are included in a single loan category. Such a broad aggregation on the FR 2416 would make it impossible to track borrowing by the commercial and industrial sector and the agricultural sector separately. It would also make it impossible to construct estimates of lending by the banking system to nonbanks, since interbank lending would be unobservable.

In the longer run, however, the Federal Reserve will continue to explore possible changes to the loan schedule that could reduce respondent burden and yet still meet the Federal Reserve's data needs.

This commentator noted that other than the loan detail, all other items reported on the FR 2416 and FR 2644 are readily available and cause no significant reporting burden.

The second commentator made a number of suggestions regarding the FR 2416, some of a more general nature and others addressing specific data items.

Elimination of the FR 2416

The commentator recommended elimination of the FR 2416, noting that filing this report is a significant reporting burden and places reporting banks at a disadvantage compared to nonbank competitors. In light of this competitive disadvantage, the commentator urged the Board to consider elimination of this report, or, at a minimum, reduce the level of data captured and the frequency of reporting.

Given the uses cited above, the Federal Reserve believes that the FR 2416 should continue to be collected, and at the current weekly frequency. Because commercial banks play a pivotal role in the transmission of monetary policy, the Federal Reserve System requires high-frequency data from which a balance sheet for the whole banking system can be constructed. The FR 2416 provides these data for large domestically chartered commercial banks. Sufficient detail must be available to track the major components of bank credit and the broad outlines of bank funding.

At the same time, in response to this commentator, in addition to the 18 existing items already proposed for deletion, two of the proposed items will be dropped: ''Loans to other nonbank financial institutions'' and ''large time deposits held as assets.'' (Detailed discussion is provided below.)

RAP/GAAP Differences

This commentator also noted that the federal banking agencies are in the process of implementing changes to adopt generally accepted accounting principles (GAAP) for the Call Report. The commentator further states that the proposed changes to the FR 2416 ''would maintain GAAP/RAP reporting differences and would require additional information that differs from GAAP, from current RAP reporting requirements (in some cases) and from the information used to manage [the bank's] business.''

The Federal Reserve points out that, under current practice, the FR 2416 is tied directly to the Call Report. Indeed, a number of changes proposed for the FR 2416 were made in response to changes already made to the Call Report. When GAAP is adopted for the Call Report, currently scheduled for March 1997, corresponding changes will be made as appropriate to the FR 2416.

Interstate Banking

The commentator believes the Board should consider the impact of interstate banking in developing reporting requirements. The commenting bank manages its business by line of business rather than by legal entity, and thus uses information internally by line of business.

The Federal Reserve has a number of efforts underway to develop plans for account structures and other operational processes in a full interstate banking environment. Reporting requirements also are being studied. These efforts will continue as experience is gained with developments in a full interstate banking environment.

Revaluation Gains and Losses

In response to a decision by the Financial Accounting Standards Board, since 1994 banks have included revaluation gains and losses on off-balance-sheet derivative positions on the asset and liability sides of their balance sheets, respectively. Prior to 1994, only the net of these positions—a much smaller number—was reported on banks' balance sheets. As a result of the 1994 change, the item on the FR 2416 that includes revaluation gains, ''other trading account assets'' (new Item 2.b), has become much more volatile. Since this volatility is unrelated to banks' extension of credit, its presence distorts the bank credit data as well as banks' apparent funding needs. For this reason, the initial proposal called for banks to report the revaluation gains component of ''other trading account assets'' as a memo item (new Item M.2). Similarly, the value for revaluation losses already included in ''trading liabilities'' would be reported as new Item M.6.

The commentator has suggested that reporting revaluation gains and losses only for the domestic side of the bank would be misleading because the bank's off-balance-sheet position is best understood for the entire bank. The commentator also indicated that reported measures of revaluation gains and losses could not be given the same attention on a weekly basis as they are for purposes of completing the quarterly Call Report. Regarding the first point, the Federal Reserve had proposed collecting these items not to monitor the off-balance-sheet activities of respondent banks, but in order to adjust their reported domestic balance sheets for the impact of revaluation gains and losses.

Concerning the second point, the Federal Reserve recognizes that different respondent banks will mark to market their off-balance-sheet positions at different frequencies, perhaps less often than weekly. Indeed, the initial proposal document and the draft reporting instructions both stated that banks that revalue less frequently than weekly would report each week the most recent value for net unrealized gains or losses. When a new value becomes available, that value would then be reported. As noted above, the Board's purpose for collecting these memo items is to adjust the balance sheet for their values already reported on it. This purpose is fully served even if the values contained in Items M.2 and M.6, and on the balance sheet itself, are marked to market less than weekly. The Federal Reserve believes that the bank credit and bank balance sheet data can be much better understood if this information on banks' off-balance-sheet activities is reported separately as initially proposed. To highlight that revaluation at a frequency less than weekly is fully acceptable for Items M.2 and M.6 (and also for Item M.7), a note will be added to the FR 2416 reporting form itself. A similar note will be added to the FR 2069 form, which also collects revaluation gains and losses.

Federal Funds Sold and Securities Purchased Under Agreements to Resell

Under the initial proposal, the reporting of ''federal funds sold and securities purchased under agreements to resell'' (FF/RPs) would continue to be disaggregated into the three current customer groups: (1) Other banks, (2) nonbank brokers and dealers in securities, and (3) other. The commentator noted that information about counterparties is not used internally for any other purpose. This commentator also noted that these positions would be reported on a net basis [if certain conditions are met] under GAAP, but that they must be reported gross on the FR 2416 because it is governed by RAP.

Regarding the first point, the Federal Reserve has collected the current disaggregation of FF/RPs since 1969. This disaggregation continues to be necessary to isolate FF/RP loans to banks in order to measure the amount of credit banks are providing to nonbanks. (Other interbank loans are broken out for the same reason.) FF/RP loans to nonbank securities dealers are combined with other loans to nonbank security dealers to provide a measure of credit supplied by banks to this important sector of the financial economy. Lending to nonbank brokers and dealers is substantial and volatile.

As for the second point, as noted earlier, the FR 2416 follows the Call Report with respect to RAP as opposed to GAAP reporting. When GAAP is adopted for the Call Report, it also will be adopted for the FR 2416.

Loans Secured by Commercial Real Estate

Under the initial proposal, loans secured by commercial real estate would be collected separately from other loans that are secured by real estate. Commercial real estate loans are also collected separately on the Call Report, albeit in more disaggregated form than proposed for the FR 2416. The commentator has objected that this FR 2416 proposal could provide a misleading picture of the bank's exposure within the real estate loan market.

However, the Federal Reserve's purpose of collecting this information on the weekly FR 2416 is *not* to assess a particular bank's exposure to any market. Rather, this item is sought in order to have available a timely measure of the banking system's lending to the commercial real estate sector. From time to time—the early 1990s provide a prime example—the commercial real estate market and the credit provided to it become a matter of intense interest to policy makers, one that has been impossible to meet satisfactorily only with quarterly Call Report data. For these reasons, loans secured by commercial real estate will be collected separately as originally proposed.

Loans to Nonbank Depository Institutions and Other Financial Institutions

The current version of the FR 2416 collects an item on ''loans to nonbank depository institutions and other financial institutions'' (these are mainly thrift institutions, mortgage companies, life insurance companies, and finance companies). Under the initial proposal, this item was retained (Item 5.b.(2) on the revised form). This item is one of very few on the FR 2416 that differs from the Call Report, which contains a separate item for loans to thrift institutions but places loans to other nonbank financial institutions in the ''all other'' loan category. The commentator noted that this difference in reporting treatment between the FR 2416 and the Call Report is quite burdensome.

This difference between the Call Report and the FR 2416 began in 1984 as a result of changes at that time to the Call Report that grouped loans to all nonbank financial institutions—other than thrifts—with ''all other'' loans. At that time, total loans to all nonbank financial institutions was deemed to be a useful component for analysis of bank credit, and such a total was retained on the FR 2416. The Federal Reserve has found the information contained in this category useful. For example, it was the only timely indication of bank lending to this sector in the early 1990s when many nonbank financial institutions were undergoing financial stress. More recently, however, these loans have been of less interest, and, in these circumstances, they do not seem to merit an exception to the Federal Reserve's principle that the FR 2416 be, as far as possible, in conformity with the Call Report. Therefore, the item ''loans to other nonbank financial institutions'' will be dropped as a separate item and instead will be included in the ''all other'' loan category.

The same change would be made to the FR 2069. Item 5.c, ''Loans to other depository institutions in the U.S. and to other financial institutions'' will be dropped as a separate item and instead will be included in the ''all other loan'' category.

Large Time Deposits Held as Assets

Under the initial proposal, an item was added to the FR 2416 to measure banks' holdings of other banks' large time deposits. The commentator noted that this information is not requested by any other internal or external party and that the information is not readily available and, consequently, would have to be developed with a separate reporting mechanism. The item was proposed to be added to the FR 2416 because it would aid in the construction of the monetary aggregate M3. M3 includes all bank deposit liabilities other than those due to other banks and the U.S. government. Because large time deposits may be negotiable, netting of bank holdings of large time deposits is better done with asset rather than liability measures. Currently, this is done using data from the Call Report. The purpose of the proposed addition of large time deposit assets to the FR 2416 was to get more timely measures of this item for purposes of constructing weekly estimates of M3. However, although the availability of weekly data would improve weekly estimates of M3, given the substantial additional reporting burden this item apparently would put on respondents, the Federal Reserve now believes that the cost of collecting this item likely would exceed its benefit. Therefore, this item will not be added to the FR 2416. For these reasons, the proposal to add large time deposit assets to the FR 2069 also would be dropped. Instead, the required netting will continue to be done using Call Report data.

Borrowings Breakdowns

The initial proposal disaggregated the borrowings item on the FR 2416 into two components: (1) Borrowings from commercial banks in the United States and (2) borrowings from all others. The commentator has noted that this information is not used internally and is not requested for any other purpose. The commentator also noted that the bank's nonbank competitors are not required to monitor and maintain this type of information. This commentator noted as well that the information requested is similar to that currently reported on the FR 2415, ''Report of Selected Borrowings.''

The Federal Reserve had proposed this breakdown on the FR 2416 to improve its estimates of bank financing from outside the banking system. The Board staff currently uses the FR 2415 for this purpose, but has found it inadequate to accurately measure bank versus nonbank borrowing because the FR 2415 deals with only a part of borrowing. In view of the need to properly analyze bank funding patterns, an exercise that is part of efforts to explain bank deposit and, therefore, money supply behavior, the Federal Reserve continues to believe that the requested split in borrowings is merited.

Estimates of Respondent Burden

Burden estimates are based on information obtained by the Reserve Banks from samples of respondents as well as on information from the two public commentators. The following table summarizes individual respondent information on the number of hours needed to prepare both the current version and the initially proposed revised version of these reports each week.

BILLING CODE 6210–01–P

	Hours per week to complete report					
	Range		Mean		Median	
	Current	Proposed	Current	Proposed	Current	Proposed
FR 2416	1 to 32	1 to 40	6.50	7.00	4.00	4.00
FR 2644	0.125 to 2	0.125 to 3	0.75	0.83	0.75	0.75
FR 2069	3 to 7	4 to 8	5.00	5.70	5.00	5.00

BILLING CODE 6210–01–C

Even though the initial proposal resulted in a net reduction in the number of data items for the FR 2416 and a net addition of only one item for the FR 2069, a number of respondents believed that burden associated with the proposed additional items more than outweighed burden reductions accruing from the item deletions. The average burden associated with the final versions of the two reports should be somewhat less than shown above, however, since two of the more burdensome items initially proposed (one existing and one new) have now been deleted. Nevertheless, the mean values from the above table were used for the ''estimated average hours per response'' shown earlier in this document.

Board of Governors of the Federal Reserve System, July 23, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–19164 Filed 7–26–96; 8:45am]

Billing Code 6210–01–P

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The company listed in this notice has applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The application listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lakes Region Bancorp, Inc., Bannockburn, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Anchor Bank, Third Lake, Illinois.

Board of Governors of the Federal Reserve System, July 23, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19166 Filed 7-26-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The company listed in this notice has given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F&M Bancorp, Frederick, Maryland; to acquire Home Federal Corporation, Hagerstown, Maryland, and thereby indirectly acquire Home Federal Savings Bank, Hagerstown, Maryland, and thereby engage in operating a savings association; selling credit life and health insurance in connection with extensions of credit by affiliates; providing securities brokerage services related to buying and selling securities solely as agent for the account of customers, in combination with investment advisory services, pursuant to § 225.25(b)(8)(i), (9), and (15)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19165 Filed 7-26-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Yahya Abdulahi, Ph.D., Clark Atlanta University: Based on its review of a report from the institution and ORI's own analysis, ORI found that Yahya Abdulahi, former Research Scientist, Department of Biology, Clark Atlanta University, committed scientific misconduct by plagiarizing words and concepts from a publication in the Journal of Environmental Health and by misrepresenting data in sections of a Public Health Service (PHS) grant application.

Specifically, Dr. Abdulahi's grant application contains extensive and significant plagiarism in the ''Description,'' ''Background and Significance,'' ''Experimental Design and Methods,'' and ''Literature Cited'' sections and contains plagiarism and misrepresentation of data in the ''Preliminary Studies'' section. Dr. Abdulahi's actions were serious in that (1) the plagiarism involved the use of extensive sections of a publication without attribution; (2) the materials, as plagiarized in the grant application, included misrepresented data; (3) the plagiarism included expropriation of the concept of the study in the publication; and (4) the plagiarism persisted throughout important portions of Dr. Abdulahi's grant application.

Dr. Abdulahi has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning July 16, 1996, to exclude himself from:

(1) Any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations), and

(2) Serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

No publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Chris B. Pascal, J.D.

Acting Director, Office of Research Integrity.

[FR Doc. 96–19160 Filed 7–26–96; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Conference Call 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 conference call meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Time and Date: 2 p.m.–4 p.m., August 13, 1996.

Place: National Center for Injury Prevention and Control (NCIPIC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 2 p.m.–2:15 p.m., August 13, 1996; Closed: 2:15 p.m.–4 p.m., August 13, 1996.

Purpose: The Committee will continue to make recommendations on policies, strategies, objectives, and priorities, including the appropriate balance and mix of intramural and extramural research; and review progress toward injury prevention and control. In addition, the Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention; and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include announcements, future meeting dates, and the Science and Program Review Work Group (SPRWG) recommendations.

Beginning at 2:15 p.m., through 4 p.m., August 13, the Committee will meet to consider the results of the review of grant applications by the Injury Research Grant Review Committee as recommended by SPRWG. This portion of the meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. Section 552b(c) (4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Carolyn J. Russell,

Dated: July 23, 1996.

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–19145 Filed 7–26–96; 8:45 am]

BILLING CODE 4163–18–M

NIOSH Draft Document; Request for Comments

The National Institute for Occupational Safety and Health (NIOSH) requests for comments on the NIOSH draft document, ''Criteria for a Recommended Standard: Occupational Noise Exposure.''

Federal Register Citation of Previous Announcement: 61 FR 25227–25228—dated May 20, 1996.

SUMMARY: Notice is given that the period for providing comments on the draft document, ''Criteria for a Recommended Standard: Occupational Noise Exposure,'' has been extended.

Original Date: June 10, 1996.

New Date: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio, 45226. Comments may be submitted by E-mail to: dmm2@NIOSDT1.em.cdc.gov. e-mail attachments (uuencoded) may be formatted as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

Dated: July 23, 1996.

Carolyn J, Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–19149 Filed 7–26–96; 8:45 am]

BILLING CODE 4160–19–M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies 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 no selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting Susan Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext 245; fax: 301/402–0220). A signed Confidential Disclosure Agreement will be required

to receive copies of the patent applications.

Novel Epidermal Growth Factor Receptor (ErbB–3) and Antibodies

M Kraus, SA Aaronson (NCI)
Serial No. 07/444,406 filed 04 Dec 89, which issued as U.S.
Patent No. 5,183,884 on 02 Feb 93; and
Serial No. 07/978,895 filed 10 Nov 92, which issued as U.S.
Patent No. 5,480,968 on 02 Jan 96; and
Serial No. 08/473,119 filed 07 Jun 95; and
Serial No. 08/475,352 filed 07 Jun 95

ErbB–3 is a member of the type I family of growth factor receptors. ErbB–3 is a 148 kd transmembrane polypeptide which has between 64–67% homology to contiguous regions within the tyrosine kinase domains of the EGFR and erbB–2 proteins, respectively. ERbB–3 has been mapped to human chromosome 12 ql 11–13 and has been shown to be expressed as a 6.2 kb transcript in a variety of normal tissues of epithelial origin. Markedly elevated erbB–3 MRNA levels have been demonstrated in certain human mammary tumor cell lines. These findings suggest that increased erbB–3 expression may play a role in oncogenesis.

U.S. Patent 5,183,884 includes claims to the cDNA encoding erbB–3, vectors containing the cDNA and cells transformed with the vector containing the cDNA encoding erbB–3. The DNA can be used in diagnostic applications or for production of the protein.

U.S. Patent 5,480,968 includes claims to the erbB–3 protein and antibodies to erbB–3. Such antibodies include both monoclonal and polyclonal antibodies. The antibodies may be labeled allowing for detection of erbB–3, or conjugated with a cytotoxic agent for use as a therapeutic.

The divisional applications, 08/473,119 and 08/475,352, include claims to DNA and antibody based diagnostic methods, drug screening assays, therapeutic applications utilizing antibody conjugates or ligands which block the binding of an activating ligand to erbB–3; activating or blocking ligands which bind to erbB–3. (portfolio: Cancer—Diagnostics, in vitor, MAb based; Cancer—Diagnostics, in vivo, MAb; Cancer—Therapeutics, immunoconjugates, MAb; Cancer—Research Reagents)

Peptide Antagonist of Keratinocyte Growth Factor Activity

D Bottaro, JS Rubin, SA Aaronson (NCI)‘
Filed 04 May 93
Serial No. 08/059,030

A novel peptide antagonist of the keratinocyte growth factor (KGF) activity has been isolated that may prove to be an effective treatment for diseases in which activation of the KGF receptor plays a role. Growth factors are important mediators of intercellular communication. These molecules are generally released by one cell type and influence proliferation of other cell types. Interest in growth factors has been heightened by evidence of their involvement in neoplasia. In addition, a number of oncogenes are homologs of genes encoding growth factor receptors, and their receptor-mediated signal transduction pathways provide insights into mechanisms of both normal and malignant cell growth. The fibroblast growth factor family affects the growth of a wide variety of cells including connective tissue cells. KGF is a member of this family, but is unique in that its activity is restricted to cells of epithelial origin. Since a vast majority of human malignancies are derived from epithelial tissues, identification of compounds that modulate the effect of KGF may be important in the treatment of carcinomas as well as other conditions in which ligand-dependent proliferation, mediated by the KGF receptor, contributes to the pathologic disorder. These novel peptides effectively inhibit binding between KGF and its epithelial cell receptor and, thus, are useful in treating carcinomas and other conditions involving epithelial cell proliferation. (portfolio: Cancer—Therapeutics, biological response modifiers, growth factors)

Expression Cloning of a Human Phosphatase

SA Aaronson, DP Bottaro, T Ishibashi, T Miki (NCI)
U.S. Serial No. 07/988,273 filed 14 Dec 92; WO 94/13796, PCT/US93/12019
U.S. Patent No. 5,512,434 issued 30 Apr 96

The identification of genes has traditionally been accomplished through the use of nucleic acid hybridization. In general, highly conserved sequences or DNA structures which are associated with a particular function or gene family are used in hybridization techniques in order to discover other related genes and associated polypeptide products. This is accomplished by construction of nucleic acid probes corresponding to those conserved DNA sequences of interest. The present invention involves ‘‘expression cloning,’’ and provides an alternative method of isolating genes of interest by using the expression of the polypeptide corresponding to that gene as a means of screening clones containing the gene. The invention describes methods of detecting clones containing the functional polypeptide either directly, or through immunological methods. The invention further describes a new dual specificity protein tyrosine phosphatase, called VHR, discovered using this method. This phosphatase is structurally unrelated to other commonly known enzymes with similar function and provides support for the invention’s utility. The invention also describes methods for treatment of VHR related disease. This invention is ideally suited for use in the isolation of previously unknown genes with similar functions of interest. The invention allows isolation of fewer false positive clones because DNA sequences with areas of high structural homology but dissimilar function, will not be identified. The invention, in contrast, favors the isolation of clones which are structurally disparate, yet functionally equivalent. (portfolio: Gene Based Therapies—Diagnostics; Gene-Based Therapies—Research Tools and Reagents; Devices/Instrumentation—Diagnostics, physical medicine; Devices/Instrumentation—Research Tools, methods; Devices/Instrumentation—Biologicals and Chemicals)

The Many Roles of Adrenomedulin in Human Pathology and Physiology

FF Cuttitta (NCI)
DHHS Reference No. E–206–95/0 filed 18 Aug 95 and
DHHS Reference No. E–206–95/1 filed 30 Aug 95

Adrenomedullin (AM) is a α-amidated 52-amino acid peptide that shows slight similarity to calcitonin gene-related peptide (CGRP). The effects of AM and its fragments in the cardiovascular system have been widely studied. Endothelial cells secrete the peptide that acts on specific receptors present in the vascular smooth muscle cells and other contractile cells. Some diuretic functions have been also described. In the respiratory system, two major roles have been described to date: relaxation of the vascular bed and bronchodilation.

The present invention provides methods for the prevention and treatment of cancers, in particular, lung, colon, ovarian, and breast cancers by inhibiting the growth of the cancerous cells with an effective amount of anti-AM monoclonal antibody. This invention provides methods for diagnosing or monitoring diseases by measuring the levels of AM in a sample. Examples of diseases include, diabetes, renal diseases, such as severe uremia; bone diseases, such as neoplastic

disease; and skin diseases. The present invention also provides a method of preventing or treating type II diabetes using the anti-AM monoclonal antibody. AM peptides and antibodies can also be utilized for diagnosis and treatment of preeclampsia and to promote fetal growth.

The present invention provides a method of regulating activity in areas of the central nervous system by administering to a subject an effective amount of AM peptides or antibodies for the regulation of neurotransmission or neuron growth. i.e. Alzheimer's disease. Administering antibodies to AM can inhibit the degranulation of mast cells and provide a method of lessening or inhibiting the allergic response due to the degranulation of mast cells. AM peptides have also been found to inhibit bacterial or fungal growth and facilitate the healing of chaffed skin, skin lesions, wound repair, and surgical incisions. AM peptides promote organ and bone development. (portfolio: Cancer—Therapeutics; Central Nervous System—Therapeutics; Infectious Diseases—Therapeutics; Internal Medicine—Therapeutics)

Dated: July 17, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–19180 Filed 7–26–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: August 9, 1996.
Time: 8:30 a.m.
Place: NIH, Rockledge 2, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: August 9, 1996.
Time: 10:30 a.m.
Place: NIH, Rockledge 2, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

Name of SEP: Clinical Sciences.
Date: August 9, 1996.
Time: 2:30 p.m.
Place: NIH, Rockledge 2, Room 4114, Telephone Conference.
Contact Person: Dr. Scott Osborne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, Bethesda, Maryland 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: August 15, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892, (301) 435–1017.

Name of SEP: Behavioral and Neurosciences.
Date: August 16, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5179, Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5179, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Biological and Physiological Sciences.
Date: August 19, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892, (301) 435–1017.

Name of SEP: Microbiological and Immunological Sciences.
Date: August 20, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Clinical Sciences.
Date: August 28, 1996.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 1996.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 96–19179 Filed 7–26–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Commission Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: July 29, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4192, (Telephone Conference).
Contact Person: Dr. Lynwood Jones, Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435–1153.

Name of SEP: Clinical Sciences.
Date: July 29–30, 1996.
Time: 2:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Chemistry and Related Sciences.
Date: August 1, 1996.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 5104, (Telephone Conference).
Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–19254 Filed 7–24–96; 4:52 pm]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Center for Mental Health Services (CMHS) National Advisory Council in September 1996.

The September 12–13 Council meeting will focus on the implications of the issues of children with serious emotional disturbances and their families, international perspectives on mental illness, outcome data from the Children's Mental Health Services grant program, CMHS managed care update, tracking health care reform and a Council member round table. In addition there will be a report from the Director, CMHS, and a report from Council member Randall Feltman on Interagency Sources of Funding for a Children's System of Care and consumer affairs updates.

The meeting will also include the review, discussion and evaluation of individual grant applications and contract proposals. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. app. 2, 10(d).

A summary of the meetings and a roster of Council members may be obtained from: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, 5600 Fishers Lane, Room 15–105, Rockville, Maryland 20857. Telephone: (301) 443–0001.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Date: September 12–13, 1996.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Closed: September 12, 9:00 a.m. to 11:00 a.m.; Open: September 12, 11:00 a.m. to adjournment; Open: September 13, 9:00 a.m. to adjournment.

Contact: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, Telephone: (301) 443–0001 and FAX: (301) 443–1563.

The September 25 teleconferenced meeting will include the review, discussion, and evaluation of individual grant applications. Therefore this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b (c) (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, 5600 Fishers Lane, Room 15–105, Rockville, Maryland 20857. Telephone: (301) 443–0001.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Meeting Date: September 25, 1996.

Place: Center for Mental Health Services, Parklawn Building, Conference Room 15–94, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed: September 25, 1996, 2:00 p.m. to 3:00 p.m.

Contact: Anne Mathews-Younes, Telephone: (301) 443–0001 and FAX: (301) 443–1563.

Dated: July 23, 1996.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–19159 Filed 7–26–96; 8:45 am]

BILLING CODE 4162–20–P

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in July.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. The discussion could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Dates: July 30, 1996.

Place: Residence Inn—Bethesda, Gatehouse Room, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: July 30, 1996 9:00 a.m.—Adjournment.

Contact: Herman I. Diesenhaus, Ph.D., Room 7A102 Rockwall II Building, Telephone: (301) 443–6575 and FAX: (301) 443–3437.

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 review and funding cycle.

Dated: July 24, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 96–19306 Filed 7–26–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Responses to Comments Received During Public Review of Wetlands Classification System

ACTION: Notice of availability of responses to comments.

SUMMARY: The Wetlands Subcommittee of the Federal Geographic Data Committee (FGDC) requested input from the public (Federal Register 60 (129), July 6, 1995) on a proposal to adopt the ''Cowardin'' classification system (Cowardin, L.M., et al. 1979. *''Classification of wetlands and deepwater habitats of the United States.''* U.S. Fish and Wildlife Service, FWS/OBS–79/31) as the FGDC standard for wetland classification. Responses to the Notice were received from 14 individuals, agencies, or organizations. Relevant questions were pooled by category and answers prepared. Interested individuals may receive a copy of the questions and the Wetland Subcommittee responses by contacting Ms. Jennifer Fox (see **ADDRESSES**). The questions and responses may also be viewed and downloaded from the Internet from the Wetlands Subcommittee Home Page at the following URL address: http://www.nwi.fws.gov/fgdcwet.html

ADDRESSES: Requests for written copies of the responses to comments should be sent to Ms. Jennifer Fox, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

FOR FURTHER INFORMATION CONTACT:

Ms. Jennifer Fox at 703–648–5514.

SUPPLEMENTARY INFORMATION: The intent of the standard is to move toward a system that allows communication about wetlands and their features in a National context. Doing so enhances the ability of all agencies and individuals to interpolate and extrapolate wetland resource data, wetland loss and gain data, and restoration efforts in the same semantic and ecological context. Adoption of the standard will not change the current status of National Wetlands Inventory maps produced by the U.S. Fish and Wildlife Service. Adoption of the standard will not affect wetland regulatory efforts undertaken by any Federal, State, or local unit of government. The next action is for the Wetlands Subcommittee to submit the standard to the FGDC Coordination Group and the FGDC Steering Committee.

Dated: July 19, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–19121 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[AK–962–1410–00–P; F–72914]

Alaska; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), and Sec. 1424(c) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1613, will be issued to Bering Straits Native Corporation for 5,749.68 acres. The lands involved are in the vicinity of Brevig Mission, Alaska, and are within T. 1 N., R. 40 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Heather A. Coats,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–19152 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–$$–M

[AK–962–1410–00–P; F–72907]

Alaska; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), and Sec. 1424(c) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1613, will be issued to Bering Straits Native Corporation for approximately 5,715.33 acres. The lands involved are in the vicinity of Shishmaref, Alaska, and are within T. 6 N., R. 36 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Heather A. Coats,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–19153 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–$$–P

[WY–040–96–1310–01]

Notice of Intent To Conduct Public Scoping and To Prepare an Environmental Impact Statement

SUMMARY: The Bureau of Land Management (BLM) will conduct public scoping and prepare an Environmental Impact Statement (EIS) for McMurry Oil Company's and Snyder Oil Corporation's (Companies) proposal to drill approximately 300 natural gas wells within and north of the existing Jonah Prospect Natural Gas Field in Sublette County, Wyoming. The Jonah Field II Natural Gas Development Project (Project) area encompasses 63,000 acres in Townships 28 and 29 North, Ranges 107, 108, and 109 West, 6th Principal Meridian. The Companies propose to drill between 150 and 450 wells on an 80-acre spacing over a 10 year period beginning in 1997.

Lands within the project area are primarily public lands administered by BLM. Four sections of land owned by the State of Wyoming (two split-estate sections with state minerals and Federal surface) and one section of private surface and Federal minerals are within the project area. These lands are used primarily for livestock grazing, wildlife habitat, watershed, and natural gas production.

DATES: A public scoping notice was distributed July 12, 1996. Responses and comments will be accepted through August 23, 1996. A public tour of the project area is scheduled for the afternoon of July 29, 1996. A public scoping meeting will be held at 7:00 p.m., July 29, 1996, at the Best Western Motel, 864 West Pine Street, Pinedale, Wyoming.

ADDRESSES: Send all scoping comments to: Leslie Theiss, Area Manager, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82041.

Additional information about attending the tour, the public meeting, or to receive a copy of the scoping notice for the Project may be obtained from the following offices:

BLM, Pinedale Resource Area, 132 Mill Street, P.O. Box 768, Pinedale, Wyoming 82041. Phone number 307–367–4358.

BLM, Rock Springs District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Phone number 307–382–5350.

FOR FURTHER INFORMATION CONTACT: Tom Curry, Pinedale Resource Area or Teri Deakins, Rock Springs District Office.

SUPPLEMENTAL INFORMATION: The purpose of the project is to expand natural gas recovery from the Jonah

Field area, allowing the Companies to provide natural gas to pipeline companies distributing and supplying natural gas to consumers. The Jonah Field currently has 17 producing wells. The existing wells, plus the additional wells, could result in development of between 150 and 450 natural gas wells within the Jonah Field II area with 300 wells the most likely development scenario. However, the level and rate of additional drilling and development will be contingent upon natural gas prices and delineation of the producing formation. Facilities at each new well site will include an individual separator, a dehydrator, and production units. Associated facilities will include access roads, a 3 to 4 inch diameter buried natural gas gathering system, replacement of existing 8 inch natural gas transmission pipeline with a 12 inch pipeline, and expansion of the natural gas powered compressor station.

An environmental assessment was prepared on natural gas development within the Jonah Prospect Field in 1994. The decision concluded that a certain level of development could be authorized without resulting in significant impact to the human environment. Additional delineation wells may be approved during preparation of the EIS so long as it remains within the scope of the existing environmental analysis and BLM policy on drilling exploration and delineation wells. Land and resource management issues and concerns associated with the construction of roads, well pads, and pipelines; the drilling and completion of wells, and the operation and maintenance of a producing natural gas field that will be analyzed in the EIS include:

- No surface occupancy within 1/2 mile of a ferruginous hawk nest.
- Potential impacts to nesting raptors.
- Threatened/Endangered/Candidate species (plant and animal).
- Potential impacts of sage grouse breeding, nesting, and winter range habitat.
- Potential impacts to Sublette antelope herd migration.
- Revegetation and restoration of short-term disturbances and long-term stabilization, and control of noxious weeds.
- Potential conflicts with livestock and range improvements.
- Potential impacts on cultural resources (prehistoric and historic resources).
- Increase drilling related traffic on Federal and State highways and increased public access to the area.
- Social and economic affects to the local communities (increased Federal, State, and local revenues).
- Potential impacts to surface and groundwater resources.
- Air quality and potential impacts to nearby Wilderness Areas.
- Potential impacts on wetlands and/or riparian areas.
- Potential impacts on paleontology.
- Hazardous substances.
- Potential impacts to wildlife habitat and fish habitat (Colorado River water depletions, if applicable).
- Human and domestic animal safety.
- Potential impacts to State Priority One bird and mammals.
- Cumulative impacts—from the company's proposal added to other energy-related activities that are on-going or planned in the vicinity of the Jonah Field II.
- Split-estate concerns.

Dated: July 23, 1996.

Alan R. Pierson,

State Director.

[FR Doc. 96–19148 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–84–P

[AK–020–1220–04–P]

Recreation Fee Collection at Fortymile Management Area Bureau of Land Management (BLM) Developed Campgrounds

The Bureau of Land Management (BLM) will begin fee collection at the following campgrounds during the summer of 1996 (on or about 1 August):

Eagle Campground, Mile 162, Taylor Highway (Eagle, AK)

Walker Fork Campground, Mile 82, Taylor Highway

West Fork Campground, Mile 49, Taylor Highway.

Fees at all of the sites are $6.00 per night, with golden age passport half-price.

Direct questions and responses to: Jeff Roach, Fortymile Management Area, Bureau of Land Management, PO Box 309, Tok, Alaska 99780–0309, Tel: (907) 883–5121.

Dated: July 12, 1996.

Robert C. Burritt,

Team Lead, Fortymile Management Area.

[FR Doc. 96–19147 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–84–P

[AZ–050–06–1220–00–1610–00]

Arizona: Intent to Prepare a Resource Management Plan Amendment (Yuma Desert) and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan Amendment/Environmental Assessment and Invitation to Participate in the Identification of Issues; Yuma District, AZ.

SUMMARY: The Bureau of Land Management, Yuma District (BLM), is preparing an Amendment/Environmental Assessment to the Yuma District and Lower Gila South (Goldwater Amendment) Resource Management Plans (RMP). The Goldwater Amendment established the 84,500-acre Yuma Desert and Sand Dunes Habitat Management Area and the 25,500-acre Gran Desierto Dunes Area of Critical Environmental Concern (ACEC), emphasizing protection and enhancement of flat-tailed horned lizard habitat and a unique dune system. The proposed Amendment would expand these boundaries to form the Yuma Desert Management Area, modify and expand management prescriptions throughout the management area, designate a utility corridor between Interstate 8 and the Southerly International Boundary, and establish a mitigation and compensation policy within flat-tailed horned lizard habitat in Yuma District.

DATES: Written comments related to the identification of issues will be accepted until August 28, 1996. Due to the noncontroversial nature of the proposal, no public meetings are scheduled.

ADDRESSES: Send comments to: Bureau of Land Management, Yuma District Office, Attention: Brenda Smith, 2555 East Gila Ridge Road, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Brenda Smith, Renewable Resources Advisor, Yuma District Office, Yuma, Arizona. Telephone (520) 317–3216.

SUPPLEMENTARY INFORMATION: BLM has been working with U.S. Fish and Wildlife Service (FWS) and several other agencies to develop a conservation agreement to alleviate threats to the flat-tailed horned lizard (*Phrynosoma mcallii*), a species proposed for listing as threatened under the Endangered Species Act. As part of the management strategy for this species, these agencies have proposed establishing a management area for the flat-tailed horned lizard in the Yuma Desert, Yuma

County, Arizona. BLM currently administers a portion of this management area as the Yuma Desert and Sand Dunes Habitat Management Area and the Gran Desierto Dunes ACEC. BLM proposes to expand the Yuma Desert and Sand Dunes Habitat Management Area to include the remaining flat-tailed horned lizard habitat within the Barry M. Goldwater Range, Yuma County, Arizona.

Existing management prescriptions for the Yuma Desert and Sand Dunes Habitat Management Area and Gran Desierto Dunes ACEC would be modified to further limit surface disturbances within the expanded management area. These modifications would exclude Federally-owned lands within the management area from disposal, place additional limits on land-use authorizations and camping within the area, prohibit commercial collection or sales of native plant products, prescribe fire suppression methods, and limit other discretionary actions that may result in loss or degradation of flat-tailed horned lizard habitat.

There is no designated utility corridor between Interstate 8 and the Southerly International Boundary in Yuma County. The Amendment would designate one right-of-way corridor and limit new utilities and roads to this corridor.

In addition, the amendment would establish a policy for mitigating and compensating for impacts to flat-tailed horned lizards from projects within flat-tailed horned lizard habitat. Mitigation and compensation would be applied both within and outside of the Yuma Desert and Sand Dunes Habitat Management Area.

Possible adverse socioeconomic impacts to Yuma County government and private entities may result from increased costs associated with development activities on Federal lands. Lands within the management area would not be available for lease or disposal. Possible benefits would be alleviation of threats to the flat-tailed horned lizard in this area and conservation of the species and its habitat.

Complete records of all phases of the planning process will be available for public review at the Yuma District Office, 2555 East Gila Ridge Road, Yuma, Arizona.

This notice is published under the authority found in 43 CFR 1610.2(c).

Dated: July 23, 1996

David Daniels,

Surface Protection Specialist/Acting District Manager.

[FR Doc. 96–19146 Filed 7–26–96; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–389]

Certain Diagnostic Kits for the Detection and Quantification of Viruses; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 25, 1996, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Hoffmann-La Roche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diagnostic kits for the detection and quantification of viruses, that infringe claims 1, 2, 5–9, 11, 12, 15, 17, and 18 of United States Letters Patent 5,476,774.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 22, 1996, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain diagnostic kits for the detection and quantification of viruses, by reason of infringement of claims 1, 2, 5–9, 11, 12, 15, 17, or 18 of United States Letters Patent 5,476,774; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Hoffmann-La Roche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Organon Teknika B.V., 5281 RM Boxtel, The Netherlands

Organon Teknika Corporation, 100 Akzo Avenue, Durham, North Carolina 27712

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–M, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

(4) Pursuant to section 210.50(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR § 210.50(b)(1), the Commission delegates to the presiding administrative law judge for this investigation the authority to compel discovery, take evidence, and hear argument with respect to the public interest in this investigation, as appropriate, and directs the presiding administrative law judge to include findings of fact and conclusions of law on public interest issues in any recommended determination filed with the Commission under section 210.42(a)(1)(ii), 19 CFR § 210.42(a)(1)(ii).

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to sections 201.16(d) and 210.13(a) of the Commission's Rules, 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: July 23, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–19109 Filed 7–26–96; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–83]

David M. Headley, M.D., Grant of Restricted Registration

On September 7, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David M. Headley, M.D., (Respondent) of Port Gibson, Mississippi, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest.

On September 30, 1994, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Jackson, Mississippi, on August 22 and 23, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On November 28, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's application for registration be granted provided he meet the following conditions:

(1) Submit to random, unannounced urine screenings once every two weeks for a period of not more than one year. Respondent shall transmit to the Special Agent in Charge of the New Orleans Field Division of the DEA or his designee the results of such urine screenings on a monthly basis.

(2) Respondent shall continue to attend weekly Alcoholics Anonymous meetings, or other support group meetings of his choice, for a period of not less than one year.

Neither party filed exceptions to his decision, and on January 16, 1996, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that on December 20, 1984, the Respondent voluntarily surrendered his DEA Certificate of Registration, AH9733862, upon admitting himself into the Ridgeview Institute in Smyrna, Georgia, for substance abuse treatment. From October 2, 1984, through February 4, 1987, the Respondent participated in a multi-phase rehabilitation treatment program. On February 20, 1986, the Mississippi State Board of Medical Licensure (Medical Board) granted the Respondent permission to re-register with the DEA in Schedules IV and V, and his DEA application was granted. The Respondent was issued a DEA Certificate of Registration, BH0570502, which was later modified to include Schedules III and IIIN.

However, in 1988, the Respondent suffered a relapse, and he admitted that he was abusing controlled and non-controlled substances during this time. In August of 1988, Medical Board investigators reviewed prescription files at pharmacies in the Respondent's local area. The investigation revealed that the Respondent had prescribed and ordered numerous controlled and non-controlled substances for himself, and had prescribed controlled substances for his wife. As a result of this investigation, the Medical Board and the Respondent entered into a Consent Agreement on September 28, 1988, which prohibited the Respondent from administering, dispensing, or prescribing addictive drugs to himself or members of his family, and which required him to submit to random, unannounced drug screening tests.

The Respondent submitted to the drug screens, and a test taken on April 28, 1989, indicated the presence of amphetamine and methamphetamine, both Schedule II drugs, and phendimetrazine, a Schedule III drug. Again on July 21, 1989, the Respondent's drug screen tested positive for amphetamine, and for phenobarbital, a Schedule IV drug. Consequently, the Medical Board served the Respondent with an Order of Prohibition dated August 11, 1989, prohibiting him from practicing medicine until such time as he was evaluated for chemical dependency.

On August 16, 1989, the Respondent entered another treatment center, where he remained until September 15, 1989. On October 24, 1989, the Respondent entered into a second consent agreement with the Medical Board, requiring him, among other things, (1) to surrender his DEA registration, (2) to refrain from administering, dispensing, or prescribing to himself or to family members, any drug having addiction-forming qualities, (3) to submit to random, unannounced, and witnessed urine and/or blood screens for a period of at least five years (4) to complete all required phases of a drug abuse treatment program, and (5) to affiliate with the Mississippi State Medical Association Impaired Professionals Program. As of the time of the hearing before Judge Tenney, the Respondent had abided by, and was still subject to, the terms of this agreement, including the drug screening provision. On October 24, 1989, the Respondent surrendered his DEA registration as required by the second consent agreement.

The Respondent continued his drug abuse rehabilitation program through February 27, 1990, completing Phase III of his treatment. He then entered into a two-year aftercare monitoring phase of recovery. On February 27, 1992, the Respondent voluntarily extended his aftercare contract for another year, after successfully having completed the required two-year period. The Respondent also successfully completed

his third year contract on February 26, 1993.

Previously, on November 22, 1991, the Medical Board approved the Respondent's request for permission to register with the DEA to obtain a Certificate of Registration for Schedules IV and V only. Accordingly, on November 24, 1991, the Respondent applied for such a restricted registration, and on July 12, 1993, the Director, Office of Diversion Control of the DEA, issued an Order to show Cause to the Respondent, seeking to deny his application. The Respondent waived his right to a hearing, and on October 25, 1993, the then-Administrator of the DEA issued a Final Order denying the Respondent's application. The Administrator concluded that the investigative file and the Respondent's written statement with accompanying letters written on his behalf, had presented insufficient evidence that the Respondent had been sufficiently rehabilitated from his substance abuse problems to be entrusted with a DEA Certificate of Registration. Subsequently, on December 15, 1993, the Respondent reapplied for a DEA registration in Schedules IV and V, and it is that application that is the subject of this order.

The evidence of record establishes that the Respondent has not abused controlled substances or alcohol since August 16, 1989. The Respondent recently earned his sixth-year sobriety chip from the local Alcoholics Anonymous (AA) chapter, and he continues to attend these group support meetings at least once a week.

An investigator for the Medical Board testified before Judge Tenney, relaying the investigative results of the Respondent's relevant conduct from 1984 through 1992. He also stated that since August of 1989, there had been no further complaints made to the Medical Board regarding the Respondent's drug abuse problem or his capabilities as a physician.

Further, an expert in drug and alcohol abuse counseling (Counselor) testified that, based upon his personal knowledge of the Respondent and his professional relationship with him, the Respondent was fully rehabilitated. The Counselor also stated that he was a recovering drug addict and alcoholic, that he had attended AA meetings with the Respondent since 1990, and that he was the Respondent's sponsor. He testified that he had not observed anything that would indicate that the Respondent had, since his rehabilitation in 1989, used any alcohol or controlled substances. The Counselor also opined that the Respondent was not a risk for diverting controlled substances. Mr. David Whitehead, an expert in drug and alcohol abuse counseling with similar personal knowledge of the Respondent, also opined that the Respondent was fully rehabilitated and would not create a risk for diverting controlled substances.

Further, Dr. Doyle Smith, a physician and an expert in addiction medicine, also testified. Based upon his personal knowledge of the Respondent's behavior, as well as his review of the evidence in this matter, Dr. Smith concluded that the Respondent was rehabilitated ''as successful[ly] as he can be in six years of ongoing sobriety.''

Dr. Roy Barnes, the Chief of Staff of the Claiborne County Hospital, testified before Judge Tenney, stating that he was the primary care doctor for the Respondent and his wife, and thus he had frequent contact with both of them. Dr. Barnes testified that he had not observed any symptoms or behavior from the Respondent or Mrs. Headley that would lead him to believe that either of them had any substance abuse problems since returning from their treatment programs. Dr. Barnes also opined that the Respondent and his wife were fully rehabilitated.

The administrator of the Claiborne County Hospital, Ms. Wanda Fleming, testified that the Respondent had regained all of his staff privileges at the hospital, to the extent possible without a DEA registration. She stated that the Respondent had been appointed Vice Chief-of-Staff for the hospital, and that there had been no deficiencies in his performance since his privileges had been reinstated. Ms. Fleming also testified that it was very difficult to find doctors to cover the emergency room at night, on weekends, and on holidays, but that she could always count on the Respondent to help when asked.

The record also contains evidence that it is very difficult to get doctors to practice in Claiborne County, Mississippi, because the area is very rural and the people are poor. The county leads the State in infant mortality and teenage pregnancies, and the Respondent is one of only two doctors who deliver babies in the county.

The Respondent's wife testified before Judge Tenney, describing her substance abuse problems, her successful completion of a drug abuse treatment program, her continuing attendance at a local support group, and to the fact that she had been sober since October 17, 1989. In addition, she testified that she and her husband have a strong marriage, that they provide support for one another, and that their support system included a large family and many close friends. She also stated that since their respective dates of sobriety, neither she nor her husband had diverted, misused, or abused controlled substances.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration as a practitioner, if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

Absent any evidence of a conviction record, the Deputy Administrator finds that factors one, two, four, and five are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, '' recommendation of the appropriate State licensing board,'' it is uncontroverted that the Respondent's past conduct resulted in the Medical Board's taking affirmative action to remove him from the practice of medicine and to prohibit him from administering, dispensing, or prescribing controlled substances. The two consent agreements and the prohibition order evidence such Medical Board intervention. However, also uncontroverted is the Medical Board's reinstatement of his medical license, and its order of November 22, 1991, allowing the Respondent to apply for a DEA Certificate of Registration in Schedules IV and V. Thus, the Deputy Administrator finds that the Medical Board, upon receiving evidence of the Respondent's drug abuse condition, quickly responded to the situation. However, the Medical Board also acknowledges the Respondent's current condition of recovery and has reinstated

his medical licensure. Further, the Medical Board also supports the Respondent's application for registration in Schedules IV and V.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's ''[c]compliance with applicable State, Federal, or local laws relating to controlled substances,'' the Deputy Administrator agrees with Judge Tenney's conclusion, that the Respondent had prescribed controlled substances to himself and his wife for their personal use and for no legitimate medical reason. To be effective, a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); see also Harlan J. Borcherding, D.O., 60 FR 28,796, 28,798 (1995). The Respondent's conduct failed to meet this standard.

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator agrees with Judge Tenney's conclusion, that ''[t]here is no persuasive evidence that the Respondent's DEA registration would threaten the public health and safety.''

The Deputy Administrator also finds significant that the Respondent and his wife have been in a state of recovery from their substance abuse condition since 1989. Further, the evidence demonstrates that, since the Respondent voluntarily surrendered his DEA Certificate of Registration in 1989, he has not prescribed nor dispensed controlled substances. The Respondent submitted voluminous evidence of negative drug screening results over a five-and-one-half year time frame. Finally, numerous witnesses with firsthand knowledge of the Respondent's and his wife's conduct since 1989 have testified to their continued sobriety and opined that a relapse after over five years of sobriety was highly unlikely. Such evidence supports the Respondent's position that granting him a DEA Certificate of Registration in Schedules IV and V would be in the public's interest.

However, Judge Tenney also noted the Respondent's history of successful treatment in 1984 and a relapse in 1988. He concluded that,

> due to the seriousness of Respondent's substance abuse problem in the past, it is prudent to continue to monitor Respondent's recovery. Dr. Moffitt, one of the founders of the Impaired Professional Program for doctors in Mississippi, testified that Respondent should be granted a DEA registration at this time, but that Respondent should also continue drug testing. I agree with that suggestion.

Consistent with his conclusion, Judge Tenney recommended that the Respondent be granted a DEA registration subject to two conditions. The Deputy Administrator agrees with Judge Tenney's conclusion, with some minor modification to the order. The Respondent will be required, beginning on the effective date of this order:

(1) To submit on a monthly basis to the Special Agent in Charge of the New Orleans Field Division of the DEA or his designee, a copy of his urine screening results from urine screenings, (a) taken once every two weeks for a period of six months, and (b) subsequently taken once every month for a follow-on period of six months.

(2) To continue to attend weekly Alcoholics Anonymous meetings, or other support group meetings of his choice, for a period of one year.

Therefore, the Deputy Administrator finds that the public interest is best served by issuing a DEA Certificate of Registration in Schedules IV and V to the Respondent, subject to the above requirements.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application of David M. Headley, M.D., for a DEA Certificate of Registration in Schedules IV and V be, and it hereby is, approved, subject to the above requirements.

Further, the Respondent submitted extensive evidence demonstrating the need for the DEA Certificate of Registration in his current practice, as well as evidence of the community's need for a physician of his specialty with prescribing capabilities. Also, the Respondent presented evidence that he would be willing to comply with the ordered requirements as a condition to granting this registration. Thus, the Deputy Administrator has determined that the public interest will be better served in making this final order effective upon publication, rather than thirty days from the date of publication. Therefore, this order is effective upon the date of publication in the Federal Register.

Dated: July 22, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–19197 Filed 7–26–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1779–96; AG Order No. 2044–96]

RIN 1115–AE26

Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until August 10, 1997, the Attorney General's designation of Bosnia-Hercegovina under the Temporary Protected Status (''TPS'') program provided for in section 244A of the Immigration and Nationality Act, as amended (''the Act''). Accordingly, eligible aliens who are nationals of Bosnia-Hercegovina (or who have no nationality and who last habitually resided in Bosnia-Hercegovina) may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already have registered for the initial period of TPS which ended on August 10, 1993.

EFFECTIVE DATES: This extension of designation is effective on August 11, 1996, and will remain in effect until August 10, 1997. The primary re-registration procedures become effective on July 29, 1996, and will remain in effect until August 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on August 10, 1992, the Attorney General designated Bosnia-Hercegovina for Temporary Protected Status for a period of 12 months, 57 FR 35604. The Attorney General extended

the designation of Bosnia-Hercegovina under the TPS program for additional 12-month periods until August 10, 1996, 60 FR 39004.

This notice extends the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures that eligible aliens who are nationals of Bosnia-Hercegovina (or who have no nationality and who last habitually resided in Bosnia-Hercegovina) must follow in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Bosnia-Hercegovina's TPS designation, late initial registrations are possible for some Bosnians under 8 CFR240.2(f)(2). Such late initial registrants must have been ''continuously physically present'' in the United States since August 10, 1992, must have had a valid immigrant or non-immigrant status during the original registration period, and must register no later than 30 days from the expiration of such status.

An Application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization. The Immigration and Naturalization Service requires TPS registrants to submit Form I–765 for data-gathering purposes.

Notice of Extension of Designation of Bosnia-Hercegovina Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) The conditions in Bosnia-Hercegovina; and (b) whether permitting nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Bosnia-Hercegovina continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Bosnia-Hercegovina under section 244A(b) of the Act is extended for an additional 12-month period from August 11, 1996, to August 10, 1997.

(2) I estimate that there are approximately 400 nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Bosnia-Hercegovina (or an alien having no nationality who last habitually resided in Bosnia-Hercegovina) who received a grant of TPS during the initial period of designation from August 10, 1992, to August 10, 1993, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Hercegovina (or an alien having no nationality who last habitually resided in Bosnia-Hercegovina) who previously has been granted TPS, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on July 29, 1996 and ending on August 27, 1996 in order to be eligible for Temporary Protected Status during the period from August 11, 1996, until August 10, 1997. Late re-registration applications will be allowed pursuant to 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–821 filed as part of the re-registration application. A Form I–765 must also be filed at the same time. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765 together with Form I–821, but in such cases no fee will be charged.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1997, the designation of Bosnia-Hercegovina under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the Federal Register.

(7) Information concerning the TPS program for nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 23, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–19209 Filed 7–26–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1778–96; AG Order No. 2045–96]

[RIN 1115–AE26]

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until September 17, 1997, the Attorney General's designation of Somalia under the Temporary Protected Status (''TPS'') program provided for in section 244A of the Immigration and Nationality Act, as amended (''the Act''). Accordingly, eligible aliens who are nationals of Somalia (or who have no nationality and who last habitually resided in Somalia) may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already have registered for the initial period of TPS which ended on September 16, 1992.

EFFECTIVE DATES: This extension of designation is effective on September 18, 1996, and will remain in effect until September 17, 1997. The primary re-registration procedures become effective on August 19, 1996 and will remain in effect until September 17, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20326, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no

nationality and who last habitually resided in that state. The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on September 16, 1991, the Attorney General designated Somalia for Temporary Protected Status for a period of 12 months, 56 FR 46804. The Attorney General extended the designation of Somalia under the TPS program for additional 12-month periods until September 17, 1996, 60 FR 39005.

This notice extends the designation of Somalia under the Temporary Protected Status program for an additional 12 months, in accordance with section 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures that eligible aliens who are nationals of Somalia (or who have no nationality and who last habitually resided in Somalia) must follow in order to re-register for TPS.

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Somalia's TPS destination, late initial registrations are possible for some Somalis under 8 CFR 240.2(f)(2). Such late initial registrants must have been ''continuously physically present'' in the United States since September 16, 1991, must have had a valid immigrant or non-immigrant status during the original registration period, and must register no later than 30 days from the expiration of such status.

An Application for Employment Authorization, Form I–765, must always be filed as part of either a re-registration or as part of a late initial registration together with the Application for Temporary Protected Status, Form I–821. The appropriate filing fee must accompany Form I–765 unless a properly documented fee waiver request is submitted to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization. The Immigration and Naturalization Service requires TPS registrants to submit Form I–765 for data-gathering purposes.

Notice of Extension of Designation of Somalia Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the immigration and Nationality Act, as amended, (8 U.S.C. 1254a), and pursuant to sections 244A(b) (3) (A) and (C) of the Act, I have had consultations with appropriate agencies of the Government concerning (a) the conditions in Somalia; and (b) whether permitting nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, to remain temporarily in the United States is contrary to the national interest of the United States. As as result, I determine that the conditions for the original designation of Temporary Protected Status for Somalia continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Somalia under section 244A(b) of the Act is extended for an additional 12-month period from September 18, 1996, to September 17, 1997.

(2) I estimate that there are approximately 350 nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who received a grant of TPS during the initial period of designation from September 16, 1991, to September 16, 1992, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who previously has been granted TPS, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on August 19, 1996 in order to be eligible for Temporary Protected Status during the period from September 18, 1996, until September 17, 1997. Late re-registration applications will be allowed pursuant to 8 CFR 240.17(c).

(5) There is no fee for Form I–821 filed as part of the re-registration application. A Form I–765 must also be filed at the same time. If the alien requests employment authorization for the extension period, the fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars ($70), will be charged for Form I–765. An alien who does not request employment authorization must nonetheless file Form I–765 together with Form I–821, but in such cases no fee will be charged.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 1997, the designation of Somalia under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the Federal Register.

(7) Information concerning the TPS program for nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, will be available at local immigration and Naturalization Service offices upon publication of this notice.

Dated: July 23, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–19208 Filed 7–26–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

School-to-Work Opportunities Act: Out-of-School Youth

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Application (SGA).

SUMMARY: All information required to submit a proposal is contained in this announcement. The U.S. Department of Labor, Employment and Training Administration (DOL/ETA), announces the availability of approximately $750,000 to award competitive grants to youth employment and/or education program providers that currently have a solid foundation of serving out-of-school youth (OSY) in a school-to-work (STW) framework. The purpose of the grants will be to accelerate the development of promising STW practices for OSY or to add new STW components to existing initiatives. This project is not designed to help existing youth programs plan how to serve out-of-school youth in a STW framework. Rather, the purpose is to select a variety of types of youth initiatives that already have developed and are implementing school-to-work elements for out-of-school youth, to help them build on this foundation in order to serve additional out-of-school youth more effectively, and to share the results with other out-of-school youth service deliverers and STW grantees.

Applicants that are not able to demonstrate a substantial number of the components and strategies of a School-to-Work Opportunities system, as described in the School-to-Work

Opportunities Act (STWOA) of 1994, for out-of-school youth will not be considered. Each potential applicant should review its current program against the three categories of threshold criteria (partnerships, programmatic, measurement) before deciding whether to submit an application. Programs that do not meet a majority of the threshold criteria will not be considered.

DATES: The closing date for receipt of proposals at the Department of Labor shall be August 23, 1996, at 4:00 P.M., Eastern time. Any proposal not received at the designated place, date and time of delivery specified will not be considered.

ADDRESSES: Proposals shall be mailed to: Division of Acquisition and Assistance, Attention: Ms. Brenda Banks, Reference: SGA/DAA 96–011, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Division of Acquisition and Assistance. Telephone (202) 219–7300 (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: This announcement consists of three parts: Part I Background/Description, Part II Application Process, and Part III Evaluation Criteria for Award.

Part I—Background

The School-to-Work Opportunities Act of 1994 is intended to create statewide systems to help all students attain high academic and occupational standards and identify and navigate paths to rewarding roles in the workplace. ''All students'' is defined in the Act as ''both male and female students from a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic or cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities, students with limited-English proficiency, migrant children, school dropouts, and academically talented students.''

Experience in implementing the School-to-Work Opportunities Act has shown that school dropouts are extremely difficult to serve under STW precisely because they are not in the school buildings that have been the major focus of STW activities to date. A major problem for many young people, especially those who leave high school without a degree, is their inability to secure full-time career-track employment and their lack of preparation for further education or training. STW is designed to respond to these problems.

In addition, there are currently many effective employment programs for school dropouts and other out-of-school youth. There is now a need to focus these programs on ways to better serve these youth with attention to the twin STW goals of high academic achievement and progressive mastery of career competencies.

Part II—Application Process

A. Eligible Applicants

This competition is open to current youth employment and education program providers who can clearly demonstrate the extent to which their program meets a majority of the ''threshold criteria'' in Appendix C.

Entities described in Section 501(c)(4) of the Internal Revenue Code who engage in lobbying activities are not eligible to receive funds under this SGA. The new Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, which became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities.

B. Grant Awards

The Department has allocated approximately $750,000 to award grants under this SGA in a range of $75,000 to $150,000, with an average award of $100,000. Applications that request more than $150,000 will not be considered. ETA expects to select a variety of types of existing programs that serve out-of-school youth as well as a variety of approaches. The Period of Performance shall not exceed twelve (12) months from the date of execution by the Government.

C. Application Procedures

1. Submission of Proposal

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate parts:

Part I shall contain the Standard Form (SF) 424, ''Application for Federal Assistance,'' and ''Budget Information Sheet.'' All copies of the SF 424 shall have original signatures. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on Budget Information Sheet.

Part II shall contain technical data that demonstrates the applicant's capabilities in accordance with Part II, Section D, Statement of Work, using the headings below and responding to the information requested in each of the categories.

I. *Project title.* Identify the title of the proposed project.

II. *Type of current program,* and major source of funding, e.g., Job Corps Center (JTPA), Federally-funded State or local STW program (STWOA), Youth Fair Chance (JTPA), Youth Build, alternative education program, etc.

III. *Project Proposal.*

A. Provide a *brief* description of the existing youth program and the STW elements, as laid out in the STWOA, that are currently a part of the program and services for out-of-school youth. The description should provide qualitative and quantitative information about current activities, keyed to the threshold criteria, and sufficient to demonstrate substantial conference with the threshold criteria. If the program receives funds under the STWOA, describe the level of service currently provided to school dropouts.

B. Provide a description of the proposed activities. Applicants must be specific in describing (1) which STW elements components or strategies are being proposed, (2) how they will build on the current program(s) and provide additional benefit to school dropouts, and (3) how the activities proposed are or will coordinate appropriately the activities of youth-serving organizations with STW activities in the State or local area funded under the STWOA. Applicants are advised to be specific about the proposed processes, products and outcomes of the OSY/STW project and to address the techniques proposed for sharing the results of the model with others.

2. Page Count

Part II—Technical Application is not to exceed a maximum of 10 single-sided pages. Attachments are not required and shall not be submitted as a part of this application. The application must be typed with a font size no smaller than 10cpi or 12pt print size, with 1 inch default margins (i.e., for top, bottom, left, and right margins). Any applicants technical proposal exceeding this page count limitation will not be considered for an award.

3. Hand Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they shall be received at the designated place by 4:00 p.m., Eastern Time by August 23, 1996. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Telegraphed and/

or faxed proposals will not be honored. Note. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Late Proposals

Any proposal received at the office designated in the solicitation, after the exact time specified for receipt, will not be considered unless it is received before award is made and was either.

(1) Sent by U.S. Postal Service registered or Certified Mail not later than the fifth (5th) calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th).

(2) Or sent by U.S. Postal Service Express Mail Next Day Service—Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service Registered or Certified Mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing.

Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

5. Period of Performance

The period of performance shall not exceed twelve (12) months from the date of execution by the Government.

D. Statement of Work/Grant Application

The Department of Labor has a strong interest in assisting youth employment and education programs to apply STW principles and components to their out-of-school youth strategies and to connect their efforts to the Federally-funded STW systems in their States. In addition, the Departments of Education and Labor, which jointly administer the School-to-Work Opportunities initiative, have a strong interest in ensuring that STW systems being developed and implemented in the States and local communities are designed to provide the same opportunities and benefits to school dropouts as they do for students who are attending school. This project will demonstrate a variety of comprehensive approaches for serving school dropouts effectively in a School-to-Work framework. Funds under this award must be used to serve ''school dropouts'' as required by the STWOA.

1. OSY/STW Threshold Criteria

This project is not intended to help fund out-of-school youth initiatives *begin* design of a school-to-work system; nor is it intended to fund existing Federally funded State or local STW initiatives that have not already begun to implement strategies for school dropouts. The expectation is that most, but not necessarily all, of the strategies and essential elements of a STW system, as laid out in the School-to-Work Opportunities Act, will be present in the existing youth initiatives selected for funding. The degree to which each is present will vary according to the type of initiative. The goal is to demonstrate a variety of more fully developed models for serving school dropouts in a STW framework than is now available.

Appendix C contains the threshold criteria that the Departments and the School-to-Work Office consider a baseline of activity for effectively serving out-of-school youth in a STW framework.

2. Allowable Activities

Activities to be funded under the OSY/STW Project must be related to components and activities in the School-to-Work Opportunities Act (most of which are referred to in Appendix C), must be designed to serve additional school dropouts more effectively, and must show a connection—that is appropriate to the status of STW implementation in the State or locality—between the organization(s) delivering services to school dropouts and the STW system funded under the STWOA. Activities may be designed to better link two or more existing out-of-school youth programs with a STW system funded under the STWOA. An objective of the overall OSY/STW initiative is to encourage existing programs serving out-of-school youth to adapt and adopt more STW elements and to assist STW systems to learn more effective ways to serve school dropouts as they design and implement STW systems for all students. Applications that do not show a strong, appropriate connection between programs serving out-of-school youth and existing STW components and systems will not be selected for funding.

Part III—Evaluation Criteria for Award

Completed applications will be reviewed against the technical criteria listed below by a rating panel. The panel's recommendations are advisory in nature to the Grant Officer.

1. Foundation of School-to-Work elements. (30 points)

fl The extent to which the *current* youth program provides service to school dropouts using STW components and elements described in the School-to-Work Opportunities Act and reflected in the threshold criteria (Appendix C).

fl The extent to which the *current* program demonstrates that it meets a majority of the threshold criteria.

fl The effectiveness of the current activities in providing youth who have dropped out of school the opportunities and benefits envisioned in the STWOA and reflected in attached threshold criteria.

2. Strategy for adding new STW component(s) or accelerating the development of an existing promising practice in STW. (40 points)

fl The extent to which the proposed activities will provide additional employment and education services in a STW framework.

fl The effectiveness of the proposed STW strategy in promoting higher academic achievement and greater mastery of career competencies for school dropouts.

Connections between organizations serving out-of-school youth and State or local STW systems funded under the STWOA. (15 points)

fl The degree to which the proposed activity(ies) connects youth service delivery organizations with the STW system in the State and local communities so that existing promising practices, strategies, curriculum, and other strategies for effectively serving youth in a STW framework are incorporated into the OSY/STW Project, and the lessons learned as a result of the OSY/STW Project are shared.

fl The effectiveness of the techniques proposed for helping others, nationwide, learn from the OSY/STW Project and replicate relevant activities.

3. Capability of staff. (15 points)

fl The extent to which the staff proposed have the knowledge and expertise in STW and in serving out-of-school youth required to successfully complete the project.

Final selections will be made based upon the panel's review and such other factors as type of current program, diversity of programmatic approaches,

and geographic balance and what is in the best interest of the Government.

Signed at Washington, D.C., this 23d day of July 1996.

Janice E. Perry,

Grant Officer, Employment and Training Administration.

Appendices

A. SF–424, Application for Federal Assistance
B. Budget Information Sheet
C. Threshold Criteria (4 Pages)

BILLING CODE 4510–30–M

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application / Pre-Application /_/ Construction / /_/ Construction /_/Non-Construction / /_/ Non-Construction	2. DATE SUBMITTED: 3. Date Received By State 4. Date Received By Federal Agency	Applicant Identifier: State Application Identifier Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state and zip code).	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):	7. Type of Applicant: (enter appropriate letter in box) /__/ A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify)
8. TYPE OF APPLICATION: /__/ New /__/ Continuation /__/ Revision If Revision, enter appropriate letter (s) in box(es) /__/ /__/ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other: (specify)	9. Name of Federal Agency:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE: NUMBER: TITLE: 12. AREAS AFFECTED BY PROJECT (cities, counties, state, etc.)	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

13. PROPOSED PROJECT: START DATE: ENDING DATE:	14. CONGRESSIONAL DISTRICTS OF: A. APPLICANT B. PROJECT

15. ESTIMATED FUNDING: a. Federal $ .00 b. Applicant $ .00 c. State $ .00 d. Local $ .00 e. Other $ .00 f. Program Income $ .00 g. TOTAL $ .00	16. Is application subject to review by State Executive Order 12372 Process? A. YES. This Preapplication/application was made available to the State Executive Order 12372 Process for review on: DATE: B. NO. /__/ Program is not covered by EO 12372 NO. /__/ Or program has not been selected by State for review 17. Is the applicant delinquent on any Federal Debt? /__/ Yes, If "YES" attach an explanation /__/ NO

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been only authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Phone #
d. Signature of Authorized Representative		e. Date Signed

Standard Form 424 - OMB Approval No. 0348-0043

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits(Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		
9. Indirect Cost(Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$		

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution	$		
3. TOTAL Cost Sharing / Match (Rate %)	$		

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

BILLING CODE 4510–30–C

Appendix C—Serving Out-of-School Youth in a School-to-Work Framework

Threshold Criteria

Partnerships

1. There is strong support for the existing initiative and for the school-to-work concept from appropriate OSY/STW stakeholders—such as secondary schools, parents, young people, employers, community-based organizations, labor, post-secondary institutions, Private Industry Councils, government agencies—as well as strategies for maintaining their support and involvement. In particular, a strong leadership role played by CBOs as stakeholders in the STW initiative should be demonstrated.

2. Collaborative agreements exist among a variety of institutions, such as those serving out-of-school youth (i.e., CBOs, Job Corps), employers, public schools, post-secondary and secondary schools, etc.

3. Employers play strong and active roles in the planning and governance of the existing initiative, and provide a range of services for the out-of-school youth component, such as providing a variety of worksite learning experiences, developing assessment criteria, and participating in career exposure activities.

4. Resources from a variety of sources (e.g., STW, federal categorical, State and local education funds, private sector) are systematically used in an integrated manner, to effectively address the work and learning needs of out-of-school youth.

5. A realistic and coherent strategy is in place to coordinate with the statewide School-to-Work system, as well as any existing local School-to-Work systems.

Programmatic

1. There is a strong community-wide partnership that is committed to preparing young people for the world of work and/or further educational and occupational training by providing appropriate activities and services which reflect the fact that youth learn best by learning in context and being actively engaged in their own learning.

2. Ongoing professional development is provided for worksite and ''school-based'' staff to ensure understanding of STW components and the provision of high quality services for out-of-school youth.

3. A system of organized school-based learning, work-based learning, and connecting activities is present in the existing out-of-school youth initiative, and is responsive to the cultural diversity of the youth it services.

4. Work-Based Learning activities include the following:

(a) A variety of different types of high quality work experiences and on-the-job training is available, depending upon the individual needs of the out-of-school youth.

(b) Adult worksite mentors are utilized.

(c) Learning is organized around an appropriate system of career pathways that offer students exposure to all aspects of an industry and are consistent with emerging industry and State standards for mastery of academic competencies and occupational skills.

5. School-Based Learning activities include:

(a) A commitment to high academic standards for all out-of-school youth participants is evident.

(b) A range of educational learning environments is available to meet the needs of out-of-school youth (e.g., alternative education).

(c) Workplace basics and learning in applied context are incorporated into curricula.

(d) Opportunities for post-secondary education and for further occupational/job training are available (e.g., dual enrollment option so that students can earn both high school and college credits simultaneously).

6. Connecting Activities include:

(a) A range of strategies that serve to effectively connect school-based and work-based learning activities, including dedicated staff that serve as school-based, work-based liaisons/coordinators.

(b) The conduct of outreach and public relations for all stakeholders involved in out-of-school youth activities, such as:

- Parents.
- Youth.
- Community-Based Organizations.
- Local elected officials.
- School Boards/School Administrators.

(c) Linkages between human resource service organizations and academic institutions to meet the needs of individual youth (e.g., pregnant and parenting teens).

(d) The provision of transportation and other support services specific to the needs of out-of-school youth.

(e) Strategies that develop the interpersonal skills of students, such as personal responsibility, teamwork, and conflict resolution.

7. Effective strategies are in place for recruiting, retaining, and serving out-of-school youth in the school-to-work framework.

Measurement

1. Evidence of specific goals and objectives and outcomes (or progress indicators) as they relate to the provision of services to out-of-school youth in a school-to-work framework.

2. The ability to implement and adjust improvement plans based on the continuous measurement of progress of the goals, objectives and outcomes, as indicated above.

3. The use of various types of ''assessment tools'' that would measure not only student mastery of skills, but also whether the student is able to integrate, apply and perform the learned knowledge, skills and abilities in real life situations, and that would serve as predictors of readiness for a variety of work, community college, advanced training and other real life situations.

[FR Doc. 96–19191 Filed 7–26–96; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the transfer of control of the licenses to the extent affected by the corporate restructuring of MidAmerican Energy Company (MidAmerican, the licensee), a holder of Facility Operating License Nos. DPR–29 and DPR–30, issued to Commonwealth Edison Company (ComEd) for operation and MidAmerican for possession of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the licenses, with respect to MidAmerican's 25 percent ownership in Quad Cities, Units 1 and 2, to the extent affected by a corporate restructuring creating MidAmerican Energy Holdings Company (Holdings). ComEd alone is licensed to operate Quad Cities, Units 1 and 2. MidAmerican would continue to remain the minority owner and possession-only licensee of the facility. The proposed action is in accordance with the licensee's application dated April 4, 1996.

The Need for the Proposed Action

The proposed action is required to the extent transfer of control of the licenses is affected by the corporate restructuring discussed above. MidAmerican has stated in its application that restructuring will provide flexibility afforded by the typical holding company structure and better position the company to operate in the increasingly competitive energy marketplace and take advantage of new growth opportunities.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed restructuring and concludes that there will be no changes to Quad Cities, Units 1 and 2, or the environment as a result of this action. The transfer of control of the licenses to the extent affected by MidAmerican's restructuring will not affect the numbers, qualifications, or

organizational affiliation of the personnel who operate the facility, in that ComEd will remain the holder of the operating licenses and continue to be responsible for the operation of Quad Cities, Units 1 and 2.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are identical.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on July 3, 1996, the staff consulted with the Illinois State official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action relating to MidAmerican's ownership of Quad Cities, Units 1 and 2.

For further details with respect to this action, see the request for approval dated April 4, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 23rd day of July 1996.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–19182 Filed 7–26–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–458]

Entergy Operations, Inc.; River Bend Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Entergy Operations, Inc., (the licensee), for operation of the River Bend Station, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Facility Operating License No. NPF–47 and Appendix C to the license to reflect the name change from Gulf States Utilities Company to Entergy Gulf States, Inc.

The proposed action is in accordance with the licensee's application for amendment dated May 20, 1996.

The Need for the Proposed Action

The proposed action is to correct the name in the license to reflect the change which occurred on April 22, 1996. The name change was made by the licensee to improve customer identification by establishing the name Entergy in the region that it serves.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license. We agree with the licensee that the name change will not impact the existing ownership of the River Bend Station (RBS) or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to Gulf States Utilities Company (GSU) or GSU's ability to comply with these conditions or with any of its other obligations or responsibilities. As stated by the licensee, ''The corporate existence continues uninterrupted and all legal characteristics remain the same. Thus, there is no change in the state of incorporation, registered agent, registered office, directors, officers, rights or liabilities of the company. Nor is there a change in the function of the Company or the way in which it does business. GSU's financial responsibility for RBS and its sources of funds to support the facility will remain the same.'' Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluent and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the River Bend Station.

Agencies and Persons Consulted

In accordance with its stated policy, on July 17, 1996, the staff consulted with the Louisiana State official, Dr. Stan Shaw, Assistant Administrator of the Louisiana Radiation Protection Division of the Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action. For further details with respect to the proposed action, see the licensee's letter dated May 20, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Troy H. Middleton Library, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 22nd day of July 1996.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–19183 Filed 7–26–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on August 20 and 21, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 20, 1996–8:30 a.m. until the conclusion of business

Wednesday, August 21, 1996– 8:30 a.m. until the conclusion of business

The Subcommittee will: (1) begin its review of the NRC-RES Program to revise/replace the current suite of NRC-RES thermal hydraulic codes, and (2) discuss the status of the RES thermal hydraulic research program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Date: July 23, 1996

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 96–19181 Filed 7–26–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions From the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on June 26, 1996 (60 FR 33150). Individual authorities established or revoked under Schedules A and B and established under Schedule C during the period June 1, 1996, through June 30, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established in 1996.

The Following Schedule A authorities were revoked:

Federal Deposit Insurance Corporation

Until June 1, 1996, all liquidation graded, temporary field positions concerned with the work of liquidating the assets and loans, or paying the depositors, of closed banks or savings and loan institutions. Effective June 8, 1996.

African Development Foundation

Two Financial Analyst positions, GS–501–12, and one Research Specialist position, GS–301–13, requiring indepth professional and cultural knowledge of African grassroots development. Effective June 24, 1996.

Department of the Air Force, U.S. Air Force Academy, Colorado

Positions of Cadet hostesses, instructors in Physical Education, instructors in Music (Choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion) and two Physical Therapists (Athletic Trainers). Effective June 28, 1996.

Schedule B

No Schedule B authorities were established in June 1996.

The following Schedule B authority was revoked in June 1996:

Federal Deposit Insurance Corporation

Temporary positions in the Washington, D.C. Headquarters offices of the Resolution Trust Corporation when filled by individuals with specialized experience in field and regional offices. Effective June 8, 1996.

Schedule C

The following Schedule C authorities were established in 1996.

Commission on Civil Rights

Special Assistant to a Commissioner. Effective June 7, 1996.

Special Assistant to a Commissioner. Effective June 24, 1996.

Department of Agriculture

Staff Assistant to the Chief Economist. Effective June 17, 1996.

Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service. Effective June 18, 1996.

Confidential Assistant to the Administrator, Farm Service Agency. Effective June 19, 1996.

Department of Commerce

Deputy Press Secretary-Agency Coordination to the Director for Communications and Press Secretary. Effective June 7, 1996.

Special Assistant to the Assistant Secretary for International Economic Policy. Effective June 7, 1996.

Special Assistant to the General Counsel, Office of the General Counsel. Effective June 14, 1996.

Executive Assistant to the Secretary of Commerce. Effective June 14, 1996.

Special Assistant to the Director, Legislative, Intergovernmental and Public Affairs. Effective June 14, 1996.

Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration. Effective June 19, 1996.

Associate Under Secretary for Economic Affairs to the Under Secretary for Economic Affairs. Effective June 19, 1996.

Director, Office of Congressional Affairs to the Assistant Secretary for Communication and Information. Effective June 21, 1996.

Special Assistant to the Director, Office of the White House Liaison. Effective June 21, 1996.

Director, Office of the White House Liaison to the Deputy Chief of Staff. Effective June 21, 1996.

Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective June 24, 1996.

Confidential Assistant to the Deputy Chief of Staff. Effective June 24, 1996.

Deputy Director of Scheduling to the Deputy Director of External Affairs and Director of Scheduling. Effective June 24, 1996.

Department of Defense

Assistant to the Deputy Secretary of Defense. Effective June 4, 1996.

Executive Director (Outreach and Integration) to the Deputy Under Secretary (Industrial Affairs and Installations). Effective June 6, 1996.

Staff Specialist to the Chief, Plans and Analysis Group. Effective June 7, 1996.

Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 19, 1996.

Department of Education

Confidential Assistant to the Director, Scheduling and Briefing. Effective June 19, 1996.

Confidential Assistant to the Director, Executive Secretariat. Effective June 19, 1996.

Department of Energy

Staff Assistant to the Director, Office of Budget Planning and Customer Service. Effective June 7, 1996.

Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison. Effective June 24, 1996.

Special Assistant to the Principal Deputy Assistant Secretary for Congressional Public and Intergovernmental Affairs. Effective June 28, 1996.

Department of Health and Human Services

Confidential Assistant to the Executive Secretary. Effective June 19, 1996.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Administration. Effective June 14, 1996.

Department of Labor

Press Secretary to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration. Effective June 12, 1996.

Department of Transportation

Special Assistant to the Chief of Staff. Effective June 21, 1996.

Department of the Treasury

Attorney-Advisor (General) to the General Counsel. Effective June 19, 1996.

Senior Policy Analyst to the Deputy Executive Secretary. Effective June 20, 1996.

Occupational Safety and Health Review Commission

Confidential Assistant to a Member (Commissioner). Effective June 20, 1996.

Office of Management and Budget

Confidential Assistant to the Associate Director, Health and Personnel Division. Effective June 28, 1996.

U.S. International Trade Commission

Confidential Secretary (Office Automation) to the Chairman. Effective June 28, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22082; File No. 812–10058]

BT Insurance Funds Trust, et al.

July 19, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: BT Insurance Funds Trust (''Trust''), Bankers Trust Global Investment Management, a unit of Bankers Trust Company (''Investment Management''), and certain other life insurance companies and their separate accounts investing now or in the future in the Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15), and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of the Trust and any other investment company that is offered to fund variable insurance products and for which Investment Management, or any of its affiliates, may serve as investment adviser,

administrator, manager, principal underwriter, or sponsor (collectively, ''Investment Companies'') to be sold to and held by the separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by affiliated or unaffiliated life insurance companies (''Participating Insurance Companies'') or to future qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

FILING DATE: The application was filed on March 25, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission 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 August 13, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Burton M. Leibert, Esq. or Rosalind A. Fahey, Esq., Wilkie Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Trust currently consists of two series, each representing an interest in a separate investment portfolio (''Portfolios''). The Trust may establish additional series of shares at any time.

2. Investment Management serves as investment adviser to each Portfolio of the Trust. Investment Management is a New York banking corporation and a wholly owned subsidiary of Bankers Trust New York Corporation (''Bankers Trust'').

3. 440 Financial Distributors, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a company not affiliated with Bankers Trust, is the distributor of the Portfolios' shares.

4. Applicants propose that the Investment Companies serve as investment vehicles for various types of Variable Contracts. Investment Companies' shares will be offered to Separate Accounts of Participating Insurance Companies which enter into participation agreements with the Trust. These Separate Accounts may be registered with the Commission under the 1940 Act or exempt from registration under Section 3(c)(1) of the 1940 Act.

5. Applicants state that each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under state law and the federal securities laws in connection with any Variable Contract issued by such company. Applicants further state that the role of the Trust under this arrangement will consist of offering its shares to the Separate Accounts and fulfilling any conditions the Commission may impose upon granting the order requested in this application.

6. In addition, Applicants state that the Trust desires to avail itself of the opportunity to increase its assets base through the sale of its shares to Qualified Plans, consistent with applicable tax law. The Qualified Plans may choose any of the Investment Companies as the sole investment option under the Qualified Plan or as one of several investment options. Qualified Plans' participants may or may not be given an investment choice among available alternatives depending on the Qualified Plan itself. Shares of any Investment Company sold to Qualified Plans would be held by the trustee(s) of such Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Investment Management may act as investment adviser to any of the Qualified Plans that will purchase shares of the Trust. Applicants note that pass-through voting is not required to be provided to participants in Qualified Plans under ERISA.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding, as defined below in Paragraphs 4 and 5.

2. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Rules 6e–2(b)(15) provides partial exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to separate accounts registered under the 1940 Act as unit investment trusts to the extent necessary to offer and sell scheduled premium variable life insurance contracts. The relief provided by the ruled also extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

4. The exemptions granted by Rule 6e–2(b)(15) are available only to a management investment company underlying a separate account (''Underlying Fund'') that offers its shares exclusively to variable life insurance separate accounts of a life insurer, or of any other affiliated life insurance company, issuing scheduled premium variable life insurance contracts. The relief granted by Rule 6e–2(b)(15) is not available to a separate account issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to a separate account issuing variable annuity or flexible premium variable life insurance contracts. The use of a common Underlying Fund as an investment vehicle for both variable annuity contracts and scheduled or flexible premium variable life insurance contracts is referred to herein as ''mixed funding.''

5. Additionally, the relief granted by Rule 6e–2(b)(15) is not available to separate accounts issuing scheduled premium variable life insurance contracts if the Underlying Fund also offers its shares to unaffiliated life insurance company separate accounts funding variable contracts. The use of a common fund as an underlying investment vehicle for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if the shares of the Trust also are to be sold to Qualified Plans.

6. Applicants, therefore, request an order of the Commission exempting scheduled premium variable life

insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such account) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rule 6e–2(b) thereunder, to the extent necessary to permit shares of the Investment Companies to be offered and sold to, and held by: (1) Variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies (*i.e.*, mixed funding); (2) variable life insurance separate accounts of one life insurance company and separate accounts funding variable contracts of unaffiliated life insurance companies (*i.e.*, shared funding); (3) Qualified Plans.

7. Regarding the funding of flexible premium variable life insurance contracts issued through a separate account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. This exemptive relief extends to a separate account's investment adviser, principal underwriter, and sponsor or depositor. These exemptions are available only where the Underlying Fund of the separate account offers its shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company * * *.'' Rule 6e–3(T), therefore, permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief afforded by Rule 6e–3(T) is available only where shares of the Underlying Fund are offered exclusively to separate accounts of insurance companies, additional relief is necessary if shares of the Trust also are to be sold to Qualified Plans.

8. Accordingly, Applicants request an order of the Commission exempting flexible premium life insurance separate accounts of Participating Insurance Companies (and, to the extent necessary, any principal underwriter and depositor of such accounts) and the Applicants from Sections 9(a), 13(a), 15(a), and 15(b) thereunder, to permit shares of the Investment Companies to be offered and sold to, and held by: (1) Separate accounts funding variable contracts of affiliated and unaffiliated life insurance companies; and (2) Qualified Plans.

9. Applicants state that changes in the tax law have created the opportunity for the Portfolios to increase their asset base through the sale of Portfolio shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the assets underlying variable contracts, such as those in each Portfolio of the Trust. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period for which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. These diversification requirements are applied by taking into account the assets of the Underlying Fund if all the beneficial interests in the Underlying Fund are held by certain designated persons. On March 2, 1989, the Treasury Department issued regulations that adopted diversification requirements for Underlying Funds. Treas. Reg. § 1.817–5 (1989). These regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which permits trustee(s) of a qualified pension or retirement plan to hold shares of an investment company, the shares of which also are held by separate accounts of insurance companies, without adversely affecting the status of the investment company as an adequately diversified underlying investment vehicle for variable contracts issued through such segregated asset accounts. Treas. Reg. § 1.817–5(f)(3)(iii).

10. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Department's regulations which made it possible for shares of an investment company to be held by the trustee(s) of qualified plans without adversely affecting the ability of shares in the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to separate accounts and qualified plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) given the then current tax law.

11. Moreover, Applicants assert that if the Trust were to sell its shares only to Qualified Plans, no exemptive relief would be necessary. Applicants state that none of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to qualified pension or retirement plans or to an Underlying Fund's ability to sell its shares to such plans. It is only because the Separate Accounts investing in the Trust are themselves investment companies which are relying upon Rules 6e–2 and 6e–3(T) and which propose to have the relief continue in place that Applicants are applying for the requested relief.

12. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as an investment adviser to, or principal underwriter of, any registered open-ended investment company if an affiliated person of that company is subject to any disqualification specified in Sections 9(a)(1) or 9(a)(2). Subparagraphs (b)(15) (i) and (ii) of Rules 6e–2 and 6e–3(T) provide exemptions from Section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by subparagraphs (b)(15)(i) of Rules 6e–2 and 6e–3(T) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the Underlying Fund. The relief provided by subparagraph (b)(15)(ii) of Rules 6e–2 and 6e–3(T) permits the life insurer to serve as the Underlying Fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

13. Applicants state that the partial relief granted under subparagraphs (b)(15) of Rules 6e–2 and 6e–3(T) from the requirements of Section 9(a), in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants submit that Rules 6e–2 and 6e–3(T) recognize that it is not necessary for the protection of investors or for the purposes of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to an investment company in

that organization. The Participating Insurance Companies are not expected to play any role in the management or administration of the Investment Companies. Applicants, therefore, submit that there is no regulatory reason to apply the provisions of Section 9(a) to the many individuals in various Participating Insurance Companies.

14. Subparagraphs (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its variable contract owners in certain limited circumstances.

15. Voting instructions may be disregarded under subparagraphs (b)(15)(iii)(A) of Rules 6e–2 and 6e–3(T) if they would cause the Underlying Fund to make, or refrain from making, certain investments which would result in changes to the subclassification or investment objectives of the Underlying Fund, or to approve or disapprove any contract between a fund and its investment advisers, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of each Rule.

16. Under subparagraph (b)(15)(iii)(B) of Rule 6e–2 and subparagraph (b)(15)(iii)(A)(*2*) of Rule 6e–3(T), an insurance company may disregard variable contract owners' voting instructions if the variable contract owners initiate any change in the Underlying Fund's investment objectives, principal underwriter, or investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

17. Applicants assert that the proposed sale of shares of the Trust to Qualified Plans does not impact of the relief requested. As previously noted, Rules 6e–2(b)(15)(iii) and 6e–3(T)(15)(iii) permit an insurer to disregard variable contract owner voting instructions in certain circumstances. Offering shares of the Trust to Qualified Plans would not affect the circumstances and conditions under which any veto right would be exercised by a Participating Insurance Company. Furthermore, as stated above, shares of the Trust would be sold only to Qualified Plans for which such shares would be held by the trustee(s) of such plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the qualified plan with two exceptions: (1) When the qualified plan expressly provides that the trustee(s) are subject to the direction of an named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions of such fiduciary made in accordance with the terms of the qualified plan and not contrary to ERISA; and (2) when the authority to manage, acquire, a dispose of assets of the Qualified Plans is delegated to one or more investment managers under Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plans' trustee(s) have the exclusive authority and responsibility for voting proxies. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee(s) or the named fiduciary. In any event, Applicants assert that pass-through voting to the participants in such Qualified Plans is not required. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

18. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants assert that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its variable contracts. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

19. Applicants state further that, under paragraph (b)(15) of Rules 6e–2 and 6e–3(T), the right of an insurance company to disregard Variable Contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser. Applicants state that the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. If a participating Insurance Company's decision to disregard Variable Contract owners' instructions represents a minority position or would preclude a majority vote approving a particular change, however, such Participating Insurance Company may be required, at the election of the relevant Investment Company, to withdraw its Separate Account's investment in such Investment Company. No charge or penalty will be imposed as result of such withdrawal.

20. Applicants state that there is no reason why the investment policies of the Investment Companies with mixed funding would or should be materially different from what they would or should be if the Investment Companies funded only variable annuity contracts or variable life insurance policies. Each type of insurance product is designed as a long-term investment program. Moreover, Applicants assert that the Investment Companies will continue to be managed in an attempt to achieve their investment objectives, and not to favor any particular Participating Insurance Company or type of insurance product. Applicants, therefore, argue that there is no reason to believe that conflicts of interest would result from mixed funding.

21. In addition, Applicants assert that the sale of shares of the Trust to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Section 817 is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on Underlying Funds of variable contracts. Treasury Regulation 1.817–5(f)(3)(iii) specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Applicants, therefore, have concluded that neither the Code, nor the Treasury regulations or revenue rulings thereunder, present any inherent conflicts of interest between or among qualified pension or retirement plan participants and variable contract owners if qualified pension and retirement plans and variable annuity and variable life separate accounts invest in the same management investment company.

22. Applicants assert that while there are differences in the manner in which distributions are taxed for variable annuity and variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are made, and the Separate Account or the Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account or the Qualified Plan will redeem shares of the Investment Companies at their respective net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Plan, and a Participating Insurance Company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract.

23. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving rights to Variable Contract owners and participants in the Qualified Plans. In connection with any meeting of shareholders, the Trust will inform each shareholder, including each Separate Account and Qualified Plan, of the information necessary for the meeting, including their respective share of ownership in the Investment Companies. A Participating Insurance Company will solicit voting instructions in accordance with the ''pass-through'' voting requirement. Qualified Plans and Separate Accounts each will have the opportunity to exercise voting rights with respect to their shares in the investment Companies, although only the Separate Accounts are required to pass through their vote to Contract owners. The voting rights provided to Qualified Plans with respect to shares of the Trust would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public.

24. Applicants argue that the ability of the Investment Companies to sell their shares directly to Qualified Plans does not create a ''senior security'' as defined by Section 18(g) of the 1940 Act. As noted above, regardless of the rights and benefits of participants under Qualified Plans, or variable Contract owners under Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their respective shares of the Investment Companies. They only can redeem such shares at their net asset value. No shareholder of the Investment Companies has any preference over any other shareholder with respect to distribution of assets of payment of dividends.

25. Applicants have determined that of conflicts of interest exist between the Variable Contract owners of the Separate Accounts and Qualified Plans participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact the insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another fund. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustee(s) of Qualified Plans or the participants in participant directed Qualified Plans could make the decision quickly and could implement the redemption of their shares from the Investment Companies and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

26. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under the Qualified Plans and Variable Contract owners of the Separate Accounts from possible future changes in the federal tax laws than that which already exists between Variable Contract owners.

27. Applicants assert that the requested relief is appropriate and in the public interest because the relief will promote competitiveness in the variable life insurance market. Various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars. Applicants argue that use of Investment Companies as common investment vehicles of Variable Contracts helps to alleviate these concerns because Participating Insurance Companies benefit not only from the investment and administrative expertise of the Trust's investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Making the Portfolios available for mixed and shared funding may encourage more insurance companies to offer variable contracts and, accordingly, could result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also would benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate mutual funds. Furthermore, Applicants assert that the sale of shares of the Investment Companies to Qualified Plans, in addition to Separate Accounts of Participating Insurance Companies, would result in an increased amount of assets available for investment by the Investment Companies. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulated shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the board of the Trust (''Board'') shall consist of persons who are not ''interested persons'' of the Trust as defined by Section 2(a)(19) of the 1940 Act and rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribed by order upon application.

2. The Board will monitor the Investment Companies for the existence of any material irreconcilable conflict between the contract holders of all Separate Accounts and of participants of Qualified Plans investing in the respective Investment Companies, and determined what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may

arise for a variety of reasons, including: (a) State insurance regulatory authority action; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Investment Companies are being managed; (e) a difference among voting instructions given by Variable Contract owners; or (f) a decision by a Participating Insurance Company to disregard Variable Contract owners' voting instructions.

3. Participating Insurance Companies and Investment Management (or any other investment manager of the Trust) and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Investment Company (''Participants'') will report any potential or existing conflicts, of which they become aware, to the Board. Participants will be obligated to assist the Board in carrying out is responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each insurance company Participant to inform the board whenever Variable Contract owners' voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in an Investment Company under their participation agreements, and those participation agreements shall provide that, in the case of insurance company Participants, such responsibilities will be carried out with a view only to the interests of the Variable Contract owners.

4. If a majority of the Board, or a majority of its disinterested members (''Independent Trustees''), determines that a material irreconcilable conflict exists, the relevant Participant shall, at its expense and to the extent reasonably practicable (as determined by a majority of Independent Trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Portfolios and reinvesting those assets in a different investment medium, which may include another portfolio of the relevant Investment Company, or, in the case of insurance company Participants, submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more Participant) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurance company Participant's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the relevant Investment Company, to withdraw its separate account's investment therein. No charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by the Board that an irreconcilable material conflict exists and to bear the cost of such remedial action shall be a contractual obligation of all Participants under their participation agreements governing participation in the Investment Companies and these responsibilities, in the case of insurance company Participants, will be carried out with a view only to the interests of the contract owners. A majority of Independent Trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the relevant Investment Company or Investment Management (or any other investment adviser of the Investment Companies) be required to establish a new funding medium for any variable contract. No insurance company Participant shall be required by this condition to establish a new funding medium for any Variable Contract if an offer to do so has been declined by a vote of majority of variable contract owners materially affected by the irreconcilable material conflict.

5. The determination by the Board of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participants.

6. Insurance company Participants will provide pass-through voting privileges to all contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participants, where appropriate, will vote shares of a Portfolio held in their Separate Accounts in a manner consistent with timely voting instructions received from contract owners. Insurance company Participants also will vote shares of a Portfolio held in its Separate Accounts for which no timely voting instructions from Variable Contract owners are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Insurance company Participants shall be responsible for assuring that each of their Separate Accounts investing in an Investment Company calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in an Investment Company shall be a contractual obligation of all insurance company Participants under their participation agreements.

7. Each Investment Company will notify all Participants that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Investment Company shall disclose in its Prospectus that: (a) Its shares of the Investment Company may be offered to insurance company separate accounts of both annuity and life insurance variable contracts and to qualified plans; (b) because of differences of tax treatment or other considerations, the interests of various contract owners participating in the Investment Company and the interests of Qualified Plan investing in the Investment Companies may conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board regarding potential or existing conflicts, and all action of the Board with respect to determining the existence of a conflict notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested, then the Investment Companies and/or the Participants, as appropriate, shall take such steps as

may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. Each Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Investment Companies), and, in particular, each Investment Company will provide for meetings as required by applicable State law or the 1940 Act, including Section 16(c) of the 1940 Act (although the Investment Companies are not one of the trusts described in that section) as will as with Section 16(a) and, if and when applicable, Section 16(b). Further, each Portfolio will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may adopt with respect thereto.

11. The Participants shall, at least annually, submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data upon reasonable request of the Board shall be a contractual obligation of all Participants under their participation agreements with the Investment Companies.

12. None of the Investment Companies will accept a purchase order from a Plan if such purchase would make the Plan shareholder an owner of 10% or more of the assets of an Investment Company unless such Qualified Plan executes fund participation agreement with such Investment Company. A plan shareholder will execute an application containing an acknowledgement of this condition upon its initial purchase of the shares of an Investment Company.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19118 Filed 7–26–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22086; International Series Release No. 1009; File No. 812–10192]

The First Trust Special Situations Trust; Notice of Application

July 22, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The First Trust Special Situations Trust.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act.

SUMMARY OF APPLICATIONS: Applicant requests an order on behalf of itself and certain series (the ''Series'') to permit certain Series (the ''Foreign Target Ten Series'') to invest up to 10.5% and certain other Series (the ''Foreign Target Five Series'') to invest up to 20.5% of their respective total assets insecurities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities (''Securities Related Issuers'').

FILING DATE: The application was filed on June 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

Each Series will be a series of the First Trust Special Situations Trust (the ''Trust''), a unit investment trust registered under the Act. Nike Securities L.P. (the ''Sponsor'') is the depositor for the Trust.

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. The Foreign Target Ten Series will invest approximately 10%, but in no event more than 10.5%, of the value of its total assets in each of the ten common stocks in the Financial Times Ordinary Share Index (the ''FT Index''), the Hang Seng Index, or the Nikkei 225 Index, as the case may be, with the highest dividend yields, and will hold those stocks for approximately one year. The Foreign Target Five Series will invest approximately 20%, but in no event more than 20.5% of the value of its total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the FT Index, Hang Seng Index or the Nikkei 225 Index, as the case may be, having the highest dividend yields, and will hold those stocks for approximately one year. The Sponsor currently intends (but is not obligated) to offer a new Series at about the time each Series terminates.

3. The FT Index comprises 30 common stocks listed on the London Stock Exchange chosen by the editors of the Financial Times (London) as representative of British industry and commerce. The companies are major factors in their industries and their stocks are widely held by individuals and institutional investors. The Hang Seng Index is a weighted average of 33

[1] The Sponsor will attempt to purchase equal values of each of the common stocks in the portfolio of a Foreign Target Ten Series and a Foreign Target Five Series. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, each Foreign Target Ten Series may purchase securities of a Securities Related Issuer which represent over ten percent, but in no event more than 10.5 percent, of such Series' assets, and each Foreign Target Five Series may purchase securities of a Securities Related Issuer which represent over twenty percent, but in no event more than 20.5%, of such Series' assets on the initial date of deposit, to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

companies listed on the Hong Kong stock exchange representative of Hong Kong industry. The Hang Seng Index is a recognized indicator of stock market performance in Hong Kong. The Nikkei 225 Index is a price-weighted index comprised of 225 Japanese companies listed on the Tokyo Stock Exchange. The Nikkei 225 Index is well-known both inside and outside Japan. The publishers of the FT Index, Hang Seng Index and the Nikkei 225 Index are not affiliated with any Series or the Sponsor and do not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor will not have any discretion as to which securities are purchased. Securities deposited in a Series may include securities issued by Securities Related Issuers.

5. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions, with payment of expenses, and at termination of the Series on a date specified a year in advance. The Sponsor does not have discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as a default by the issuer in the payment of any of its outstanding obligations, a decrease in the price of a security, or other such credit factors exist so that, in the opinion of the Sponsor, the retention of such securities would be detrimental to the Series. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts purchases of securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer.

2. Section 6(c) of the Act provides that the SEC may exempt a person from any provision of the Act or any rule thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant requests an exemption under section 6(c) from section 12(d)(3) to permit any Foreign Target Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities Related Issuer and to permit a Foreign Target Five Series to invest up to 20%, but in no event more than 20.5% of the value of its total assets in securities of a Securities Related Issuer. Each Series will comply with all of the conditions of rule 12d3–1, except the condition prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a Securities Related Issuer.

4. Section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant believes that this concern does not arise in connection with its application because neither it nor the Sponsor has discretion in choosing the portfolio securities or amount purchased. The security must first be included in the appropriate index, which indexes are unaffiliated with applicant or the Sponsor. In addition, with respect to the Foreign Target Ten Series, the securities must also qualify as one of the ten highest dividend yielding securities in the respective index, and with respect to the Foreign Target Five Series, the securities must qualify as one of the five lowest dollar price per share stocks of the ten highest dividend yielding stocks in the respective index.

5. Applicant also believes that the effect of a Series' purchase on the stock of parents of broker-dealers or other securities companies would be *de minimis.* The common stocks of Securities Related Issuers represented in the FT Index, the Hang Seng Index, or the Nikkei 225 Index are widely held, have active markets, and potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that purchases of these securities by a Series would have any significant impact on the securities' market value.

6. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in a Series' portfolio nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant believes that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Condition

Applicant and each Series agree that any order granted under this application may be conditioned upon no company held in the Series' portfolio, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19119 Filed 7–26–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (MedQuist Inc., Common Stock, No Par Value) File No. 1–13326

July 23, 1996

MedQuist Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, the withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously voted to

withdraw the Security from listing on the Amex and, instead, to list the Security on the Nasdaq National Market. The decision of the Board followed a through study by management of the matter and was based upon the belief that the Company's shareholders would benefit from greater liquidity and broader research coverage by listing of the Security on the Nasdaq National Market rather than the Amex.

Any interested person may, on or before August 13, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–19185 Filed 7–26–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 29, 1996.

A closed meeting will be held on Thursday, August 1, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 1, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Opinion.

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 at (202) 942–7070.

Dated: July 25, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–19371 Filed 7–25–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37461; File No. SR–GSCC–96–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Permit Netting Members To Receive Credit Forward Mark Adjustment Payments

July 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 15, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–06) as described in Items, I, II, and III below, which items have been prepared primarily by GSCC. 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 proposed rule change will amend GSCC's rules to permit GSCC netting members to receive credit forward mark adjustment payments from GSCC pursuant to GSCC's funds-only settlement process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC Rule 13 to permit all netting members to receive credit forward mark adjustment payments from GSCC pursuant to GSCC's funds-only settlement process. The forward mark adjustment is a daily mark-to-market process for all net settlement positions designed to account for GSCC's ongoing exposure on each forward net settlement position. As the novation of forward settling trades occurs prior to the settlement of such trades, GSCC incurs multiday settlement exposure on such trades. To mitigate this risk, GSCC collects on a daily basis an amount equivalent to the difference between the contract value of netting members' positions and GSCC's system value based on current market value (''collateral mark''). GSCC also collects a financing mark based on the rate for all forward repurchase and reverse repurchase transactions (''repos'').[3] A member's forward mark adjustment payment is the sum of all collateral marks and all financing marks.

GSCC collects forward mark adjustment payments from those netting members with a negative forward mark adjustment on a particular business day with regard to a particular CUSIP and remits forward mark adjustment payments to category 1 dealer and bank netting members that are in a positive forward mark position with regard to such CUSIP. A member's required payment is recalculated each day with any debit or credit from the previous day reversed, and a new forward mark adjustment payment obligation is established. Only cash can be used to fund forward mark adjustment payments because GSCC passes through credit forward mark adjustment payments.

GSCC's rules currently provide that only category 1 dealer netting members and bank netting members that have been members for at least sixty calendar days are entitled to receive credit forward mark adjustment payments. This limitation was put into effect in connection with the implementation of GSCC's netting service for repos.[4] GSCC

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] The financing mark is equal to the product of the market value of the repo, GSCC's system repo rate, and the repo term.

[4] For a complete description of GSCC's repo netting system, refer to Securities Exchange Act

believed that limiting credit pass throughs in this manner was a prudent measure to ensure that the revised forward mark adjustment process did not pose undue risk to GSCC. However, with the benefit of some experience with the new forward mark adjustment process, GSCC now believes it is appropriate to pass through credit forward mark adjustment payments to all netting members provided that GSCC maintains sufficient clearing fund margin protection. In addition, GSCC believes that the sixty day waiting period set forth in Section 1 of GSCC Rule 13 is no longer necessary.

Although GSCC proposes to extend to all netting members the right to receive credit forward mark adjustments, GSCC believes it is prudent to obtain additional margin protection from category two dealer netting members and category two futures commission merchant (''FCM'') netting members in return for acquiring such right. Under GSCC's current rules, category two dealer netting members and category two FCM netting members are required to provide GSCC with additional clearing fund margin protection.[5] This is due in part to the more modest minimum net worth requirements for such types of netting members.[6] Therefore, GSCC proposes that each category two dealer netting member and category two FCM netting member be given an option as to whether it wishes to either (i) receive a full credit forward mark adjustment payment and have the haircut applicable to its clearing fund deposit raised from the current levels to levels that are based on historical two day volatility designed to cover ninety-five percent of price movements, as determined by using the greater of the price movements from the last quarter or the last year or (ii) not receive credit forward mark adjustment payments and retain its current clearing fund margin level. If such netting member elects to receive forward mark adjustments, the increase in the member's margin factors should help ensure that even in a situation involving a delay in the liquidation of such member's positions GSCC's exposure will be limited.

GSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.[7]

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the rule filing will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC members will be notified of the filing of the proposed rule change. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–06 and should be submitted by August 19, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19120 Filed 7–26–96; 8:45 am]

BILLING CODE 8010–01–M

Release No. 36491 (November 17, 1995), 60 FR 49649 [File No. SR–GSCC–95–02] (order approving proposed rule change implementing GSCC's netting services for non-same-day-settling aspects of next-day and term repo transactions).

[5] Category two dealer and FCM netting members now have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-nine percent of historical one day price volatility. All other GSCC members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-five percent of historical one day price volatility.

[6] For example, category two dealer netting members and FCM netting members must maintain a net worth of $25 million, but category one banks and category one dealers and FCMs must maintain a minimum net worth of $100 million and $50 million, respectively.

[7] 15 U.S.C. 78q–1 (1988).

[8] 17 CFR 200.30–3(a)(12) (1995).

UNITED STATES SENTENCING COMMISSION

Rules of Practice and Procedure

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed rules of practice and procedure. Request for public comment.

SUMMARY: Pursuant to its authority under 995(a)(1) of title 28, United States Code, the Sentencing Commission is considering the promulgation of internal rules of practice and procedure. The proposed rules are set forth below. The Commission invites comment on these proposed rules.

DATES: Written comment should be submitted to Michael Courlander, Public Information Specialist, no later than November 1, 1996.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, South Lobby, Washington, D.C. 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of title 28 authorizes the U.S. Sentencing Commission, an independent agency in the judicial branch of the United States Government, to establish general policies and promulgate rules and regulations for the Commission as necessary to carry out the purposes of the Sentencing Reform Act of 1984.

These rules of practice and procedure are designed to facilitate public understanding and participation in the work of the Sentencing Commission. For the most part these rules do not

represent substantive change in the way the Commission has traditionally conducted its business. These rules are not intended to enlarge the rights of any person sentenced under the guidelines promulgated by the Commission or otherwise create any private right of action.

Authority: 28 U.S.C. 995(a)(1).

Richard P. Conaboy,

Chairman.

RULES OF PRACTICE AND PROCEDURE

PART I—SCOPE OF RULES

Rule 1.1 Application and Purpose

Pursuant to 28 U.S.C. 995(a)(1) and other applicable provisions of its organizational statute, the United States Sentencing Commission (''the Commission'') has established these rules governing its usual operating practices. While the Commission, an agency within the judicial branch of government, is not subject as a general matter to the Administrative Procedures Act and a variety of other statutes typically applicable to executive branch agencies, the Commission nevertheless desires to involve interested members of the public in its work to the maximum extent practicable. Accordingly, these rules are issued for the purpose of more fully informing interested persons of opportunities and procedures for becoming aware of and participating in the public business of the Commission. These rules are not intended to enlarge the rights of any person sentenced under the guidelines promulgated by the Commission or otherwise create any private right of action.

Rule 1.2 Suspension of Rules and Promulgation of Temporary Rules

The Commission in a public meeting at which a quorum is present may, by vote of a majority of members, promulgate, modify, or suspend any rule contained herein, or promulgate a temporary, supplemental, or superseding rule.

PART II—ACTION BY THE COMMISSION

Rule 2.1 Members

For purposes of the voting procedures set forth in these Rules, ''member'' of the Commission shall mean a voting member and shall not include an *ex-officio,* non-voting member. *Ex-officio* members may participate in all discussions of the Commission but may not vote or make motions.

Rule 2.2 Voting Rules for Action by the Commission

Except as otherwise provided in these rules or by law, action by the Commission requires the affirmative vote of a majority of the members at a public meeting at which a quorum is present. A quorum shall consist of a majority of the members then serving. Members shall be deemed ''present'' and may participate and vote in public meetings from remote locations by electronic means, including, but not limited to, telephone, satellite and video conference devices.

Promulgation of guidelines, policy statements, official commentary, and amendments thereto shall require the affirmative vote of at least four members at a public meeting. *See* 28 U.S.C. 994(a).

Publication of proposed amendments to guidelines, policy statements, or official commentary in the Federal Register shall require the affirmative vote of at least three members at a public meeting.

Action on miscellaneous matters may be taken without a meeting based on the affirmative vote of a majority of the members then serving by written or oral communication. Such matters may include, but are not limited to, the approval of budget requests, legal briefs, staff reports, analyses of legislation, and administrative and personnel issues.

PART III—INFORMATION ABOUT THE COMMISSION

Rule 3.1 Office(s)

The offices of the Commission are located in the Thurgood Marshall Federal Judiciary Building, Suite 2–500, South Lobby, One Columbus Circle, N.E., Washington, D.C. 20002–8002.

The office can be reached telephonically between 8:30 a.m. and 5:30 p.m. Monday through Friday. The main telephone number is 202/273–4500. The fax number is 202/273–4529.

Rule 3.2 Communications Office

The Communications Office administers the Commission's policy on Public Access to Sentencing Commission Documents and Data. See 54 Fed. Reg. 238, 51279 (1989). This office also maintains*A Guide to Publications & Resources* that lists all publications and datasets available from the Commission. This document is available on request.

Generally, the Communications Office will maintain for public inspection by appointment official Commission documents, meetings and hearing schedules and agendas, public comment submissions, and other documents (or citations thereto) that inform Commission decisions or actions.

Rule 3.3 Internet Site

The Commission maintains and updates information and documents on an Internet Web Site and Electronic Bulletin Board. The Web Site is found at: http://www.ussc.gov. The Electronic Bulletin Board can be accessed directly by computer via modem by dialing 202/273–4709.

This resource shall include general information, such as background information about the Commission and Commissioners, notices for scheduled meetings and hearings, minutes of recent meetings, listings of Commission priorities and projects, outstanding public comment solicitations, recently promulgated amendments, a list of all reports and resources available from the Commission, and the text of the Guidelines Manual and Commission reports.

Rule 3.4 Information at Federal Depository Libraries

All Commission publications printed by the Government Printing Office, and other selected documents, are available in hard copy or microfiched form through the Government Printing Office's Regional Depository Libraries (of which there are more than 600 nationwide). The location of the nearest Federal Depository Library can be determined in several ways: (1) Request a free copy of the Directory of Depository Libraries from the U.S. Government Printing Office, Library Programs Services, Stop: SLLD, Washington, DC 20401; (2) ask your local library for the address of the nearest Federal Depository Library; or (3) use the Internet at http://www.access.gpo.gov/su__docs; Select: ''Information Available for Free Public Use in Federal Depository Libraries.'' Search the listing by state or by area code.

Rule 3.5 Access to Commission Data—Research Consortium

The Commission provides its various databases to the University of Michigan's Inter-University Consortium for Political and Social Research (ICPSR). Researchers interested in studying federal sentencing practices through quantitative methods can access Commission sentencing data through this means. Contact ICPSR, P.O. Box 1248, Ann Arbor, MI 48106; or call 1–800–999–0960; or use the following Internet address: http://www.ICPSR.umich.edu/NACJD/home.html.

PART IV—MEETINGS AND HEARINGS

Rule 4.1 Meetings

The Chair shall call and preside at Commission meetings. In the absence of the Chair, the Chair will designate a Vice Chair to preside.

Rule 4.2 Public Meetings

The Commission shall endeavor to meet publicly on at least two separate occasions in each calendar quarter to inform the public and receive public comment on matters under consideration by the Commission.

To the extent practicable, the Chair shall issue, through the Office of Staff Director, a public notice of any public meeting at least seven days prior to the date of the meeting. The public notice, to the extent practicable, shall indicate the general purpose(s) of the meeting and include an agenda and any related documents approved for public release.

In the discretion of the Chair, and to the extent the Chair may deem appropriate, members of the public may be afforded an opportunity to comment on any issue on the agenda of a public meeting.

Rule 4.3 Executive Sessions

The Commission may hold executive sessions closed to the public to transact business of the Commission that is not appropriate for a public meeting, including, but not limited to, discussion and resolution of personnel and budget issues.

Rule 4.4 Working Sessions

The Commission routinely may hold working sessions that are not open to the public for the purpose of receiving information from staff and others and for conducting in-depth discussions of matters before the Commission.

Rule 4.5 Public Hearings Generally

The Commission may convene a public hearing on any matter involving the promulgation of sentencing guidelines or any other matter affecting the Commission's business. Notice of such hearing will be placed in the Federal Register as soon as practicable and the notice shall include, if applicable, a procedure for requesting the opportunity to testify and the availability for public inspection of documents or reports relevant to the subject of the hearing.

The Communications Office shall make available by customary means the topic(s) that will be the subject of testimony and any other topics or issues about which only written submissions will be accepted.

The Commission may exclude from such a hearing any electronic devices that record the voice or image of any or all witnesses, as well as cameras of any kind.

At the request of any witness to turn off any such electronic device(s) during that person's testimony, the Chair of the Commission may order, at his or her discretion, that use of such devices be discontinued during the testimony of that witness.

Rule 4.6 Written Record of Meetings and Hearings

The Commission shall prepare and maintain written minutes of public meetings and make them publicly available by customary means within a reasonable time after their approval by the Commission.

The Commission shall maintain a written transcription of public hearings that shall be publicly available for inspection.

PART V—AMENDMENT PROCESS

Rule 5.1 Promulgation of Amendments

The Commission may promulgate and submit to Congress amendments to the guidelines between the beginning of a regular session of Congress and the first day of May that year. Amendments shall be accompanied by a brief explanation or statement of reasons for the amendments. Unless otherwise specified, or unless Congress legislates to the contrary, amendments submitted for review shall take effect on the first day of November of the year in which submitted. 28 U.S.C. 994(p).

The Commission may promulgate amendments at other times pursuant to special statutory enactment (e.g., the ''emergency'' amendment authority under section 730 of the Antiterrorism and Effective Death Penalty Act of 1996).

Amendments to policy statements and commentary may be promulgated and put into effect at any time. However, to the extent practicable, the Commission shall endeavor to include amendments to policy statements and commentary in any submission of guideline amendments to Congress and put them into effect on the same November 1 date as any guideline amendments issued in the same year.

Rule 5.2 Prison Impact of Amendments

In promulgating amendments to the guidelines, the Commission shall consider the available penal, correctional, and other facilities and services.

To the extent practicable, the Commission shall consider and, make available to the public by customary means, information describing the prison impact of any amendments that significantly impact on prison population.

Rule 5.3 Notice and Comment on Proposed Amendments

In proposing and promulgating guidelines and amendments thereto, the Commission shall comply with the requirements of section 553 of title 5, United States Code, relating to publication in the Federal Register and public hearing procedure. 28 U.S.C. 994(x).

The Commission may promulgate commentary and policy statements, and amendments thereto, without regard to the provisions of 28 U.S.C. 994(x). Nevertheless, the Commission will endeavor to provide, to the extent practicable, comparable opportunities for public input on proposed policy statements and commentary considered in conjunction with guideline amendments.

Rule 5.4 Federal Register Notice of Proposed Amendments

As stated in Rule 2.2, *supra,* upon the affirmative vote of three voting members, the Commission may authorize publication in the Federal Register of a proposed amendment to a guideline, policy statement, or official commentary. A vote to publish shall be deemed to be a request for public comment on the proposed amendment.

The notice of proposed amendments also shall provide, where appropriate and practicable, reasons for consideration of amendments, a summary of or reference to information that is relevant to the issue(s), and whether the Commission possesses information on the issue(s) that is publicly available. In addition, the publication notice shall include a deadline for public comment and may include a notice of any scheduled public hearing(s) or meetings on the issue(s).

In the case of proposed amendments to guidelines or issues for comment that form the basis for possible guidelines amendments, to the extent practicable, there shall be a minimum period of public comment of at least 60 calendar days prior to final Commission action on the proposed amendments.

Rule 5.5 Public Hearing on Proposed Amendments

Unless time does not permit or the Commission determines that a hearing would not substantially assist the

amendment process, the Commission shall conduct a public hearing on proposed amendments. The hearing shall be noticed in the Federal Register and otherwise announced by customary means.

PART VI—PUBLIC INPUT TO AMENDMENT PROCESS

Rule 6.1 Public Comment File

As stated in Rule 3.2, *supra,* the Communications Office shall receive and maintain public comment and public hearing testimony received by the Commission. This public comment file will be available during normal business hours for public inspection pursuant to written or telephonic request and with reasonable notice.

Rule 6.2 Notice of Priorities

Annually, following the submission to Congress of any guideline amendments, the Commission shall publish in the Federal Register and make available to the public by customary means, a notice of the tentative priorities for future Commission inquiry and possible action, including areas for possible amendments to guidelines, policy statements, and commentary. Any such notice shall include an invitation to, and deadline for, the submission of written public comment on the proposed priorities.

Rule 6.3 Data and Reports Relevant to the Amendment Process

To fulfill Commission priorities and inform consideration of potential amendments, the Staff Director shall direct the preparation of relevant data and reports for consideration by the Commission. Upon authorization by the Commission, the Communications Office shall make the data and reports available to the public by customary means, as soon as practicable.

Rule 6.4 Advisory Groups

Upon authorization of the Commission, the Staff Director may facilitate the creation, membership, and periodic meeting at the Commission offices and elsewhere, of advisory groups of defense attorneys, academics, probation officers, judges, prosecutors, and others, to facilitate formal and informal input to the Commission. Two types of advisory groups are authorized: standing and *ad hoc.*

The following groups are the standing advisory groups: the Practitioners' Advisory Group and the Probation Officers' Advisory Group. The Commission may create additional standing advisory groups.

The Commission also may create *ad hoc* advisory groups as needed.

In addition, the Commission expects to receive and, from time to time, solicit input from outside groups representing the federal judiciary, prosecutors, defense attorneys, crime victims, and other interested groups.

Rule 6.5 Advisory Group Meetings and Reports

Subject to such limitations as the Commission may deem necessary, each advisory group shall establish appropriate policies regarding the conduct of their meetings.

Except as otherwise authorized by the Commission, final reports of *ad hoc* advisory groups, if any, shall be provided to the Commission and, after necessary time for Commission review, shall be made available for public inspection.

[FR Doc. 96–19113 Filed 7–26–96; 8:45 am]

BILLING CODE 2210–40–U

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214(c)) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6¾ percent for the July–September quarter of FY 96.

Pursuant to 13 CFR 120.932, the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801(c)(2)) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term or the loan.

John R. Cox,

Associate Administrator for Financial Assistance.

Calculation of SBA's Peg Rate and Direct Lending Rate–4th Quarter 1996

SBA's Peg Rate is a Weighted Average of the last three months like-maturity rates from the Treasury Department, as follows:

Month	Weight	Rate	Weighted rate
April	1	6.25	6.25
May	2	6.5	13
June	3	6.75	20.25
Sum			39.5

Divide by 6 to get Peg Rate 6.583333 = Peg Rate.

Round to the Nearest Eighth = 6.63

SBA's Direct Rate is last month's like-maturity Treasury Rate plus 1%, as follows:

June 6.75+1
Direct Rate = Last Month+1 = 7.75
Peg Rate: 6.625
Direct Rate: 7.750%

Average Maturity Calculation

Number of EOL loans	1483	12.42	average maturity of EOL Loans.
Number of HAL loans	987	14.33	average maturity of HAL Loans.
Number of VET loans	860	10.75	average maturity of VET Loans.

Weighted Average

Weight–EOL Loans	0.445345	5.531189
Weight–HAL Loans	0.296396	4.247360

Weight–VET Loans	0.258258	2.776276	
Sum	1	12.55482	= Average Maturity

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES

	Used for March 1996 (percent)	Indicated for April 1996 (percent)	Changes
1 year	4⅞	5¼	+⅜
5 years	5¼	5¾	+½
15 years	6	6⅜	+⅜
20 years	6⅛	6⅝	+½

TABLE 2.—RANGE OF MATURITIES TO WHICH THE RATES FOR APRIL 1996 APPLY

From	To	Rate (percent)
0 years—3 months	Only	5
0 years—4 months	0 years—9 months	5⅛
0 years—10 months	1 year—3 months	5¼
1 years—4 months	1 year—9 months	5⅜
1 years—10 months	2 years—5 months	5½
2 years—6 months	3 years—8 months	5⅝
3 years—9 months	5 years—0 months	5¾
5 years—1 month	5 years—10 months	5⅞
5 years—11 months	7 years—1 month	6
7 years—2 months	10 years—3 months	6⅛
10 years—4 months	12 years—9 months	6¼
12 years—10 months	15 years—0 months	6⅜
15 years—1 month	17 years—4 months	6½
17 years—5 months	26 years—11 months	6⅝
27 years—0 months	29 years—11 months	6½

The rates shown for April are based on average market yields from February 21, 1996 through March 20, 1996.

TABLE 1.—INTEREST RATES FOR SPECIFIC MATURITIES

	Used for April 1996 (percent)	Indicated for May 1996 (percent)	Changes
1 year	5¼	5½	+¼
5 years	5¾	6¼	+½
15 years	6⅜	6¾	+⅜
20 years	6⅝	6⅞	+¼

TABLE 2—RANGE OF MATURITIES TO WHICH THE RATES FOR MAY 1996 APPLY

From	To	Rate (percent)
0 years—3 months	0 years—4 months	5⅛
0 years—5 months	0 years—7 months	5¼
0 years—8 months	0 years—10 months	5⅜
0 years—11 months	1 year—1 month	5½
1 year—2 months	1 year—4 months	5⅝
1 year—5 months	1 year—8 months	5¾
1 year—9 months	2 years—2 months	5⅞
2 years—3 months	3 years—4 months	6
3 years—5 months	4 years—7 months	6⅛
4 years—8 months	5 years—10 months	6¼
5 years—11 months	10 years—2 months	6⅜
10 years—3 months	13 years—0 months	6½
13 years—1 month	14 years—11 months	6⅝
15 years—0 months	16 years—11 months	6¾
17 years—0 months	25 years—9 months	6⅞
25 years—10 months	29 years—10 months	6¾

The rates shown for May are based on average market yields from March 21, 1996 through April 20, 1996.

TABLE 1. —INTEREST RATES FOR SPECIFIC MATURITIES

	Used for May 1996 (percent)	Indicated for June 1996 (percent)	Changes
1 year	5½	5⅝	+⅛
5 years	6¼	6⅜	+⅛
15 years	6¾	6⅞	+⅛
20 years	6⅞	7⅛	+¼

TABLE 2. —RANGE OF MATURITIES TO WHICH THE RATES FOR JUNE 1996 APPLY

From	To	Rate (percent)
0 years—3 months	Only	5⅛
0 years—4 months	0 years—6 months	5¼
0 years—7 months	0 years—8 months	5⅜
0 years—9 months	0 years—11 months	5½
1 year—0 months	1 year—1 month	5⅝
1 year—2 months	1 year—4 months	5¾
1 year—5 months	1 year—8 months	5⅞
1 year—9 months	2 years—0 months	6
2 years—1 month	2 years—8 months	6⅛
2 years—9 months	3 years—10 months	6¼
3 years—11 months	5 years—0 months	6⅜
5 years—1 months	6 years—3 months	6–½
6 years—4 month	9 years—11 months	6⅝
10 years—0 month	13 years—0 months	6¾
13 years—1 months	15 years—9 months	6⅞
15 years—10 month	18 years—10 months	7
18 years—11 months	22 years—1 month	7⅛
22 years—2 months	27 years—5 months	7
27 years—6 months	29 years—9 months	6⅞

The rates shown for June are based on average market yields from April 21, 1996 through May 20, 1996.

AVERAGE LOAN MATURITY BY LOAN PROGRAM—LOAN PORTFOLIO BASIS

[Quarter Ended 03/31/96]

Loan program	Number of loans	Total maturity months	Average maturity months	Average maturity years
Business 7(A):				
Direct	1,188	244,739	206	17.17
Immed Part	41	8,727	213	17.75
Guaranty	169,135	23,759,704	140	11.67
Total	170,364	24,013,170	141	11.75
EOL:				
Direct	1,483	221,425	149	12.42
Immed Part	4	833	208	17.33
Guaranty	404	59,783	148	12.33
Total	1,891	282,041	149	12.42
Handicapped:				
Direct	987	169,408	172	14.33
Immed Part	39	7,601	195	16.25
Guaranty	7	1,554	222	18.50
Total	1,033	178,563	173	14.42
Veterans:				
Direct	860	110,935	129	10.75
Immed Part	2	480	240	20.00
Guaranty	1	120	120	10.00
Total	863	111,535	129	10.75
SBIC:				
Direct	128	18,142	142	11.83
Immed Part	0			.00

AVERAGE LOAN MATURITY BY LOAN PROGRAM—LOAN PORTFOLIO BASIS—Continued

[Quarter Ended 03/31/96]

Loan program	Number of loans	Total maturity months	Average maturity months	Average maturity years
Guaranty	210	26,592	127	10.58
Total	338	44,734	132	11.00
Displ Bus:				
Direct	405	128,885	318	26.50
Immed Part	41	11,993	293	24.42
Guaranty	2	546	273	22.75
Total	448	141,424	316	26.33

[FR Doc. 96–19186 Filed 7–26–96; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28495]

Airport Financial Reports

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Extension of filing deadline.

SUMMARY: On March 18, 1996, the FAA published in the Federal Register a notice of availability of formats for the preparation of filing of two financial reports required from sponsors of federally assisted airports. The notice also requested comments on those formats. The reports are required from airport sponsors under the FY 1994 FAA Authorization Act. The first report requires sponsors of federally assisted airports to report to the Department of Transportation amounts paid and services provided to other units of government. The second requires that the sponsor of each commercial service airport report in detail the total revenue and expenditures at the airport, including revenue surplus. The March 18 notice stated that the reports were required within 60 days of the end of the sponsor's fiscal year. In consideration of comments received, and in order to complete work on final reporting formats and instructions for completing the forms, the FAA is extending the filing date for the reports. Until further notice is published in the Federal Register, the reports must be filed within 120 days of the end of a sponsor's fiscal year. The FAA will issue further guidance on the filing of this information as soon as possible.

DATES: Airport financial reports described in the notice published March 18, 1996, are due from airport sponsors on the 120th day following the end of the sponsor's fiscal year, beginning the first fiscal year ending after the date of this notice.

ADDRESSES: Copies of the report formats and instructions for completing the reports are available from the persons listed under ''For Further Information Contact,'' and may also be downloaded via internet from the Office of the Associate Administrator for Airports World Wide Web site at: http:/ www.faa.gov/arp/arphome.htm.

Reports must be submitted to the airport sponsor's Airports District Office and to: Airport Safety and Compliance Branch, AAS–310, ATTN: AIRPORT FINANCIAL REPORTS, Federal Aviation Administration, 800 Independence Ave., NW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave., SW., Washington DC 20591, telephone (202) 267–8728; or Ellis Ohnstad, Manager, Airports Program Guidance Branch, APP–510, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: The requirement for filing of two new airport financial reports is published pursuant to section 111 of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103–305 (August 23, 1994) (1994 Authorization Act). That section requires the Secretary, through a new grant assurance and through establishment of a new report format, to require two new reports relating to airport revenue. Those reports are described in detail in the notice published March 18, 1996 (61 FR 11077).

The March 18 notice established specific procedures and filing times for the reports, but also requested public comment on the procedures. The Comment period closed May 2, 1996. Comments received on the notice will be addressed in the final version of the reporting format and instructions to be published as soon as the FAA completes its review of the comments received.

In the March 18 notice, the FAA expressed the intention to issue final guidance before June 30, 1996, in consideration of the number of local governments with a fiscal year ending on that date. Reports were to be filed within 60 days after the end of a sponsor's fiscal year. Many of the commenters expressed problems with the 60-day reporting period, however, based on the fact that audited numbers for the fiscal year are frequently not available within 60 days after the end of that year. Because we believes it is important to have audited information for the filing of the required reports, the FAA is contacting affected sponsors to obtain information on the fiscal year and the availability of audited information at each airport subject to the reporting requirement.

In order to permit time to obtain this additional information and to complete work on the final reporting format and instructions, and in the meantime to avoid the filing of reports not based on audited financial data, the FAA is temporarily extending the time in which reports are due.

Effective immediately, and until further notice is published in the Federal Register, the two required reports are due within 120 days of the end of an airport's fiscal year. The 120-day filing period does not represent a final agency decision on the issue. Some airport operators commented that audited numbers for their airports were not available for as long as 180 days after the end of the fiscal year. All such comments will be considered before the

adoption of a final filing procedure, and the requirement may be changed in the final reporting instructions to be issued. Al other filing requirements set forth in the March 18 notice remain in effect pending issuance of final instructions.

Issued in Washington, DC on July 19, 1996.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 96–19105 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review; McGhee Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing an updated noise compatibility program that was submitted for McGhee Tyson Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) hereinafter referred to as ''the Act'') and 14 CFR Part 150 by Metropolitan Knoxville Airport Authority. McGhee Tyson Airport has an existing noise compatibility program approved May 5, 1989, and amended March 4, 1993. This updated Noise Compatibility Program was submitted subsequent to a decision by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for McGhee Tyson were in compliance with applicable requirements effective October 12, 1995. The proposed updated Noise Compatibility Program will be approved or disapproved on or before January 18, 1997.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is July 22, 1996. The public period ends September 20, 1996.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301. Telephone 901–544–3495. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for McGhee Tyson Airport which will be approved or disapproved on or before January 18, 1997. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed updated noise compatibility program for McGhee Tyson Airport, effective July 22, 1996. It was requested that the FAA review this material and that the noise mitigation measures to be implemented by the airport be approved as measures to the noise compatibility program under Section 104(b) of the Act. An amendment to the updated program, submitted subsequent to the updated noise compatibility program document, is also considered. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days will be completed on or before January 18, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, the noise compatibility program, and the proposed revisions to the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301

Administrative Offices, Metropolitan Knoxville Airport Authority, McGhee Tyson Airport, Alcoa, Tennessee 37701.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis, Tennessee, July 22, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–19231 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–35]

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), this 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 August 15, 1996.

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, DC 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 July 22, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 28607.

Petitioner: Sphere One International, Inc.

Sections of the FAR Affected: 14 CFR 91.119, 91.126, 91.127, 91.133, and 91.319(a)(2)

Description of Relief Sought: To permit Sphere One International, Inc., to fly a newly manufactured airship in designated airspace, including restricted and prohibited areas, in conjunction with, and during, the 1996 Olympic Games.

Docket No: 28609.

Petitioner: Reeve Aleutian Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.380(a)(2)(ii) and (b) (1) and (2)

Description of Relief Sought: To permit Reeve Aleutian Airways, Inc., to operate its fleet of Lockheed L–188C Electra aircraft under part 121, using Aeroproducts turbo-propellers, Model A6641FN–606, without keeping a record of the total time in service of each propeller.

Dispositions of Petitions

Docket No.: 23869.

Petitioner: The Uninsured Relative Workshop.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 4943, as amended, which permits The Uninsured Relative Workshop (TURW) to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). It also permits pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps. The amendment removes Strong Enterprises, which has applied for a separate exemption, as a co-petitioner with TURW in the original exemption and subsequent extensions.

GRANT, June 28, 1996, Exemption No. 4943F

Docket No.: 26582.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 61.3 (a) and (c), 63.3 (a), and 121.383 (a) (2).

Description of Relief Sought/ Disposition: To extend Exemption No. 5487, as amended, which permits an air carrier to issue written confirmation of an FAA-issued crewmember certificate to a flight crew member employed by that air carrier based upon information in the air carrier's approved record system.

GRANT, June 14, 1996, Exemption No. 5487B

Docket No.: 26962.

Petitioner: Mr. Charles D. Segars.

Sections of the FAR Affected: 14 CFR 121.383 (c).

Description of Relief Sought/ Disposition: To permit Mr. Segars to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

DENIAL, June 20, 1996, Exemption No. 6466

Docket No.: 28422.

Petitioner: Broward County, Florida, Public Works Department, Mosquito Control Section.

Sections of the FAR Affected: 14 CFR 137.53 (c) (2).

Description of Relief Sought/ Disposition: To permit pilots employed by the petitioner to conduct aerial applications of insecticide materials over congested areas from a Beechcraft C45H Aircraft (Registration No. N850BD, Serial No. 11844) that is not equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds.

GRANT, June 26, 1996, Exemption No. 6470

Docket No.: 28479.

Petitioner: Strong Enterprises.

Sections of the FAR Affected: 14 CFR 105.43 (a).

Description of Relief Sought/ Disposition: To permit employees of Strong Enterprises, certified tandem instructors, and consenting adult members of the public to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43 (a), and to permit pilots in command of aircraft involved in these operations to all such persons to make these parachute jumps.

GRANT, June 28, 1996, Exemption No. 6474

Docket No.: 28513.

Petitioner: Evergreen Helicopters of Alaska, Inc.

Sections of the FAR Affected: 14 CFR 135.153 (a) and 135.180 (a).

Description of Relief Sought/ Disposition: To permit Evergreen Helicopters of Alaska, Inc., to operate five CASA C–212–200–CC aircraft, without the aircraft being equipped with an approved traffic alert and collision avoidance system (TCAS).

PARTIAL GRANT, June 25, 1996, Exemption No. 6467

Docket No.: 28520.

Petitioner: P&N flight and Charter.

Sections of the FAR Affected: 14 CFR 135.143 (c) (2)

Description of Relief Sought/ Disposition: To permit P&N flight and Charter to operate its aircraft (Registration No. N4921J, Serial No. 28R–30642) without a TSO–C112 (Mode S) transponder installed.

GRANT, May 31, 1996, Exemption No. 6448

Docket No.: 28529.

Petitioner: Atlantic Aero, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)

Description of Relief Sought/ Disposition: To permit Atlantic Aero, Inc., to operate its aircraft without TSO–C112 (Mode S) transponders installed.

GRANT, June 7, 1996, Exemption No. 6459

Docket No.: 28544.

Petitioner: Learjet Incorporated.

Sections of the FAR Affected: 14 CFR 25.783(h).

Description of Relief Sought/ Disposition: To allow Learjet Incorporated exemption from the passenger entry door emergency exit requirements of § 25.783(h) for the Lear 45 airplane.

PARTIAL GRANT, June 26, 1996, Exemption No. 6468

Docket No.: 28553.

Petitioner: Air North.

Sections of the FAR Affected: 14 CFR 129.18.

Description of Relief Sought/ Disposition: To permit operation of either a Hawker HS748 or a Fokker F–27 airplane between Yukon, Canada, and Alaska without an approved traffic alert and collision avoidance system (TCAS) installed.

DENIAL, June 3, 1996, Exemption No. 6453

Docket No.: 28555

Petitioner: Samoa Air and Polynesian Limited.

Sections of the FAR Affected: 14 CFR 129.18(b) and 135.180.

Description of Relief Sought/ Disposition: To permit the petitioners to operate aircraft without approved traffic collision and avoidance systems (TCAS) installed.

DENIAL, June 3, 1996, Exemption No. 6456

Docket No.: 28562.

Petitioner: East Hampton Airlines.

Sections of the FAR Affected: 14 CFR 135.143(c).

Description of Relief Sought/ Disposition: To permit East Hampton Airlines to operate its Piper PA31–350 (Registration No. N41081, Serial No. 31–8352008) without a TSO–C112 (Mode S) transponder installed.

GRANT, June 26, 1996, Exemption No. 6469

Docket No.: 28597.

Petitioner: U.S. Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c).

Description of Relief Sought/ Disposition: To permit U.S. Helicopters, Inc., to operate certain aircraft without a TSO–C112 (Mode S) transponder installed.

GRANT, June 3, 1996, Exemption No. 6452

Docket No.: 28560.

Petitioner: Skull Creek Air Service.

Sections of the FAR Affected: 14 CFR 135.143(c).

Description of Relief Sought/ Disposition: To permit Skull Creek Air Service to operate a Maule M–5–235C aircraft (Registration No. N5643N, Serial No. A7361C) without a TSO–C112 (Mode S) transponder installed.

GRANT, June 20, 1996, Exemption No. 6465

Docket No.: 28579.

Petitioner: Mr. Robert W. Powelson.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit Mr. Powelson to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

DENIAL, June 20, 1996, Exemption No. 6464

[FR Doc. 96–19108 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–36]

Petition 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), this 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 August 19, 1996.

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, DC 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, DC 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 July 23, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28196.

Petitioner: Travis County, TX.

Sections of the FAR Affected: 49 U.S.C. subtitle VII, part A, chapter 411; chapter 417, §§ 41701, 41702, 41708, 41709, 41711, and 41738; chapter 447, §§ 44701, 44702, 44704, 44705, 44709, 44711, 44713, 44717, and 44722; chapter 451; chapter 463, §§ 46301, 46304, 46306, and 46310; and sections of 14 CFR parts 91 and 135.

Description of Relief Sought: To allow Travis County, its aircraft, and its pilots to perform certain services as public aircraft under the operations and maintenance standards developed by Travis County. This is a petition for reconsideration of a previous denial, published on April 19, 1995, in the Federal Register (60 FR 19620).

Docket No.: 28559.

Petitioner: Collins Commercial Avionics.

Sections of the FAR Affected: 14 CFR 21.327(a).

Description of Relief Sought: To permit Collins Commercial Avionics to use a printout from its Order Management System (OMS) for a Class II product, instead of the Application for Export Certificate of Airworthiness (FAA Form 8130–1), even though the manufacturer does not hold a production certificate.

Dispositions of Petitions

Docket No.: 581.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 91.159.

Description of Relief Sought/ Disposition: To rescind Exemption Nos. 48 and 132, as amended. The petitioner states that these exemptions now provide unnecessary duplication in light of the granting of Exemption No. 5118, May 16, 1996, which addresses the same relief.

TERMINATED, May 16, 1996, Exemption No. 132F

Docket No.: 28561.

Petitioner: Scenic Airlines, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c).

Description of Relief Sought/ Disposition: To permit Scenic Airlines, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Modes S) transponder installed.

GRANT, June 21, 1996, Exemption No. 6471

Docket No.: 28574.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit the Federal Express Corporation (FedEx) to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. This substitution would occur only at the discretion of the certificate holder and only when an FAA inspector is not immediately available, subject to certain conditions and limitations.

PARTIAL GRANT, June 27, 1996, Exemption No. 6473

[FR Doc. 96–19220 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 14, 1996, at 10 a.m. Arrange for oral presentations by August 5, 1996.

ADDRESSES: The meeting will be held at the Regional Airline Association, 1200 19th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 14, 1996, at the Regional Airline Association, 1200 19th Street, NW., Washington, DC, 10 a.m. The agenda will include:

- Concept briefing by the Digital Information Working Group on a proposed electronic signature notice of proposed rulemaking (NPRM).
- Discussion of the relationship between ARAC and working group records and Freedom of Information Act and Federal Advisory Committee Act requirements.
- Discussion of a proposed task concerning overflights of national parks.
- Briefing by Transport Canada on its harmonization efforts.
- 1997 Executive Committee meeting schedule.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by August 5, 1996, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

A copy of the proposed NPRM that will be the subject of the Digital Information Working Group's concept briefing may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on July 22, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–19224 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 185

Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on August 12–13, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review Draft Version 10 of Special Committee 185 Report; (6) Consider/Approve Version 10 with Corrections for Distribution for Ballot; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 933–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 22, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–19106 Filed 7–26–96; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc., Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held August 14–16, 1996, starting at 9:00 a.m. on August 14. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: Wednesday, August 14: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS, Report on ICAO AMCP Activity and Continue Refinement of Upper Layers. Thursday, August 15: (5) WG–2 Continues; (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Activities. Friday, August 16: (7) Plenary Reconvenes at 9:00 a.m.: (8) Review and Approve Minutes of the Previous Meeting; (9) Reports From WG's 2 & 3 Activities; (10) Reports on CSMA Validation and FAA Vocoder Activity; (11) Report on Brazilian VDL Activities—Tectelcom; (12) Review Issues List and Address Future Work; (13) Other Business; (14) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, on July 23, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–19227 Filed 7–26–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Albany County Airport, Albany, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Egan, Chief Executive Officer of the Albany County Airport Authority, at the following address: Albany County Airport, ARFF Building, 2nd Floor, Albany, New York 12211.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Albany under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manger of the New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530, Tel. (516) 227–3803. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 24, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Albany was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1994.

Proposed charge expiration date: December 31, 2022.

Total estimated PFC revenue: $116,894,125.

Brief description of proposed projects:

—Terminal Building Renovation and Expansion
—Runway and Taxiway Improvements
—Flood Management Improvements
—Air Traffic Control Tower
—Environmental Remediation
—New Interior Roadways
—Airport Studies
—Airport Equipment
—New Storage Building
—Terminal Ramp
—Passenger Lift Device
—Glycol Collection System

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albany County Airport.

Issued in Jamaica, New York state on July 21, 1996.

William DeGraaf,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–19223 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Altoona-Blair County Airport, Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Martha A. Disney, Airport Manager for the Blair County Airport Authority at the following address: Altoona-Blair County, 2 Airport Drive, Martinsburg, PA 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Dr., suite, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 19, 1996 the FAA determined that the application to impose and use the revenue from a PFC submitted by Blair County Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 17, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1997.

Proposed charge expiration date: December 1, 2001.

Total estimated PFC revenue: $173,598.

Brief description of proposed project(s):

—Acquire land for Runway Protection Zone (Use only)
—Conduct Environmental Assessment for extension of runway 12/30 (use only)
—Design extension of Runway 12/30
—Construct deicing pad (Impose only)
—Construction of Snow equipment storage building
—Improve airport roadways and parking
—Signage update
—Terminal Building Expansion
—Install Runway High Intensity Lights

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Fitzgerald Federal Building, JFK International Airport, Jamaica, N.Y. 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in Jamaica, NY on July 22, 1996.

William Degraaff,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 96–19222 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application to Impose a Passenger Facility Charge (PFC) at Cherry Capital Airport, Traverse, City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Cherry Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stephen R. Cassens, Director of the Cherry Capital Airport, at the following address: Northwestern Regional Airport Commission, 1330 Airport Access Road, Traverse City, MI 49686.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Northwestern Regional Airport Commission under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313)–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Cherry Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 15.

On July 8, 1996, the FAA determined that the application to impose a PFC submitted by Northwestern Regional Airport Commission was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 9, 1996.

The following is a brief overview of the application.

PFC Application No.: 96–01–I–00–TVC.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1997.

Proposed charge expiration date: December 31, 2016.

Total estimated PFC revenue: $14,846,381.00.

Brief description of proposed project(s): Construction of new airline terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFC:s: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Northwestern Regional Airport Commission.

Issued in Des Plaines, Illinois, on July 22, 1996.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–19228 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Grand Forks International Airport, Grand Forks, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports

District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Jo Crystal, Director of Finance and Administration, of the Grand Forks Regional Airport Authority at the following address: Grands Forks International Airport, 2787 Airport Drive, Grand Forks, North Dakota 58203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Grand Forks Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Grand Forks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 28, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Grand Forks Regional Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1996.

The following is a brief overview of the application.

PFC application number: 96–03–C–00–GFK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: May 31, 1997.

Total estimated PFC revenue: $86,463.00.

Brief description of proposed project(s): Extension of Ramp A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Operators providing unscheduled passenger/charter services; operating aircraft with a passenger capacity of 30 seats or less; and having enplanements of less than 1% of the Airport's annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Grand Forks Regional Airport Authority offices at the Grand Forks International Airport.

Issued in Des Plaines, Illinois on July 22, 1996.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–19229 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To use the Revenue From a Passenger Facility Charge (PFC) at Reno/Tahoe International Airport, Reno, Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and 14 CFR Part 158.

DATES: Comments must be received on or before August 28, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlington, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert White, Executive Director, Airport Authority of Washoe County at the following address: Airport Authority of Washoe County, 2001 East Plumb Lane, Reno, NV 89502.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Modesto under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Reno/Tahoe International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 17, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Airport Authority of Washoe County was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 16, 1996.

The following is a brief overview of the use application number AWP–96–02–U–00–RNO.

Level of proposed PFC: $3.00.

Proposed charge effective date: January 1, 1994.

Proposed charge expiration date: April 30, 1999.

Total estimated PFC revenue to be used on this use project: $4,200,000.00.

Brief description of the use projects: Snow Removal Equipment, Taxiway B South Extension, and Perimeter Road Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

This project was previously approved as an impose only project contained within an overall PFC package, which was approved on October 29, 1993. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Authority of Washoe County, Reno, Nevada.

Issued in Hawthorne, California, on July 17, 1996.

Ellsworth L. Chan,

Acting, Manager, Airports Division, Western-Pacific Region.

[FR Doc. 96–19232 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on August 1, 1996. The session begins with an Administrative Business session (non-Federal Board members only) from 8:30 a.m.—9:30 a.m. The General Program Session is as follows: (1) Review of ITS America Antitrust Policy and Conflict of Interest Statements; (2) Review and Approval of Previous Meeting's Minutes; (3) Federal Reports (including by the U.S. Deputy Secretary of Transportation Mortimer Downey); (4) Coordinating Council Report; (5) State Chapters Council Report; (6) Update on National Investment and Market Analysis; (7) Dedicated Short Range Communications (DSRC) Status Report; (8) Board Retreat Report-out; (9) South American Trade Mission Report; (10) Third ITS World Congress and Annual Meeting Report; (11) Report From Japan; (12) Other Program Business; and (13) Adjournment until Board of Directors Meeting in conjunction with the Third ITS World Congress at the Orlando Convention Center, Orlando, Florida.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: Board of Directors of ITS AMERICA will meet on August 1 from 7:45 a.m. to 12:15 p.m.

ADDRESSES: Silver Lake Village, Upper Deer Valley, Park City, Utah; Phone: 800/453–3833; Fax 801/649–4040.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, DC. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, DC. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 12, 1996.

Jeffery Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–19210 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on July 24, 1996. The session expected to focus on: (1) Federal Reports (by the Modal Administrations; (2) ITS AMERICA President's Report; (3) CVO Guiding Principles; (4) Dedicated Short Range Communications Standards (DSRC) Update; (5) International Report; (6) Emergency Management Services Task Force Report; (7) Adoption of National ITS Architecture; (8) Sunset-Sunrise Task Force; (9) ATMS Research & Technology Advisory Group Recommendation Round- Two; (10) ATIS Interoperabity Summit Recommendations; (11) Automated Highway System (AHS) Update & NAHS/ITS America Coordination Plan; (12) Performance Measures Report; and (13) American Meteorological Association.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on July 24, 1996, from 10:30 a.m. to 1:00 p.m. (Eastern Standard time).

ADDRESSES: Snowbird Resort, Snowbird Conference Center at Cliff Lodge, Little Cottonwood Canyon, Utah. Phone: (801) 742–2222; Fax: (801) 742–3344.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by FAX at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: July 12, 1996.

Jeffery Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–19211 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 96–077; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Bentley Brooklands Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Bentley Brooklands passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Bentley Brooklands that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 28, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1993 Bentley Brooklands passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1993 Bentley Brooklands that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Rolls-Royce Motors, Ltd., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Bentley Brooklands to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Bentley Brooklands, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Bentley Brooklands is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 101 *Controls and Displays, 102 Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 115 *Vehicle Identification Number,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 301 *Fuel System Integrity,* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlight assemblies; (b) installation of U.S.-model turn signal lenses.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement in the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* reprogramming of the DIPP unit for proper functioning of the warning buzzer, which is already installed in the vehicle, together with a microswitch in the ignition circuit.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning system, including the replacement of the driver's seat belt latch with a U.S.-model component and reprogramming of the DIPP; (b) installation of a driver's side air bag that is identical to the one found on the vehicle's U.S. certified counterpart. The petitioner states that the vehicle is equipped with Type 2 seat belt assemblies in all front and rear outboard seating positions, and with a Type 1 seat belt in the rear center seating position.

Additionally, the petitioner states that U.S.-model bumper shock absorbers and associated hardware must be installed on the non-U.S. certified 1993 Bentley Brooklands to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 22, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19071 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–072; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Toyota Land Cruiser Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Toyota Land Cruiser multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Toyota Land Cruiser that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of

being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 28, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., S.W, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

LPC of New York, Inc. of Ronkonkoma, New York (''LPC'') (Registered Importer 96–100) has petitioned NHTSA to decide whether 1994 Toyota Land Cruiser MPVs are eligible for importation into the United States. The vehicle which LPC believes is substantially similar is the 1994 Toyota Land Cruiser that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1994 Toyota Land Cruiser to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

LPC submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Toyota Land Cruiser, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Toyota Land Cruiser is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 Door Locks and Door Retention Components, 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages,* 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, 301 Fuel System Integrity, and* 302 Flammability of Interior Materials.

Additionally, the petitioner states that the non-U.S. certified 1994 Toyota Land Cruiser complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* placement of the appropriate symbols on the brake failure, parking brake, and seat belt warning lamps.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamps; (c) installation of a high mounted stop lamp.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 22, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19103 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–74; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1988 Kawasaki ZX1000–B1 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988 Kawasaki ZX1000–B1 motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1988 Kawasaki ZX1000–B1 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 28, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1988 Kawasaki ZX1000–B1 motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the version of the 1988 Kawasaki ZX1000–B1 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1988 Kawasaki ZX1000–B1 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Kawasaki ZX1000- B1, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Kawasaki ZX1000–B1 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 115 *Vehicle Identification Number,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated: Standard No. 108 Lamps, Reflective Devices and Associated Equipment: installation of U.S.-model headlamp assemblies.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 22, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19104 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. As required by the Paperwork Reduction Act of 1995, a notice was published in the Federal Register on May 16, 1996 stating RSPA intention to request reinstatement of an expired information collection. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions: (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection.

DATES: Comments must be submitted on or before August 22, 1996.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950, (202) 366–1640. Copies of this information collection can be reviewed at the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590.

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Reinstatement of an information collection.

Abstract: The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response plan to minimize the impact of an oil discharge in the case of an accident. These response plans

enhance the spill response capability of pipeline operators.

Use: To enhance response capability in the event of an oil spill.

Estimate of Burden: The average burden hours per response is 120.

Respondents: Oil Pipeline operators.

Estimated Number of Respondents: 1,215.

Estimated Total Annual Burden on Respondents: 140,300 hours.

ADDRESSES: Written comments concerning the proposed information collection should be sent within 30 days of this notice directly to the Office Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, DC on July 22, 1996.

Phillip A. Leach,

Information Clearance Officer, U.S. Department of Transportation.

[FR Doc. 96–19216 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–62–P

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:30 p.m., August 14, 1996, in the Associate Administrator's Conference Room at the Corporation's Administration Building, 180 Andrews Street, Massena, New York, 13662–0520. The general agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than August 12, 1996, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on July 23, 1996.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 96–19093 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–61–M

Surface Transportation Board [1]

[STB Finance Docket No. 32999]

Nebraska Northeastern Railway Company; Acquisition and Operation Exemption; Burlington Northern Railroad Company

Nebraska Northeastern Railway Company (NNR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 120.4 miles of rail line from Burlington Northern Railroad Company, between milepost 4.0 near Ferry Station, NE, and milepost 124.4 [2] at O'Neill, NE. The transaction was to have been consummated on or after July 19, 1996.

This proceeding is related to *TNW Corporation—Continuance in Control Exemption—Nebraska Northeastern Railway Company,* STB Finance Docket No. 33000, wherein TNW Corporation has concurrently filed a verified notice to continue to control NNR, upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32999, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

Decided: July 19, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19175 Filed 7–26–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] NNR erroneously has indicated the milepost at O'Neill to be milepost 120.4. Their map, however, indicates O'Neill at milepost 124.4.

[Finance Docket No. 32829]

Saginaw Valley Railway Company, Inc.; Acquisition Exemption; CSX Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the acquisition by Saginaw Valley Railway Company, Inc., of 51.32 miles of rail line in the State of Michigan from milepost CBD 4.50 near Hoyt, just east of Saginaw, to milepost CBD 55.82, near Brown City, is exempted from the prior approval requirements of 49 U.S.C. 11343–45, subject to standard labor protective conditions.

DATES: The exemption will be effective August 8, 1996. Petitions to stay must be filed by August 5, 1996 and petitions to reopen must be filed by August 21, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32829 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board'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, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone:

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

(202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 17, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19177 Filed 7–26–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33000]

TNW Corporation; Continuance in Control Exemption; Nebraska Northeastern Railway Company

TNW Corporation (TNW), a noncarrier, has filed a notice of exemption to continue in control of Nebraska Northeastern Railway Company (NNR), upon NNR's becoming a Class III rail carrier. The transaction was to have been consummated on or after July 19, 1996.

NNR, a noncarrier, has concurrently filed a notice of exemption in *Nebraska Northeastern Railway Company—Aquisition and Operation Exemption—Burlington Northern Railroad Company,* STB Finance Docket No. 32999, to acquire approximately 120.4 miles of rail lines of Burlington Northern Railroad Company, between Ferry Station, NE, and O'Neill, NE.

TNW controls two other nonconnecting Class III rail carriers: Texas North Western Railway Company and the Texas, Gonzales & Northern Railway Company operating in Texas.

TNW states that: (1) NNR will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect NNR with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33000, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eugenia Langan, Shea & Gardner, 1800 Massachusetts Avenue, Street, N.W., Washington, DC 20036.

Decided: July 19, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19176 Filed 7–26–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Docket No. AB–33 (Sub-No. 100X)]

Union Pacific Railroad Company—Discontinuance of Service Exemption—in Washington County, ID

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon a 0.50-mile portion of the New Meadows Branch from milepost 0.50 to the end of the line at milepost 1.00, near Weiser, in Washington County, ID.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 28, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 8, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 19, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, 1416 Dodge Street 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 2, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 22, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary.

[FR Doc. 96–19178 Filed 7–26–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Performance Review Board; Notice

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Departmental Offices' Performance Review Board (PRB) and supersedes the list published in 60 FR 39485 dated August 2, 1995, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith—Director, Office of Financial Institutions Policy
Steven O. App—Deputy Chief Financial Officer
John J. Auten—Director, Office of Financial Analysis
William E. Barreda—Deputy Assistant Secretary (Trade and Investment Policy)
Darcy E. Bradbury—Assistant Secretary (Financial Markets)
Richard S. Carnell—Assistant Secretary (Financial Institutions)
Joyce H. Carrier—Deputy Executive Secretary (Public Liaison)
Mary E. Chaves—Director, Office of International Debt Policy
Wushow Chou—Deputy Assistant Secretary (Information Systems)
Anna Dickey—Director, Office of Enforcement Budget Policy
Lowell Dworin—Director, Office of Tax Analysis
James H. Fall, III—Deputy Assistant Secretary (Technical Assistance Policy)
James J. Flyzik—Director, Office of Telecommunications Management
Michael Froman—Deputy Assistant Secretary (Eurasia and Middle East)
Jon M. Gaaserud—Director, U.S. Saudi Arabian Joint Commission Program Office
Joshua Gotbaum—Assistant Secretary (Economic Policy)
Geraldine A. Gerardi—Director for Business Taxation
William H. Gillers—Director, Office of Management Advisory Services
Robert F. Gillingham—Deputy Assistant Secretary (Policy Coordination)
W. Scott Gould—Deputy Assistant Secretary Departmental Finance and Management
John D. Hawke—Under Secretary for Domestic Finance
James E. Johnson—Assistant Secretary (Enforcement)
Raymond W. Kelly—Under Secretary for Enforcement
Edward S. Knight—General Counsel
David Lipton—Assistant Secretary (International Affairs)
Fe Morales Marks—Deputy Assistant Secretary (Financial Institutions Policy)
Calvin Mitchell, III—Deputy Assistant Secretary (Public Affairs)
George Muñoz—Assistant Secretary (Management) and Chief Financial Officer)
Gerald Murphy—Fiscal Assistant Secretary
Jill K. Ouseley—Director, Office of Market Finance
Linda Robertson—Assistant Secretary (Legislative Affairs)
Alex Rodriguez—Deputy Assistant Secretary (Administration)
Victor Rojas—Deputy Assistant Secretary for Legislative Affairs (International)
Howard Schloss—Assistant Secretary (Public Affairs)
Charles Schotta—Senior Advisor (Counselor for Middle East Affairs)
G. Dale Seward—Director, Automated Systems Division
Jeffrey Shafer—Under Secretary for International Affairs
John P. Simpson—Deputy Assistant Secretary (Regulatory, Trade, and Tariff Affairs)
Sylvia Mathews—Chief of Staff
Jane L. Sullivan—Director, Office of Information Resources Management
Mozelle Thompson—Deputy Assistant Secretary (Government Financial Policy)
Robert Welch—Director, Office of Procurement

FOR FURTHER INFORMATION CONTACT: Rosemary Downing, Executive Secretary, PRB, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; telephone: (202) 62201440.

This notice does not meet the Department's criteria for significant regulations.

George Muñoz,

Assistant Secretary of the Treasury (Management).

[FR Doc. 96–19122 Filed 7–26–96; 8:45 am]

BILLING CODE 4810–25–M

Office of Thrift Supervision

[AC–37; OTS No. 3887]

Amsterdam Federal Savings and Loan Association, Amsterdam, New York; Approval of Conversion Application

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

Notice is hereby given that on July 16, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Amsterdam Federal Savings and Loan Association, 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: July 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–19096 Filed 7–26–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–39: OTS No. 4329]

Community Bank of Excelsior Springs, A Savings Bank, Excelsior Springs, Missouri; Approval of Conversion Application

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

Notice is hereby given that on July 22, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Bank of Excelsior Springs, A Savings Bank, Excelsior Springs, 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, Dallas, Texas 75039–2010.

Dated: July 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–19094 Filed 7–26–96; 8:45 am]

BILLING CODE 6720–01–M

[AC–38: OTS No. 01856]

Madison First Federal Savings and Loan Association, Madison, Indiana; Approval of Conversion Application

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

Notice is hereby given that on July 18, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Madison First Federal Savings and Loan Association, Madison, Indiana, 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, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606–4360.

Dated: July 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–19095 Filed 7–26–96; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 61, No. 146
Monday, July 29, 1996

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 ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96-635-000]

CNG Transmission Corporation; Notice of Request Under Blanket Authorization

Correction

In notice document 96–18311 beginning on page 37730 in the issue of Friday, July 19, 1996, the Docket number should have appeared as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4083-N-01]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Fiscal Year 1996 Funding for the Section 8 Rental Voucher Program and Rental Certificate Program

Correction

In notice document 96–18443, beginning on page 37756, in the issue of Friday, July 19, 1996, make the following correction:

On page 37758, in the second column, in the second line, the date should read ''September 3, 1996''.

BILLING CODE 1505–01–D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-62]

Termination of Increased Duties on Certain Products of the European Community

Correction

In notice document 96–18122, appearing on page 37309, in the issue of Wednesday, July 17, 1996, make the following correction.

On page 37309, in the third column, in the last paragraph, in the first line, ''not'' should read ''now''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28617; Notice 96-6]

RIN 2120-AF79

Revision of Hydraulic Systems Airworthiness Standards to Harmonize With European Airworthiness Standards for Transport Category Airplanes

Correction

In proposed rule document 96–17034 beginning on page 35056 in the issue of Wednesday, July 3, 1996, make the following corrections:

1. On page 35056 in the first column, under the heading ADDRESSES: in the second paragraph, the ninth line ''is in maintaining'' should read ''is maintaining''.

2. On the same page, in the second column, under the heading Availability of the NPRM in the second paragraph, in the fourth line ''su-docs'' should read ''su__ docs''.

3. On the same page, in the same column, in the third paragraph, in the second line ''of'' should read ''by''.

4. On page 35057, in the third column, in the second full paragraph, in the tenth line ''or normally'' should read ''of normally''.

5. On page 35058, in the first column, under *Proposal 6.*, in the 16th line ''§25.2435'' should read ''§25.1435''.

6. On the same page, in the same column, in the 31st line ''the adopt'' should read ''to adopt''.

§25.1435 [Corrected]

7. On page 35060, in the third column, §25.1435(a)(3), in the second line ''of hazardous'' should read ''or hazardous''.

8. On page 35061, in the second column, §25.1435(c)(1), in the second line ''ground'' should read ''ground and''.

9. On page 35061, in the third column, §25.1435(c)(3), in the first line ''pressure'' should read ''pressure or''.

BILLING CODE 1505–01–D

federal register

Monday
July 29, 1996

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 4, 42, and 52

Federal Acquisition Regulations: Final Overhead Settlement; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 42 and 52

[FAR Case 95–017]

RIN 9000–AG87

Federal Acquisition Regulation; Final Overhead Settlement

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 to improve the process of final settlement of contractor overhead rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 27, 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 95–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 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 95–017.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR parts 4, 42 and 52 to improve the process of final settlement of contractor overhead rates. Cost reimbursement and fixed-price incentive contracts require that contractors' overhead rates be settled prior to establishment of final contract prices. At present, the contractor is required to submit a certified indirect cost rate proposal within 90 days after the end of its fiscal year, and a final audit is required of the contractor's proposed rates. However, late proposal submissions and incomplete supporting cost data are contributing to greatly extended cycle times on overhead settlements. As a result, the 90-day timeframe currently provided for submissions could be considered less than adequate time for contractors to complete their year-end closing and prepare an adequate proposal. In addition, there is currently no sanction or penalty for late submissions.

Improvement of this process by extending the submission date from 90 days to 6 months and identifying the minimum supporting cost data required to be submitted with the proposal can achieve a substantial, overall reduction in cycle time. This proposed rule implements recommendations of the Contract Administration Services Reform Process Action Team by (1) stating that failure to comply with the revised due date for submission of proposed final indirect cost rates may be considered as an indication of an inadequate accounting system and controls; (2) specifying the minimum data which is needed with the contractor's proposal in order to proceed efficiently with the audit; and (3) changing ''final indirect cost rate proposal'' to ''final incurred cost proposal'' to more closely reflect the terminology used by the Defense Contract Audit Agency.

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, generally, large businesses provide the types of supplies and services that are procured using cost-reimbursement and fixed-price incentive contracts which require final overhead settlement. 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 95–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose any substantial change in 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. 3051 *et seq.*

List of Subject in 48 CFR Parts 4, 42 and 52

Government procurement.

Dated: July 18, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 4, 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.703 is amended by revising paragraph (b)(3) to read as follows:

4.703 Policy.

* * * * *

(b) * * *

(3) The contractor does not meet the original due date for submission of final incurred cost proposals specified in subparagraph (d)(2)(i) of the clause at 52.216–7, Allowable Cost and Payment, and subparagraph (c)(2)(i) of the clause at 52.216–13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.

* * * * *

PART 42—CONTRACT ADMINISTRATION

3. Section 42.705–1 is amended by revising paragraph (b)(1) to read as follows:

42.705–1 Contracting officer determination procedure.

* * * * *

(b) * * *

(1) In accordance with the Allowable Cost and Payment clause at FAR 52.216–7 or FAR 52.216–13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant auditor a final incurred cost proposal together with the supporting cost data specified in paragraphs (b)(1) (i) through (viii) of this subsection. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

(i) Schedule of proposed rates for each expense pool.

(ii) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically

identified and excluded from the proposed pool.

(iii) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(iv) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (b)(1)(iii) of the subsection).

(v) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(vi) Schedule of Government contract participation in the indirect expense pools.

(vii) Schedule of facilities capital cost of money factors computation (if applicable).

(viii) Schedule or computation of allocable independent research and development and bid and proposal costs (if applicable).

Note to paragraph (b)(1): These items represent the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the contracting officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

* * * * *

4. Section 42.705–2 is amended by revising paragraph (b)(1) to read as follows:

42.705–2 Auditor determination procedures.

* * * * *

(b) * * * (1) The contractor shall submit to the cognizant contracting officer and auditor a final incurred cost proposal reflecting actual cost experience during the covered period, together with supporting cost data in accordance with 42.705–1(b)(1).

* * * * *

PART 5—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.216–7 is amended by revising the date of the clause and paragraph (d)(2) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (DATE)

* * * * *

(d) * * *

(2) (i) The Contractor shall, within six months after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer in exceptional circumstances, submit to the cognizant Contracting Officer responsible for negotiating its final indirect rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and the following supporting cost data:

(A) Schedule of proposed rates for each expense pool.

(B) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically identified and excluded from the proposed pool.

(C) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(D) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (d)(2)(i)(C) of this clause).

(E) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(F) Schedule of Government contract participation in the indirect expense pools.

(G) Schedule of facilities capital cost of money factors computation (if applicable).

(H) Schedule or computation of allowable independent research and development and bid and proposal costs (if applicable).

(ii) Paragraphs (d)(2)(i) (A) through (H) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(iii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

* * * * *

6. Section 52.216–13 is amended by revising the date of the clause and paragraph (c)(2) to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

ALLOWABLE COST AND PAYMENT—FACILITIES (DATE)

* * * * *

(c) * * *

(2) (i) The Contractor shall within six months after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer in exceptional circumstances, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and the following supporting cost data:

(A) Schedule of proposed rates for each expense pool.

(B) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically identified and excluded from the proposed pool.

(C) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(D) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (c)(2)(i)(C) of this clause).

(E) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(F) Schedule of Government contract participation in the indirect expense pools.

(G) Schedule of facilities capital cost of money factors computation (if applicable).

(H) Schedule or computation of allocable independent research and development and bid and proposal costs (if applicable).

(ii) Paragraphs (c)(2)(i)(A) through (H) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(iii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

* * * * *

7. Section 52.216–15 is amended by revising the date of the clause and paragraph (b) to read as follows:

52.216–15 Predetermined Indirect Cost Rates.

* * * * *

PREDETERMINED INDIRECT COST RATES (DATE)

* * * * *

(b) (1) Not later than six months after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures to, to the cognizant Government audit activity, proposed predetermined indirect cost rates and the following supporting cost data:

(i) Schedule of proposed rates for each expense pool.

(ii) Statement of pool and base costs for each proposed indirect expense rate, listing the proposed amount by account with unallowable costs specifically identified and excluded from the proposed pool.

(iii) Schedule of allowable direct costs for each cost-reimbursement and fixed-price incentive contract (or reference to applicable accounting records if data is too voluminous).

(iv) Schedule of allocation base amounts for each cost-reimbursement and fixed-price incentive contract (if not otherwise covered by paragraph (b)(1)(iii) of this clause).

(v) Schedule of hours and costs proposed on time-and-materials and labor-hour contracts (if applicable).

(vi) Schedule of Government contract participation in the indirect expense pools.

(vii) Schedule of facilities capital cost of money factors computation (if applicable).

(viii) Schedule of computation of allocable independent research and develop and bid and proposal costs (if applicable).

(2) Paragraphs (b)(1) (i) through (viii) of this clause specify the minimum data necessary to begin the required audit, and compliance with this requirement does not limit the Contracting Officer's right to require, on a case-by-case basis, submission of additional data considered necessary to support the proposal.

(3) The proposed rates shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin as soon as practical after receipt of the Contractor's proposal. Contractors who are delinquent in the submittal of final incurred cost proposals may be considered to have an inadequate accounting system and controls.

* * * * *

[FR Doc. 96–18852 Filed 7–26–96; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Monday
July 29, 1996

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.

Applicability of Hazardous Materials Regulations to Loading, Unloading, and Storage; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, 180

[Docket HM–223; Notice No. 96–15]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading and Storage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); notice of meeting.

SUMMARY: This ANPRM announces three public meetings at which RSPA will seek ideas, proposals and recommendations regarding the applicability of the Hazardous Materials Regulations (HMR) to particular hazardous materials transportation activities. This information will help the agency to consolidate, clarify, revise and update existing agency interpretations, rulings and decisions regarding the applicability of the HMR and determine whether there is a need to amend the HMR. Clarifying the applicability of the HMR will facilitate compliance and will have the beneficial effect of clarifying the applicability of other Federal, State, local and Indian tribe hazardous materials requirements.

DATES: *Meetings.* (1) September 13, 1996 from 9:00 a.m. to 4:00 p.m. in Atlanta, Georgia—public meeting.

(2) September 25, 1996 from 9:00 a.m. to 4:00 p.m. in Sacramento, California—working-group session.

(3) October 30, 1996 from 9:00 a.m. to 4:00 p.m. in Philadelphia, Pennsylvania—working-group session.

Oral presentations—Atlanta. Any person wishing to present an oral statement at the Atlanta public meeting should notify Nancy E. Machado by telephone or in writing, on or before September 10, 1996. Five copies of written text of oral statements should be presented to RSPA staff immediately prior to the oral presentation.

Written comments; working-group sessions in Sacramento and Philadelphia. Written comments must be received on or before November 30, 1996. Any person wishing to participate in the Sacramento working-group session should notify Nancy E. Machado by telephone or in writing on or before September 18, 1996. Any person wishing to participate in the Philadelphia working-group session should notify Nancy E. Machado by telephone or in writing on or before October 23, 1996.

ADDRESSES: *Meetings.* (1) The Omni Hotel, 100 CNN Center, Atlanta, GA 30335.

(2) Department of Social Services Auditorium, 744 P Street, Sacramento, CA 95184.

(3) Penn Tower Hotel, Civic Center Boulevard at 34th St., Philadelphia, PA 19104.

Comments. Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590–0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Office Hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except on public holidays when the office will be closed.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington D.C. 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Temporary Closure of Docket Room

In an effort to improve the indoor air quality in the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590, the U.S. Department of Transportation and the building's owner have initiated a major cleaning project. This project entails a thorough cleaning of the building on a floor-by-floor basis. During the cleaning of each floor, the floor will be closed to employees and visitors. It is estimated that the cleaning of each floor will take approximately three weeks. During this three-week period, the offices on each floor will be closed and the affected employees will be relocated to another building. Once the cleaning of a floor is complete, employees and visitors may return to that floor. RSPA's Dockets Unit is located on the eighth floor. Cleaning of the eighth floor is scheduled to begin on Monday, August 12, 1996 and last until September 3, 1996. As a result, RSPA's Dockets Unit is scheduled to close for approximately three weeks.

Because of the volume of materials in the Dockets Unit, it cannot be relocated during the cleaning and will be closed. However, since the comment period of this ANPRM is open until November 30,1996 Docket HM–223 will be relocated and made available for review in Room 5414A of the Nassif Building, telephone (202) 366–4900. The public may view this docket between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays.

Following completion of cleaning, Docket HM–223 will be returned to the Dockets Unit in Room 8421 of the Nassif Building, 400 Seventh Street, SW, Washington, DC, 20590–0001, telephone (202) 366–5046.

II. Background

The HMR, 49 CFR Parts 171–180, are promulgated in accordance with the direction in 49 U.S.C. 5103(b) that the Secretary of Transportation ''prescribe regulations for the safe transportation of hazardous material in intrastate, interstate and foreign commerce.'' ''Transportation'' is defined as ''the movement of property, and any loading, unloading, or storage incidental to the movement.'' 49 U.S.C. 5102(12). ''Commerce'' is defined as ''trade or transportation in the jurisdiction of the United States—(A) between a place in a State and a place outside of the State; or (B) that affects trade or transportation between a place in a State and a place outside of the State.'' 49 U.S.C. 5102(1).

In recent years, RSPA has issued a number of interpretations, inconsistency rulings and preemption determinations in response to public requests for clarification regarding the meaning of the term ''transportation in commerce'' and whether particular activities fall under that term and, therefore, are subject to the HMR. Although these documents are publicly available, the regulated industry, Federal agencies, States, local governments, and Indian tribes have not been consistently aware of their existence and availability. Furthermore, some of the interpretations and decisions in these documents need to be revised in light of changes in DOT's, and other Federal agencies', statutory authority. The purpose of this rulemaking is to consolidate, clarify, and revise, as necessary, these interpretations, rulings and decisions, and make them part of the HMR.

Clarifying the applicability of the HMR would also have the beneficial effect of clarifying the applicability of the Environmental Protection Agency's (EPA's) and the Occupation Safety and Health Administration's (OSHA's) regulations concerning materials covered under the HMR. For example, EPA regulates hazardous materials to ensure that they are not unintentionally

or unlawfully released into the environment (*see, e.g.,* SARA Title III, 42 U.S.C. 11001, *et seq.*), and OSHA regulates hazardous materials in the work-place to ensure worker safety and health *see, e.g.,* the Occupational Safety and Health Act of 1970 (OSHAct), 29 U.S.C. 651 *et seq.*). To the extent that DOT does not regulate in a particular area, both EPA and OSHA are free to regulate to the full extent of their statutory authority. However, where DOT does regulate in a particular area, both have limited authority to regulate in that same area. For example, in its hazardous material emergency programs, EPA has exempted by regulation, or is required to exempt by statute, certain transportation activities that are subject to the HMR. *See* 42 U.S.C. 11047 (transportation and storage incident to such transportation are exempt from most SARA Title III requirements); 40 CFR 68.3 (certain transportation-related activities are exempt from the definition of ''stationary source'' in EPA's Chemical Accident Prevention regulations). OSHA faces similar limitations. *See* 29 U.S.C. 653(b)(1) (''Nothing in [the Occupational Safety and Health Act of 1970] shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.'').

Clarifying the applicability of the HMR would have the beneficial effect of clarifying where States, local governments and Indian tribes may regulate without being preempted under Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101–5127. When it last substantively amended Federal hazmat law in 1990, Congress stated that uniform regulations promote safety in the transportation of hazardous materials. *See* Public Law (Pub. L) 101–615, § 2, 104 Stat. 3244 (1990). In order to promote consistency in laws and regulations governing the transportation of hazardous materials, to achieve greater uniformity among those laws, and to promote the public health, welfare, and safety at all levels, Congress gave DOT the authority to preempt a requirement of a State, political subdivision of a State or Indian tribe where:

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of [Federal hazmat law] or a regulation prescribed under [Federal hazmat law] is not possible;

(2) the requirement of the State, political subdivision, or tribe, as applied and enforced, is an obstacle to accomplishing and carrying out [Federal hazmat law] or a regulation prescribed under [Federal hazmat law]; or

(3) a law, regulation, order or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects . . . is not substantively the same as a provision of [Federal hazmat law] or a regulation prescribed under [Federal hazmat law]:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125 (a) and (b).

Non-Federal requirements that are authorized by other Federal law are not preempted. *See* 49 U.S.C. 5125(b).

Petitions for Reconsideration of Administrative Determination of Preemption

On February 15, 1995, RSPA published its determinations in PD–8(R), PD–9(R), PD–10(R), and PD–11(R) (Docket Nos. PDA–9(R), PDA–7(R), PDA–10(R), and PDA–11(R), respectively) (60 FR 8774). RSPA did not preempt the two California statutory provisions or 34 of the 40 Los Angeles County regulations at issue. The State and local requirements related to permits; fees; on-site hazard communication; the definition, classification, transportation, storage, handling and unloading of hazardous materials at consignee facilities; and container design and construction. RSPA did, however, preempt six Los Angeles County regulations, finding that those regulations restricted tank car unloading and imposed fees, which were not used for hazardous materials transportation purposes, on consignee unloading activities.

Within the 20-day time period provided in 49 CFR 107.211(a), HASA, Inc., The Society of the Plastics Industry, Inc.; National Propane Gas Association; Pioneer Chlor Alkali Company, Inc.; National Tank Truck Carriers, Inc.; and Chlorine Institute, Inc. and Chemical Manufacturers' Association (Petitioners) filed petitions for reconsideration of RSPA's determinations. The petitioners raised numerous issues regarding the on-site handling and transportation of hazardous materials, and questioned whether certain transportation and unloading activities are regulated under the HMR.

This rulemaking will directly address the issues raised by the petitioners in PD–8(R), PD–9(R), PD–10(R), and PD–11(R). Consequently, RSPA will defer issuing a decision with respect to the petitions for reconsideration until this rulemaking is completed. RSPA is taking this action in order to avoid prejudging issues which are more appropriately handled through the notice-and-comment process under the Administrative Procedure Act, 5 U.S.C. 553. In conjunction with this ANPRM, RSPA has also published, in the Federal Register of July 24, 1996 (61 FR 38513), a ''Notice of Deferral of Decision on Petitions for Reconsideration of Administrative Determination of Preemption.''

III. Areas of Regulatory Concern

RSPA asks commenters to address the following questions and to identify other related issues RSPA should address in any further rulemaking under this docket:

Loading

Background

The HMR impose filling conditions and limitations for packaging hazardous materials, such as specifying the types of packagings which must be used and the filling limits for those packagings. 49 CFR Part 173. The HMR also specify requirements for marking and labeling hazardous materials shipments. 49 CFR 172.300–338 and 172.400–450, respectively. The HMR historically have addressed the offering of packages for transportation, holding the shipper, or offeror, responsible for compliance with applicable regulations at the time a package is offered for transportation. 49 CFR 171.1, 171.2. Concerning in-plant processes, the HMR address only the loading of highway cargo tanks. 49 CFR 177.834–844.

Issues

(1) At what point is a package offered for ''transportation in commerce''? When filled? When a package is selected from inventory? When an offer (oral or written) has been made to a carrier? When a shipping paper has been executed? When the packaging is physically tendered to the carrier? At some other point? Explain your answer.

(2) (a) If the shipper is a private carrier, should any portion of

transportation, prior to movement onto a public road, be considered transportation in commerce?

(b) If the carrier is a contract or common carrier, should any movement on the shipper's facility of a transport vehicle containing hazardous material be considered in transportation in commerce, including movement to an on-site storage facility?

(c) Should public accessibility to the shipper's facility have any bearing on whether in-plant movement is regulated?

(3) (a) Should the agency continue to regulate the loading of cargo tanks but not other bulk packagings (except where a function relates directly to safety during transportation away from the loading facility)?

(b) Should regulation be limited to loading of cargo tanks or other bulk packaging only where contract or common carrier personnel are involved in the loading?

(4) (a) Should the agency regulate the filling of non-bulk packagings beyond functions that directly relate to safety during transportation away from the filling facility?

(b) Should regulation be limited to the loading or filling of bulk or non-bulk packagings performed by contract or common carrier personnel only?

(5) Are there others factors for determining whether loading of hazardous materials is ''incidental'' to transportation in commerce?

Unloading

Background

Generally, under the HMR, transportation in commerce is considered complete when hazardous materials are delivered to a consignee's location and the delivering carrier has physically tendered the materials to the consignee, such as by unloading a trailer or disconnecting a trailer for unloading by the consignee. *See* 49 CFR 177.834(i)(2). This applies to both bulk and non-bulk hazardous materials. A notable exception to the general rule is that the HMR regulate the unloading of tank cars by consignees, even though there is usually no carrier involvement in the process other than positioning the tank car at the unloading site. 49 CFR 174.67. OSHA has promulgated several worker health and safety standards, *e.g.*, Process Safety Management of Highly Hazardous Chemicals, 29 CFR 1910.119; Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120, which provide more comprehensive protection for consignees' employees than RSPA's limited consignee unloading requirements.

Issues

(1) (a) Should RSPA continue to regulate rail tank car unloading by consignees?

(b) Should RSPA continue to regulate rail tank car unloading by consignees in light of OSHA's comprehensive worker safety and health standards?

(c) Should RSPA or FRA promulgate regulations for the protection of railroad workers while performing work assignments within plant boundaries?

(d) If RSPA continues to regulate rail tank car unloading by consignees, should RSPA only regulate to the extent that the unloading process is begun or, alternatively, completed, within a specified period of time (*e.g.*, within two weeks of delivery to the consignee)? If so, what time frame do you recommend?

(2) Should RSPA regulate unloading, for other than tank cars, of non-bulk or bulk packages when unloading does not involve a contract or common carrier?

(3) Should public accessibility to a consignee's facility have any bearing on whether unloading is regulated?

(4) Since a private motor carrier may be both a carrier and consignee, at what point should transportation be considered complete for that carrier? (*e.g.*, When a transport vehicle is delivered to the carrier's facility? When it is unloaded?)

(5) Are there other factors for determining whether unloading of hazardous materials is ''incidental'' to transportation in commerce?

Storage

Background

Storage that is incidental to transportation in commerce and, consequently, regulated under the HMR, includes storage by a carrier that occurs between the time a hazardous material is offered for transportation to the carrier and the time it reaches its intended destination and is delivered by the carrier and accepted by the consignee. *See* 49 CFR 174.204(a)(2) (requirements for tank car delivery, including storage, of gases). RSPA has expressed the view that storage of hazardous material on consignor or consignee property (including leased track) is not incidental to transportation in commerce and, thus, not regulated under the HMR. *See* Inconsistency Ruling 28, *City of San Jose, California; Restrictions on Storage of Hazardous Materials*, 55 FR 8884 (Mar. 8, 1990). Similarly, when a shipment is consigned by the offerer to a storage or transfer facility which is the destination of the shipment, rather than to an end user, RSPA believes the shipment is out of transportation in commerce once received and then unloaded, or stored loaded, at the storage or transfer facility.

Issues

(1) Should the storage of a hazardous material on leased track, by any person, be regulated under the HMR? Why or why not?

(2) Should the HMR continue to apply only to storage that may occur between the time a hazardous materials shipment is offered for transportation to a common, contract or private carrier and the time the shipment reaches its intended destination and is accepted by the consignee?

(3) Should RSPA regulate only those hazardous materials shipments that are stored while under ''active'' shipping papers? If so, how should RSPA define ''active'' shipping papers?

(4) Are there others factors for determining whether storage of hazardous materials is ''incidental'' to transportation in commerce?

Handling

Background

Based on their respective statutory authorities, both DOT and OSHA regulate hazardous materials. Nevertheless, prior to 1990, where DOT exercised its authority, under the former Hazardous Materials Transportation Act (HMTA), 49 U.S.C.A. 1801 *et seq.*, to prescribe or enforce standards or regulations affecting occupational safety or health in a particular area, OSHA was precluded from regulating in that same area, without exception. *See* 29 U.S.C. 653(b)(1).

In 1990, Congress enacted the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. 101–615. Among other things, HMTUSA amended the HMTA to limit the preemptive effect of DOT regulations on Federal OSHA regulations. *See* 49 U.S.C. App. 1805(b)(3) (1990).

In 1994, the HMTA was codified by Pub. L. 103–272. The purpose of Pub. L. 103–272 was to ''clean-up'' several related Federal transportation laws, ''restating'' them in a format and language intended to be easier to understand without changing substantive content. The language in 49 U.S.C. 5107(f)(2), where former HMTA § 1805(b)(3) is codified, reinforces Congress' intent to limit the preemptive effect of DOT regulations on Federal OSHA regulations. Section 5107(f)(2) clearly nullifies the HMR's preemptive effect on Federal OSHA regulations in several areas—(1) Hazmat employee training under 49 U.S.C. 5107 (a)–(d);

(2) handling under 49 U.S.C. 5106; (3) registration under 49 U.S.C. 5108; and (4) motor carrier safety permits under 49 U.S.C. 5109. Section 5125 of Federal hazmat law continues to define the preemptive effect of the HMR on State, local government and Indian tribe requirements.

Despite language in 49 U.S.C. 5106 authorizing DOT to regulate the handling of hazardous materials, language in 49 U.S.C. 5125 authorizing DOT to preempt non-Federal handling requirements that are not substantively the same as those under Federal hazmat law or the HMR, and language in 49 U.S.C. 5107(f)(2) limiting the preemptive effect of DOT's handling regulations, nowhere does Federal hazmat law define the term ''handling.'' In interpreting the applicability of the HMR, RSPA has held that the term ''handling'' includes, among other activities, the unloading of hazardous materials incidental to transportation in commerce. *See* PD–9 (February 15, 1995; 60 FR 8774).

Issues

(1) Which transportation-related activities should be included under the term ''handling''? Why?

(2) Which transportation-related activities, if any, should be excluded from the list of activities that constitute ''handling''? Why?

(3) Are there factors for determining when a hazardous materials transportation activity is ''handling'' within the meaning of Federal hazmat law and, therefore, regulated under the HMR?

IV. Participation/Conduct of Meetings

The public meetings will be informal. Representatives from DOT will be in attendance. RSPA has invited representatives from OSHA and EPA to attend because of the interest those agencies share with DOT in regulating hazardous materials. RSPA invites all interested parties, including States, local governments and Indian tribes, to participate in these meetings.

Participation in the Atlanta meeting will be in the form of oral statements. Speakers will be limited to ten minutes. The Atlanta meeting may conclude early if all participants have been heard.

The Sacramento and Philadelphia meetings also will be informal. RSPA proposes to begin the Sacramento and Philadelphia meetings by giving meeting participants an overview of the major issues of concern identified by commenters during the Atlanta meeting. Meeting participants then will form working groups to discuss those issues and to generate ideas, proposals and recommendations for use by the agency when it begins preparing a notice of proposed rulemaking in this docket. A DOT employee will be assigned to each working group as a facilitator. At the conclusion of the working-group discussions, a representative from each working group will present each group's ideas, proposals and recommendations to all of the meeting participants for further discussion.

If it appears that there is insufficient public interest in a break-out group format, RSPA may decide to hold traditional public meetings in Sacramento or Philadelphia.

Issued in Washington, DC on July 23, 1996, under authority delegated in 49 CFR Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–19114 Filed 7–26–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Monday
July 29, 1996

Part IV

Environmental Protection Agency

40 CFR Parts 180 and 185

Revocation of Pesticide Food Additive Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300360B; FRL–5388–2]

RIN 2070–AB78

Revocation of Pesticide Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking six food additive regulations (tolerances) for four pesticides. EPA is revoking four tolerances because they violate the Delaney clause of the Federal Food, Drug, and Cosmetic Act, and the other two tolerances because they are not needed to prevent adulterated food.

EFFECTIVE DATE: This final rule is effective September 27, 1996. Written objections, requests for a hearing, and/or requests for stays identified by the docket number OPP–300360B, must be submitted by August 28, 1996.

ADDRESSES Written objections and hearing requests, identified by the docket number, [OPP–300360B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300360B]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT By mail: Jean M. Frane, Policy and Special Projects Staff (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1113, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5944. e-mail: frane.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into the following areas for discussion: Table of Contents

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I. Introduction

A. Regulated Entities

Category	Examples of Regulated Entities
Industry	Users of the pesticides covered by this notice
.....	Food processors

This table is not exhaustive, but is a guide to the entities EPA believes are regulated by this action.

B. Terms and Acronyms

In today's document, EPA uses a number of terms and acronyms that may not be familiar to the reader. For the convenience of readers, principal terms and acronyms used in this document are listed here.

Federal Food, Drug, and Cosmetic Act - FFDCA

Federal Insecticide, Fungicide and Rodenticide Act - FIFRA

408 tolerance - a raw food tolerance established under section 408 of the FFDCA.

409 tolerance - a processed food tolerance established under section 409 of the FFDCA.

CF - concentration factor

DF - dilution factor

HAFT - highest average field trial

RAC - raw agricultural commodity

RTE - ready to eat

C. Statutory Background

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as ''tolerances.'' Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is ''adulterated'' under section 402 of the FFDCA and may not be legally moved in interstate

commerce. 21 U.S.C. 331, 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture. EPA can establish a tolerance in response to a petition or on its own initiative.

The FFDCA has separate provisions for tolerances for pesticide residues in raw agricultural commodities (RACs) and in processed food. EPA establishes tolerances, or exemptions from tolerances when appropriate, for RACs under section 408 (hereafter referred to as ''408 tolerances'' or ''RAC tolerances''). 21 U.S.C. 346a. EPA establishes food additive regulations for pesticide residues in processed foods under section 409, which pertains to ''food additives.'' 21 U.S.C. 348. Food additive regulations under section 409 are referred to hereafter as ''409 tolerances'' or ''processed food tolerances.''

Section 409 tolerances are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the ''flow-through'' provision because it allows the RAC tolerance to flow through and apply to the processed food forms as well. Thus, a 409 tolerance is only necessary to prevent foods from being deemed adulterated when the level of the pesticide residue in a processed food when ready to eat is greater than the tolerance established for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

If a 409 tolerance must be established, section 409 of the FFDCA requires that the use of the pesticide will be ''safe'' (21 U.S.C. 348(c)(3)). Relevant factors in this safety determination include (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; and (3) appropriate safety factors to relate the animal data to the human risk evaluation. Section 409 also contains the Delaney clause, which specifically provides that ''no additive shall be deemed to be safe if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal.''

D. Regulatory Background

1. On January 18, 1995 (60 FR 3602)(FRL–4910–8), EPA published in the Federal Register a proposal to revoke six 409 tolerances for 4 pesticides. EPA's action was prompted by a decision of the Ninth Circuit Court of Appeals, which ruled on July 8, 1992, in the case of *Les v. Reilly*, 968 F.2d 985 (9th Cir.), cert. denied, 113 S.Ct. 1361 (1993), that the Delaney clause barred the establishment of a 409 tolerance for a pesticide which ''induces cancer,'' no matter how infinitesimal the risk.

In response to the court's decision in *Les v. Reilly*, EPA identified and proposed to revoke all 409 tolerances for pesticides which it determined ''induce cancer in man or animals.'' EPA decided to evaluate these pesticides in phases. The initial phase of revocations included 26 uses of 7 pesticides and was finalized on March 22, 1996 (61 FR 11993)(FRL–5357–7). The second phase of revocations includes 6 uses of 4 pesticides and was proposed on January 18, 1995 (60 FR 3602). Today's final revocations address those pesticides. A third set of revocations was proposed on September 21, 1995 (60 FR 49141)(FRL–4977–3) and will be finalized by March 1997.

E. EPA Actions Since Proposed Rule

1. *Settlement of California v. Browner case.* In a court-approved settlement, entered on February 9, 1995, in the case of *California v. Browner*, EPA agreed to make decisions regarding pesticides that may be affected by the Delaney clause. This settlement agreement includes a timetable for making the decisions. Today's revocations comply with the timeframes in that settlement.

2. *Revised tolerance-setting policies.* In September 1993 the National Food Processors' Association (NFPA) filed a petition with the EPA, challenging a number of policies under which EPA administers its tolerance-setting program, including the concentration policy, ready-to-eat policy and coordination policy. Several of these policies are relevant to today's revocation decisions. In the Federal Register of June 14, 1995 (60 FR 31300)(FRL–4944–2) and January 25, 1996 (61 FR 2378)(FRL–4991–9), EPA responded to the NFPA petition by modifying or establishing policies concerning concentration of residues, ready-to-eat foods, raw agricultural commodities and coordination of its regulatory authorities. Unit II of this document summarizes the policy changes that are relevant to today's revocations.

F. Today's Action

EPA is revoking the 409 tolerances for six uses of four pesticides. Table 1 below summarizes the revocations and their basis. Each of these is discussed later in this notice.

Pesticide	CFR Citation	Commodity	Basis for Revocation
Acephate	185.100	Food handling establishments	Violates Delaney
Imazalil	185.3650	Citrus oil	Not needed
Iprodione	185.3750	Dried Ginseng	Violates Delaney
Iprodione	Do.	Raisins	Violates Delaney
Triadimefon	185.800	Barley, milled fractions (except flour)	Not needed
	Do.	Wheat, milled fractions (except flour)	Violates Delaney

The 409 tolerance revocations being finalized in this notice were proposed on January 18, 1995, before EPA had responded to the NFPA petition and adopted its new policies. In addition, EPA received petitions from registrants of three pesticides requesting revocation of four 409 tolerances (imazalil/citrus oil, iprodione/raisins and dried ginseng, and triadimefon/barley milled fractions) on the basis that they are not needed. For each petition, EPA published a notice of availability in the Federal Register requesting comment. Although not required to do so, where appropriate EPA has based its revocation decision on the reasons cited by the petitioners rather than the requirements of the Delaney clause as proposed.

II. Relevant Policy Changes Since the Proposal

A. Concentration Policy

In its June 1995 notice, EPA announced a new policy on how it would determine whether a pesticide needs a 409 tolerance. To determine whether the use of a pesticide on a growing crop needs a 409 tolerance in addition to a 408 tolerance, EPA evaluates the likelihood that the residue levels in the processed food when ready to eat will exceed the 408 tolerance level. In the past, EPA focussed almost exclusively on the results of processing studies using treated crops in making this determination. EPA now considers a greater range of information in determining the likelihood that residues in processed food will exceed the 408 tolerance. For example:

1. Mixing and blending of treated food commodities decreases the likelihood that residues in processed food will exceed the 408 tolerance. EPA takes potential mixing and blending into account by using information on the highest average field trial residue (referred to as the HAFT).

2. If multiple processing studies demonstrate different concentration factors (CFs), EPA now uses the average CF rather than the highest CF to determine the expected level of concentration.

3. At the same time, EPA examines processing studies to ensure that they reflect typical commercial practices. If a study does not include a step (e.g., washing) that is considered typical practice in processing a RAC, EPA may decide not to include that study in the calculation of the average CF. EPA's concentration policy bears on today's decision on triadimefon/wheat.

B. Ready-to-Eat Definition

In its June 1995 notice, EPA also adopted a definition of ''ready to eat'' (RTE) as it applies to human food and animal feed. EPA stated it would interpret the phrase ''RTE food'' as meaning food ready for consumption ''as is'' without further preparation. If a food is not RTE, EPA considers the degree of dilution that occurs in producing a RTE food from the not-RTE food in determining the likelihood that residues in RTE food will exceed the 408 tolerance. EPA's RTE definition bears on today's decision on imazalil on citrus oil.

C. RAC Interpretation

On January 25, 1996 (61 FR 2386), EPA published its interpretation of the term RAC as applied to dried commodities under the FFDCA. EPA based its interpretation on the purpose of drying, such that commodities dried for the purpose of creating a new marketable commodity are treated as processed food, while those dried for storage or transportation needs are treated as raw foods. EPA's RAC interpretation bears on today's decision on iprodione on raisins.

III. Decision Framework

In analyzing whether the six 409 tolerances addressed in this document should be revoked, EPA generally has used the following decision framework. First, EPA determined whether a 409 tolerance was necessary to prevent adulteration, applying its RAC, concentration, and RTE policies. Unit IV.A. of this document discusses EPA's determination for each chemical. If no 409 tolerance is needed, EPA in most cases has revoked the 409 tolerance on that ground. If a 409 tolerance is needed, then EPA has determined whether that 409 tolerance is permitted under the Delaney clause. Unit IV.B. of this document discusses the Agency's determinations on ''induce cancer'' for each chemical for which a 409 tolerance is needed. EPA does not believe that this decision hierarchy is legally required under the FFDCA but has chosen this approach in its discretion.

Under current policy, a 409 tolerance is needed when EPA determines that some processed food can contain residues exceeding the section 408 tolerance. This determination is made on a case-by-case basis, taking into account the sensitivity of the analytical method used to detect the residues.

Before determining whether a 409 tolerance is needed, however, EPA also examines whether available residue data indicate that the current 408 tolerance should be revised. EPA has received large amounts of residue data as part of the pesticide reregistration program of section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Review of these data shows that, in one instance (triadimefon/wheat), the existing 408 tolerance should be lowered.

EPA has decided that it should base its concentration decision upon the most recent data on residues in raw crops. If those data indicate that a 408 tolerance should be adjusted, EPA has used the adjusted 408 tolerance level as the basis for its determination whether a 409 tolerance is needed because the pesticide concentrates. The basis for EPA's determination that a 408 tolerance should be adjusted is in the docket.

In examining whether a 409 tolerance is needed, EPA followed a stepwise process involving a series of questions. In brief, the questions are:

1. Is there actual concentration of residues during processing? If processing studies demonstrate that the level of residues in the processed food is less than or equal to the level of residues in the precursor crop (i.e., no ''concentration in fact''), residues in the processed food would not be expected to exceed the 408 tolerance and no 409 tolerance is needed.

2. If there is actual concentration, what is the concentration factor? If there are multiple processing studies, what is the average CF? Does the use of an average CF in itself alter EPA's determination of the likelihood of residues in processed food exceeding the RAC tolerance?

3. Is the commodity mixed or blended during processing, such that use of the HAFT value is appropriate?

4. Can the pesticide residue in the processed food exceed the section 408 tolerance, taking into account the HAFT and CF (or average CF if appropriate).

5. Is the processed food form a not RTE food? If the processed food is not RTE, a 409 tolerance is not needed for that food. If residues in a processed not RTE food can exceed the 408 tolerance, EPA will establish a maximum residue level under FFDCA section 701.

6. What is the likelihood that residues in RTE food can exceed the 408 tolerance? If the dilution of residues in RTE food preparation is greater than the concentration of residues in processing (DF > CF), it is likely that the residues in the RTE food will be less than the 408 tolerance. In this case, no 409 tolerance would be necessary for the RTE food. If, as is frequently the case, there is more than one RTE food form, EPA must determine whether residues in the food form having the highest level of expected residues (the lowest dilution factor) can exceed the 408 tolerance.

If, after consideration of the above factors, EPA determined that a 409 tolerance is needed, EPA then examines whether the existing 409 tolerance violates the Delaney clause.

IV. Is a Processed Food Tolerance Needed?

EPA has determined that under its revised concentration, RTE, and RAC policies, three 409 tolerances are not needed to prevent adulterated food, while three 409 tolerances are needed. This unit discusses the Agency's findings with respect to each pesticide and use.

A. Acephate in Food Handling Establishments

The current 409 tolerance for the use of acephate in food handling establishments is 0.02 ppm. Acephate is directly applied in food handling establishments and residues in processed food are likely to result from application. Policies on RAC, concentration, and dilution in RTE foods are not relevant to processed foods where residues result from direct application rather than carryover from raw foods. Therefore, a 409 tolerance is needed to prevent adulterated food.

B. Imazalil in Citrus Oil

The current 408 tolerance for residues of imazalil in citrus is 10 ppm (40 CFR 180.413) and the 409 tolerance is 25 ppm (40 CFR 185.3650). On December 14, 1995, EPA published notice in the Federal Register (60 FR 64163)(FRL–4986–5) of a petition filed by Janssen Pharmaceutica which sought to revoke the 409 tolerance because it is not needed. Janssen maintained that citrus oil is not a RTE food, and submitted data showing the maximum residue of imazalil in RTE foods to be below the 408 tolerance.

EPA has reviewed the public comments and reconsidered the available processing studies in light of its RTE policy. EPA agrees with Janssen that citrus oil is not consumed ''as is,'' and is therefore not a processed RTE food. Typically citrus oil is incorporated into food such as candies as a flavoring agent. The minimum level of dilution of citrus oil in RTE foods (its use in chewing gum) is 238X, and residues in the RTE food items are not expected to exceed the 408 tolerance of 10 ppm. Therefore a 409 tolerance is not needed.

C. Iprodione on Dried Ginseng

The current 408 tolerance for ginseng is 2 ppm (40 CFR 180.399) and the 409 tolerance for iprodione on dried ginseng is 4 ppm (40 CFR 185.3750). On June 5, 1996, EPA published notice in the Federal Register (61 FR 28578)(FRL–5374–8) of a petition filed by Rhone-Poulenc which sought to revoke the 409 tolerance because it is not needed. Rhone-Poulenc claims that dried ginseng is not a RTE commodity, and once diluted to its RTE form, the residues do not exceed the 408 tolerance. No comments were received on the petition.

EPA has concluded that the petition is moot. In response to comments received on EPA's proposed revocation, EPA has determined that dried ginseng meets the criteria for a RAC. Ginseng is dried not to create a new marketable commodity, but as an essential step in preventing rotting during storage and transportation. EPA's determination that ginseng is a RAC means that EPA need not further evaluate Rhone- Poulenc's petition.

However, EPA has not had time since its reclassification of dried ginseng to provide notice and comment of the RAC classification as a possible alternate ground for revocation. EPA is obligated under the terms of its consent order in the *California v. Browner* case to issue a final decision on iprodione on dried ginseng by July 18. The basis for its original proposal has not changed: the current 409 tolerance for dried ginseng violates the Delaney clause because iprodione induces cancer within the meaning of the Delaney clause. EPA does not believe it should simply announce its RAC determination in this final notice without providing notice and comment. In its discretion, therefore, EPA is revoking the current 409 tolerance for iprodione on ginseng on Delaney grounds as proposed.

D. Iprodione on Raisins

The current 408 tolerance for iprodione on grapes is 60 ppm (40 CFR 180.399) and the 409 tolerance for raisins is 300 ppm (40 CFR 185.3750). In the same petition noted above for iprodione/ginseng, Rhone-Poulenc sought to have EPA revoke the 409 tolerance for raisins because it is not needed.

Rhone-Poulenc argues that the likelihood of iprodione residues in raisins from application to grapes is minimal because iprodione use can be limited to grapes grown for fresh table use by means of a label statement (''Grapes treated with [iprodione] must not be used to produce raisins''). The label statement, Rhone-Poulenc states, will be enforceable for two reasons: First, because grapes intended for fresh use versus raisin use have sufficiently different cultural practices that a label limitation based upon ''market segregation'' is practical, and second, because Rhone-Poulenc will undertake an educational program to ensure that grape growers, pesticide applicators, State regulators and raisin producers will be fully informed of the proposed label prohibition against use of iprodione on grapes intended for raisins. Rhone-Poulenc also asserts that current tracking systems for pesticide use in California would provide adequate oversight over the use of iprodione on grapes, and that contractual arrangements with raisin producers also would preclude use on grapes intended for raisins.

With respect to the feasibility and effectiveness of ''market segregation'' based on cultural practices, Rhone-Poulenc suggested that differences in trellising systems, in pesticides used (use of the plant hormone gibberellin for fresh grapes) and in irrigation practices would ensure market segregation. However, Rhone-Poulenc provided no support for these assertions, such as substantiating information from the State, grape growers, or raisin producers.

Based on other information available to EPA, it appears that the cultural practices cited in the petition do occur. However, based on that information, EPA has concluded that the level of market segregation between grapes grown for the fresh/wine/juice market and grapes grown for the raisin market is insufficient to support a finding that a 409 tolerance would not be necessary to protect the public health.

The National Academy of Sciences, in their Report on ''Pesticides in the Diets of Infants and Children'' (1993), states that children may be a sensitive subpopulation; children differ significantly from adults in their body systems and potential physiological and biological responses to pesticide exposures. Information from the USDA National Food Consumption Survey (1977–78) indicates that children age 1 to 6 consume more than 4 times the amount of raisins on a body weight basis than the U.S. population at large. Because of this disproportionate consumption, and the different sensitivities of children to pesticides in their diet, EPA, as a policy matter, has concluded that it must have a high degree of confidence that grapes treated with iprodione will not be diverted to raisin production. The information currently available to the Agency suggests that complete market segregation between grape and raisin production cannot be achieved, and that Rhone-Poulenc's proposed labeling restrictions and education program will not prevent iprodione residues on raisins.

The Thompson seedless grape is by far the major grape grown for both fresh table grapes and for raisin production. In addition, while varietal wine grapes are not used to make raisins, a small percentage of Thompson seedless grapes that are grown for the wine/juice market may be made into raisins. Thus there is a significant potential for crossover or diversion of grapes intended for fresh or wine/juice use into raisin processing. While there are no data directly addressing the amount of crossover between grape markets, information from experts and extrapolated from the

California Agricultural Statistics Service (contained in the docket) indicates that a low but relatively constant amount of grapes grown for fresh use and wine/juice use are diverted into raisin production. The following Table 2 sets out potential grape diversion to raisin production.

TABLE 2.— DIVERSION OF GRAPES TO RAISIN PRODUCTION

Diversion from grapes intended for:	Percentage of grapes diverted	Maximum Percentage of Raisin Production
Fresh market use.	1 to 4 percent	1.8 percent
Wine/juice use.	1 to 5 percent	1.9 percent
Total		**3.7 percent**

Thus, market segregation based on the cultural practices cited by Rhone-Poulenc, while substantial, clearly does not account for or prevent some diversion of grapes to raisins.

EPA's concern about the lack of complete market segregation is heightened by the fact that grapes for fresh use are likely to be treated with iprodione more frequently and later in the growing season than grapes intended for raisins. If diversion occurs late in the grape season, residues in raisins produced from diverted fresh market grapes could be significantly higher than in raisins from grapes grown for raisin production. In years with heavy early rainfall, when natural drying is not possible, fresh market grapes may be diverted into golden raisin production (oven-dried) after iprodione application. The potentially higher risk posed by raisins diverted from fresh/wine/juice grape production reinforces EPA's belief that complete market segregation is essential.

In its policy statement of June 14, 1995 (61 FR 31300), EPA discussed the possibility that market segregation could be used to determine that a 409 tolerance would not be needed. EPA said that it believed that total market segregation would be difficult to achieve. The information available to EPA on grapes/raisins illustrates this difficulty. Without a clear demonstration that market segregation can be achieved and monitored, EPA cannot conclude that a labeling prohibition premised on market segregation would be an effective means of ensuring that iprodione treated grapes are not used for raisins.

Rhone-Poulenc contends that contractual arrangements govern the purchase of grapes for raisins and that limitations on iprodione use on such grapes can therefore be enforced by raisin processors. Even if true, and the petition provided no information to support this assertion, contracts for raisin production would not affect the production of, or pesticides used on, grapes grown for other uses. Contracts between raisin processors and growers obligate the grower to sell his grapes to a particular buyer, but may not necessarily be brought to bear on a grower of fresh market grapes who sells his crop to a non-contracted raisin processor.

In its June 1995 policy statement, EPA discussed the possibility that processing industry practices could be taken into account in determining the likelihood of residues in processed food. One of the criteria that EPA would need to consider is whether residue levels in the raw food (grapes) could be adequately monitored by the processing industry such that EPA could be assured that there is no reasonable expectation of residues in raisins. EPA has no information on the residue monitoring practices of the raisin industry, and therefore cannot evaluate whether grapes bearing iprodione residues could be adequately detected.

For the same reasons, Rhone-Poulenc's proposed education/information and labeling proposals, and existing systems for tracking, authorizing and reporting pesticide use do not alleviate EPA's concerns. All of these activities focus on ensuring that iprodione is not used on grapes initially intended for raisins, but do not address the possibility that grapes grown for fresh or wine/juice use (which may also be Thompson seedless variety) may be diverted. By the time a decision is made to divert grapes into raisin processing, iprodione may have already been applied several times. Systems for tracking pesticide use do not prevent a grower from selling grapes unusable for the fresh market to a raisin processor directly. Other grapes may be sold to an intermediary, who purchases cull grapes or ''strippings'' and funnels the grapes into whichever processing stream offers the greatest return (wine/juice or raisins). In this latter case, the grape grower may not know the destination of his grapes, and the intermediary may not know whether iprodione has been applied to the grapes.

In sum, EPA believes that complete market segregation is needed, and is not persuaded on the basis of the available information that market segregation of grapes can be achieved. EPA therefore denies the Rhone-Poulenc petition with respect to raisins. Because raisins are a processed RTE food under EPA's interpretation, a 409 tolerance is needed.

E. Triadimefon on Milled Fractions of Wheat (Wheat Bran)

The current 408 tolerance for triadimefon on wheat grain is 1 ppm (40 CFR 180.410) and the 409 tolerance for milled fractions of wheat, except flour, is 4.0 ppm (40 CFR 185.800). Evaluation of new residue data indicates that the 408 tolerance should be reduced to 0.2 ppm. Based on the HAFT of 0.14 ppm for the wheat grain and an average CF of 3.7 in wheat bran, the expected residue in wheat bran is calculated as 0.52 ppm. (The HAFT multiplied by the CF is 0.14 ppm $\times$ 3.7 = 0.52 ppm.) Therefore, EPA believes that it is likely that some wheat bran will contain residues exceeding an adjusted RAC tolerance at 0.2 ppm. Milled fraction wheat bran is a processed RTE food and needs a 409 tolerance.

F. Triadimefon on Milled Fractions of Barley (Barley Bran)

The current 408 tolerance for triadimefon on barley grain is 1 ppm (40 CFR 180.410) and the 409 tolerance for milled fractions of barley (except flour) is 4.0 ppm (40 CFR 185.800). This use is no longer registered and the 409 tolerance is no longer needed. On June 19, 1996, EPA published a notice (61 FR 31081)(FRL–5379–7) proposing to revoke the 408 tolerance for triadimefon on barley grain, forage and straw and the 409 tolerance on milled fractions of barley because they are not needed.

In its notice of June 19, 1996, EPA proposed to make the triadimefon revocations effective as of May 23, 1997. However, the registration was cancelled in August 1993, effective November 1993, with provision for sale and distribution of existing stocks of triadimefon labeled for use on barley until May 1995. More than a year has passed since the last product bearing the barley use could be sold and distributed. EPA now believes that this year is sufficient time for barley treated with triadimefon to have cleared channels of trade. Since no comments were received indicating that triadimefon is still being used on barley, EPA is revoking the various barley tolerances on the same day as the other revocations in this notice (effective 60 days after publication in the Federal Register). EPA believes that since the cancellations were at the request of the registrant in August 1993, it is unlikely that significant amounts of triadimefon were being used on barley even then. Therefore, this earlier revocation should not result in economic impacts from loss of use or adulterated barley.

V. Do Needed Processed Food Tolerances Violate the Delaney Clause?

EPA has determined that 409 tolerances are needed for acephate/food handling establishments, iprodione/raisins and triadimefon/wheat bran. And although EPA has determined that a 409 tolerance is not needed for iprodione/dried ginseng because dried ginseng is a RAC as explained in Unit IV.C. of this document, EPA has chosen not to revoke the current 409 tolerance on that ground.

If a 409 tolerance is needed to prevent adulterated food, EPA must determine whether the tolerance is permitted under the Delaney clause, i.e., whether the pesticide induces cancer within the meaning of the Delaney clause. In its January 18 proposal, EPA proposed to determine that acephate, iprodione, imazalil and triadimefon ''induce cancer'' within the meaning of the Delaney clause. Copies of EPA's reviews of each chemical and other references in this document are available in OPP docket 300360.

In construing the ''induce cancer'' standard as to animals, EPA follows a weight-of-the-evidence approach. In regard to animal carcinogenicity, EPA, in general, interprets ''induces cancer'' to mean:

> The carcinogenicity of a substance in animals is established when administration in an adequately designed and conducted study or studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, benign or a combination of benign and malignant) neoplasms in treated animals compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological significance of the observed responses, but a conclusion on carcinogenicity is not determined on the basis of statistics alone. Under this approach, a substance may be found to ''induce cancer'' in animals despite the fact that increased tumor incidence occurs only at high doses, or that only benign tumors occur, and despite negative results in other animal feeding studies. (See 58 FR 37863, July 14, 1993, 53 FR 41108, October 19, 1988, and 52 FR 49577, December 31, 1987.)

EPA has considered the comments submitted on the proposed rule, and has applied this interpretation to the 3 pesticides that need 409 tolerances.

Based on this analysis, EPA concludes that acephate, iprodione, and triadimefon induce cancer within the meaning of the Delaney clause. Because EPA has determined that the 409 tolerance for imazalil in citrus oil should be revoked on grounds other than the Delaney clause, the Agency is not issuing a final finding that imazalil induces cancer within the meaning of the Delaney clause.

VI. Revocations

A. Processed Food Tolerances That Are Not Needed

Imazalil/citrus oil. EPA is revoking the 409 tolerance for imazalil in citrus oil (40 CFR 185.3650). EPA is revoking this tolerance because the Agency has determined that it is not needed to prevent adulterated food. As discussed in Unit IV.B. of this document, EPA is revoking this 409 tolerance because citrus oil is not a processed RTE food, and residues in RTE foods are not likely to exceed the 408 tolerance for citrus.

Triadimefon/milled fractions of barley. EPA is revoking the 409 tolerance for triadimefon in or on milled fractions of barley (except flour) (40 CFR 185.800). As discussed in Unit IV.F. of this document, EPA is revoking this tolerance because the use is no longer registered. For the same reason, EPA is revoking the 408 tolerances for triadimefon on barley grain, straw and green forage.

B. Processed Food Tolerances That Violate the Delaney Clause

Acephate/food handling establishments. EPA is revoking the 409 tolerance for acephate in food-handling establishments (40 CFR 185.100). EPA is revoking this tolerance because the Agency has determined that acephate induces cancer in animals. Thus, the 409 tolerance violates the Delaney clause.

Iprodione/dried ginseng. EPA is revoking the 409 tolerance for iprodione in dried ginseng (40 CFR 185.3750). As discussed in Unit IV.C of this document, although EPA has determined that dried ginseng is a RAC, EPA has chosen to revoke the 409 tolerance because iprodione induces cancer in animals. Thus the 409 tolerance violates the Delaney clause.

Iprodione/raisins. EPA is revoking the 409 tolerance for iprodione in raisins (40 CFR 185.3750). EPA is revoking this tolerance because the Agency has determined that iprodione induces cancer in animals. Thus, the 409 tolerance violates the Delaney clause.

Triadimefon/milled fractions of wheat. EPA is revoking the 409 tolerance for triadimefon in or on milled fractions of wheat (except flour)(40 CFR 185.800). EPA is revoking this tolerance because the Agency has determined that triadimefon induces cancer in animals. Thus, the 409 tolerance violates the Delaney clause.

VII. General Comments Common to All Proposed Revocations

Because EPA's proposed revocation of these 409 tolerances was published prior to EPA's issuance of its modified tolerance-setting policies, a number of comments were received urging EPA to reconsider many of those tolerance setting policies, including the coordination, concentration, RTE and RAC policies. EPA has now adopted these policies. EPA presumes that the comments pertaining to the concentration, RTE, RAC and coordination policies were based on EPA's previous policies, and not to its revised policies. Because these comments were all previously raised in response to the petition submitted by the National Food Processors' Association, EPA believes that it has adequately addressed the comments in EPA's previous notices, and so has not addressed them again in this document. Readers should refer to EPA's policy statements of June 14, 1995 (60 FR 31300) and January 25, 1996 (61 FR 2378, 2386) for a full discussion of the issues.

Comment. Bayer, Valent, Rhone-Poulenc, and ACPA raised comments that had previously been raised in response to EPA's proposed revocation of 26 section 409 FARs, on the grounds that they violate the Delaney Clause. (59 FR 33941, July 1, 1994). Many of the comments suggested that EPA has incorrectly applied the legal standard ''induce cancer'' because EPA failed to duplicate prior FDA practice. The commenters contend that EPA's application of the standard was not sufficiently thorough and that EPA had failed to consider relevant evidence of biologic and mechanistic data, and the relevance of the results of animal studies to humans. The commenters also assert that EPA failed to take account of the fact that an ''induce cancer'' finding is appropriate only where the evidence is ''conclusive'', and that this high standard cannot be met, by definition, where EPA has classified a chemical as a Group C carcinogen. A Group C carcinogen is one for which the evidence of carcinogenicity is based on limited animal evidence that is normally judged to represent insufficient evidence to support the determination that a chemical is known to cause or can reasonably be anticipated to cause cancer in humans.

EPA response. EPA has previously responded at length to the issues raised by the commenters. Rather than repeat the arguments and EPA's response

verbatim, a summary of EPA's response follows. Readers should refer to EPA's March 22, 1996, Final Revocation of Pesticide Food Additive Regulations for a complete discussion of the issues. (61 FR 11994, and 12000–12002, March 22, 1996).

EPA believes its application of the ''induce cancer'' standard and the weight of the evidence approach has sufficiently addressed all relevant evidence. Where commenters have raised questions concerning how specific data were considered for specific chemicals, EPA has in this notice or in the docket responded to those comments.

EPA does not believe that it is required to conclude that the carcinogenicity found in the animal studies is relevant to humans, in order to conclude that the Delaney clause applies. Once a finding of animal carcinogenicity is made the operation of the Delaney clause is ''automatic.'' *Public Citizen v. Young*, 831 F.2d 1108, 1121 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988). The D.C. Circuit has previously concluded that the Delaney clause indicates that ''Congress did not intend the FDA to be able to take a finding that a substance causes only trivial risk in humans and work back from that to a finding that the substance does not 'induce cancer in . . . animals.'' *Id*. Similarly, EPA may not work back from a conclusion that the results of an animal study are irrelevant to humans to a finding that the substance does not induce cancer in animals. *Id*.

EPA believes that mechanistic and biologic information may be relevant to the Delaney clause determination on animal carcinogenicity to the extent such information bears on the question of whether a substance induces cancer in the test animal. Some mechanistic and biologic information may have particular relevance to the issue of causation. However, having said that, EPA recognizes that proper evaluation under the Delaney clause of mechanistic and biologic information poses difficult questions. EPA does not believe that EPA or FDA has ever squarely decided this legal question in taking final action on a substance under the Delaney clause. Nor does EPA believe that question needs to be addressed in this notice. Although secondary mechanism arguments have been raised as to several of the pesticides at issue in this notice, as discussed below, EPA has decided either as a factual matter those arguments are not adequately supported or that there exists other evidence showing cancer induction independent from any cancer produced through a secondary mechanism.

EPA also disagrees that section 409 and FDA precedent hold EPA to an unusually high standard to support a finding that a substance induces cancer for purposes of the Delaney clause. Neither the statute nor FDA precedent support using any other than the general administrative standard of proof which is generally described as a preponderance of the evidence. The relevant words of the statute bar the establishment of a regulation for a food additive ''found to induce cancer when ingested by man or animal . . .'' The plain language of the statute certainly does not impose some extraordinary level of proof.

Comment. Valent and Bayer argue that ''Congress, the courts and FDA—the agency that has administered the clause the longest and most often—have all recognized that the [Delaney] Clause simply does not apply when the results of animal studies create merely the suggestion that a substance induces cancer.'' The commenters argue that the studies upon which EPA relied to make its determination that triadimefon and acephate induce cancer in animals are so seriously flawed that they merely ''suggest'' the induction of cancer. The commenters further argue that the General Food Safety clause in section 409 would instead apply, and cites the legislative history of section 409 and FDA's decision regarding the artificial sweetener cyclamate as support.

EPA Response. The commenters' argument is premised on the assertion that the Delaney clause imposes an unusually high burden of proof. As noted above, EPA disagrees with this assertion.

EPA also disagrees with the commenters' assertion that the studies on which EPA based on its finding of animal carcinogenicity create merely the suggestion that triadimefon and acephate induce cancer in animals. EPA believes that the studies provide positive evidence to support the finding that the pesticides induce cancer in animals.

However, if the commenters are correct that the data are fatally flawed, then EPA lacks the data to demonstrate that acephate and triadimefon are ''safe'' for purposes of either the general safety clause or the Delaney clause. Since the FFDCA places the burden of demonstrating the safety of the product on the proponent of the 409 tolerance, the lack of reliable data to support the tolerance would still result in revocation of the 409 tolerance under either clause.

Comment. Bayer commented that EPA has denied them procedural due process by proposing to revoke the 409 tolerance without simultaneously proposing to revoke the corresponding 408 tolerances and to cancel the corresponding pesticide use under FIFRA sec. 6. Bayer asserts that, as a result of EPA's coordination policy, revoking a section 409 on Delaney grounds is tantamount to a de facto revocation of the 408 tolerance and cancellation of the use under FIFRA, and that EPA has failed to make the requisite findings and to comply with the procedural requirements necessary to complete such actions.

EPA response. EPA disagrees that revoking a 409 tolerance is tantamount to a de facto revocation of the underlying 408 tolerance and to cancellation of the use. The revocation of a 409 tolerance does not, in itself, affect the status of a 408 tolerance or a pesticide registration. Nor does the revocation of a 409 tolerance have the effect of revoking the 408 or cancelling the registration. Revocation of a pesticide's 409 tolerance does not prevent raw food with residues of the pesticide from travelling in commerce, nor does it prohibit farmers from using the pesticide on a particular crop.

Moreover, it is not clear that revocation of a 409 tolerance would necessarily have an effect on the processed commodity. A 409 tolerance allows processed ready-to-eat food to travel within commerce when pesticide residues exceed the levels permitted by a 408 tolerance. If residues remain within the levels permitted by the 408 tolerance, processed food may legally continue to travel in commerce under the flow-through provision of section 402(a)(2), regardless of whether a 409 tolerance exists. Until EPA finally revokes the 408 tolerance or cancels use on wheat, conceivably no impact may be felt from revocation of the 409 tolerance.

With regard to triadimefon, it is unclear that revocation of the 409 tolerance would have any impact. Bayer asserted that triadimefon residues in wheat bran fall within the 408 tolerance, and that no triadimefon residues were found in routine FDA monitoring the processed food; if that is accurate, then revocation of the 409 tolerance should have no effect on the current status of wheat bran.

EPA has complied with all of the procedural requirements of the FFDCA in revoking the 409 tolerance and in proposing to revoke the 408 tolerance for triadimefon on wheat. See 61 FR 8174 (March 1, 1996)(FRL–5351–6). Further, EPA has clearly stated its policy on coordination between FIFRA and the FFDCA (January 25, 1996, 61 FR 2378). Congress has charged EPA with

administering two statutes with different procedural schemes. As discussed in EPA's coordination policy, EPA has taken an approach which harmonizes the two statutory standards to the extent possible. FIFRA does not require EPA to take action under FIFRA before acting under the FFDCA. Nor does EPA believe that the rulemaking procedures in the FFDCA violate Constitutional due process.

Comment. Bayer also commented that EPA would bear the burden of proof in any hearing under sections 409 or 408 of the FFDCA or under section 6 of FIFRA. To support this, the commenter cited *Director, Office of Workers' Compensation Programs, Department of Labor v. Greenwich Collieries*, 114 S Ct 2251 (1994). According to the commenters:

> Section 7(c) of the APA is controlling in food additive hearings, as the FFDCA is silent with regard to the burden of proof and other procedural issues, and exemptions to the APA are not lightly presumed. As such, the holding in *Greenwich Collieries* applies with equal force and effect to hearings held by EPA under section 409(f)(1) of the FFDCA. As the proponent of the revocation action, the agency bears the burden of persuasion and cannot shift that burden to Bayer or any other party objecting to the revocation action. EPA's procedural rule, 40 CFR 179.91, which provides for a contrary result is implicitly overruled by the holding in Greenwich Collieries.... Indeed, the holding in *Greenwich Collieries*, supra, applies with equal force and effect to hearings held pursuant to FFDCA section 408 and FIFRA section 6. EPA's procedural rules 40 CFR 164.80 and 179.91, and case law which provide for a contrary result are implicitly overruled. (Bayer Comments, 46–48)

EPA response. EPA disagrees that section 7(c) of the Administrative Procedures Act (APA) governs the allocation of the burden of proof in food additive hearings. EPA believes that both the FFDCA and FIFRA clearly allocate the burden of persuasion to the proponent of the registration or the tolerance. Consequently, EPA also disagrees that the holding in *Greenwich Collieries* has implicitly shifted the ultimate burdens of proof and persuasion in a hearing under either the FFDCA or FIFRA, from the proponents of a tolerance or a registration.

The Supreme Court did not consider the FFDCA, FIFRA, or EPA's regulations allocating the burden of proof in *Greenwich Collieries*. The court only examined the question of whether section 7(c) of the APA, in providing that the proponent of a rule or order has the burden of proof, has allocated to the proponent merely the burden of going forward or whether it has also allocated to the proponent the burden of persuasion. The court also considered whether section 7(c)'s allocation of the burden of proof applies to adjudications under the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Black Lung Benefits Act (BLBA). The Court held that section 7(c) did allocate both the burdens of production and persuasion, and that section 7(c)'s allocation applied to both the LHWCA and the BLBA finding that both statutes explicitly incorporated section 7(c) of the APA.

Section 7(c) of the APA provides that ''[e]xcept as otherwise required by statute, the proponent of a rule or order has the burden of proof.'' As both statutes place the burden squarely on the proponent of registration and of permitting pesticide residues, of demonstrating that the pesticide product and its residues meet the statutory standards, both the FFDCA and FIFRA fall within the exception specified in section 7(c).

The legislative histories of both statutes clearly demonstrate that Congress intended to place the burden of demonstrating the safety of the product on the proponents of a registration or a tolerance. *e.g.*, H.R. Rep. No. 1125, 88th Cong., 1st Sess., 2 (1964); H.R. Rep. No. 1385, 83d Cong., 2d Sess., 5 (1954); S. Rep. No. 1635, 83d Cong., 2d Sess., 4 (1954). Case law also supports EPA's interpretation that section 7(c) of the APA does not apply to FIFRA or the FFDCA. e.g., *Environmental Defense Fund v. EPA*, 548 F.2d 1012, 1015 (D.C. Cir. 1976)(Supplemental Opinion on Petition for Rehearing)(''We hold that in light of the legislative history of FIFRA, and the numerous cases holding that its 1964 amendment was specifically intended to shift the burden of proof from the Secretary to the registrant, this case is one where the allocation of the burden of proof is, in the language of the APA, 'otherwise provided by statute.''); *Environmental Defense Fund v. U.S. Dept. of Health Education and Welfare*, 428 F.2d 1083,1087, 1092, n.27 (''In light of Congress' strong concern about the safety of pesticide residues and the congressional intent to place the burden of persuasion on those proposing to permit a residue to remain, the fact that the present petition seeks revocation of an existing tolerance does not affect the burden of persuasion established by Congress.... Once new evidence bearing on the safety of pesticide residues has been adduced or cited sufficient to justify reopening the validity of existing tolerances, as in the present case, the burden of establishing the safety of any tolerances remains on those who seek to permit a residue.'').

Comment. Valent and Bayer assert that EPA has failed to conduct a weight of the evidence review of their chemicals, but is merely relying on the classification of acephate and triadimefon as ''C'' carcinogens, which fails to meet the ''high degree of certainty necessary to conclude that a chemical induces cancer within the meaning of the Delaney clause, and is inconsistent with EPA's previous acknowledgment that a Group C classification doesn't equate to a finding that a chemical is either an animal carcinogen or induces cancer under the Delaney clause. To support the statement that EPA's assessment is inconsistent with previous statements, the commenters cite to EPA's policy statement, Regulation of Pesticides in Food: Addressing the Delaney Paradox (53 FR 41104, October 19, 1988) and the final rule revoking the 409 tolerance for dicofol (59 FR 10994, March 9, 1994).

EPA response. EPA's determination that triadimefon and acephate induce cancer is based on a weight-of-the-evidence review of all available studies for triadimefon and acephate, not merely on the fact that EPA had previously classified the chemicals as Group C carcinogens. And as noted above, EPA does not agree that the Delaney clause imposes a burden of certainty on the Agency greater than a preponderance of evidence.

Moreover, the commenter's use of the two notices to support its assertion is misleading. As EPA acknowledged in the dicofol revocation cited by the commenter, EPA believes that the language from the 1988 Delaney policy statement referred to by the commenter has only limited relevance to current decisions because that notice dealt primarily with whether certain types of pesticides in Group C would come within a de minimis exception to the Delaney clause. EPA continues to believe, as acknowledged in the dicofol revocation notice referred to by the commenters, that it is necessary to carefully examine pesticides classified in Group C according to the Cancer Assessment Guidelines to determine whether they meet the Delaney clause's induce cancer standard, which is exactly what EPA has done in concluding that triadimefon and acephate induce cancer.

Comment. Bayer and Valent assert that the proposed classifications of triadimefon and acephate are inconsistent with previous EPA actions, and are therefore, legally insupportable. The commenters point to more recent reviews by EPA of pesticides with ''comparable data'' that have classified those compounds as Group D

carcinogens, or that have ''otherwise resolved concerns.'' Specifically, the commenters cite EPA's decisions to establish tolerances for primisulfuron-methyl (55 FR 21547, May 25, 1990), hexazinone (55 FR 15104, March 22, 1995)(FRL–4935–1), quizalofop-p ethyl ester (57 FR 24553, June 10 1992) and bromoxynil (60 FR 16111, March 29, 1995)(FRL–4944–7).

EPA Response. The focus of both Bayer's and Valent's comments appears to be that EPA has been inconsistent in how it classifies pesticides with ''comparable'' data as carcinogens. Bayer suggests that were triadimefon to be evaluated in the same manner as pesticides with comparable data, or against current scientific standards, it would be classified as a Group D (insufficient data to classify) rather than as a Group C carcinogen. Bayer did not elaborate on what study observations or Agency determinations for the cited pesticides it considered ''comparable.'' However, its citations are presumably intended to bolster its point.

Valent, in similar but more extensive comments, detailed the Agency's findings on mouse liver tumors observed for quizalofop-ethyl, primisulfuron-methyl and hexazinone (bromoxynil was not mentioned in Valent's comment). Valent raised points concerning the type of tumors (malignant/benign), the dose levels at which tumors were observed (the MTD was exceeded), the historical incidence of liver tumors in mice, the statistical significance of the findings (trends versus pairwise comparisons), and other specific factors that it believes illustrate EPA's lack of consistency in its cancer classifications.

As a scientific matter, a weight-of-the-evidence approach to determining the classification of a carcinogen is inherently inexact. A number of factors must be considered, including all those mentioned by Valent, and these factors weighed against each other. Thus, even with apparently comparable data, under a weight-of-the-evidence approach, it is scientifically valid and even to be expected that EPA should arrive at different conclusions that lead to different cancer classifications. EPA's cancer peer review documents explain the relevance of each factor in EPA's classification decision.

However, the finding that a pesticide ''induces cancer in man or animals'' within the meaning of the Delaney clause is more straightforward and less scientifically onerous, since it requires only a finding of carcinogenicity in animals. Since cancer studies are conducted using animals, the data can directly demonstrate whether a pesticide does or does not result in cancer in animals. The cancer classification system used by EPA since 1986, on the other hand, focusses on cancer risk to humans. It is entirely possible that EPA could determine that a pesticide classified as a Group D carcinogen (insufficient data for humans) meets the ''induce cancer'' standard for animals. Under the Delaney clause, this is all that is required.

Accordingly, EPA disagrees with comments purporting to find flaws in EPA's ''induce cancer'' determination based on perceived inconsistencies in cancer classification for humans or comparability of cancer profiles within the classification system. Notwithstanding differences in classification among acephate, triadimefon and other chemicals apparently similarly situated, a preponderance of the evidence demonstrates that both triadimefon and acephate induce cancer in animals.

In the case of triadimefon and acephate, however, EPA classified those chemicals as C carcinogens based upon stronger evidence of carcinogenicity than was found with the four pesticides cited by Valent and Bayer as having comparable cancer profiles but which were classified only as Group D carcinogens. For both acephate and triadimefon, liver tumors were observed in a pairwise manner at dosages that were not determined to be excessive. In the case of acephate, the tumors were heavily malignant in female mice. In the case of triadimefon, although only benign adenomas were seen, they were found in a pairwise comparison in both sexes at doses clearly under the MTD.

In each of the other cases, either the tumors were observed only at excessive doses (primisulfuron-methyl and quizalofop-ethyl) or showed only a trend for liver tumors that was not statistically significant upon pairwise comparison (hexazinone). A trend for expression of tumors is a less significant finding than a pairwise comparison and would not in itself normally lead to a positive cancer classification. Although Bayer claims that EPA had determined that bromoxynil is a Group D carcinogen, EPA has always classified bromoxynil as a Group C carcinogen. The FIFRA Scientific Advisory Panel recommended a Group D classification, which EPA did not adopt.

Comment. Bayer also argued that EPA has applied a ''shifting definition of what it means to 'induce cancer' for purposes of the Delaney clause,'' citing the final regulation revoking 409 tolerances for benomyl, mancozeb, phosmet and trifluralin (58 FR 37863, July 14, 1993), the proposed revocation for several 409 tolerances found to be inconsistent with the Delaney clause (59 FR 33942, July 1, 1994), and the proposed revocation for triadimefon (60 FR 3608, January 18, 1995).

EPA response. It is true that the definition of ''induce cancer'' in the first two notices referred to by the commenter do not include, as cancer, the class in which only benign neoplasms occur. However, EPA disagrees that this is a substantive change to its interpretation of ''induce cancer.'' EPA's interpretation is supported by the court in *California v. Browner*, which agreed that the change was not substantive. No.Civ. S–89–0752, slip op. at 5 (E.D. Cal. Feb. 1995)

VIII. Comments Related to Specific Pesticides

A. Acephate

Comment. Valent contended that acephate does not induce cancer because the MTD was exceeded in the mouse study, and that testing at lower dose levels which showed no evidence of carcinogenicity should be used. Valent also proposes a secondary mechanism for carcinogenesis of acephate, based on upon a theory that acephate at high doses alters the homeostasis of female mice such that they are phenotypically similar to male mice in their expression of liver tumors.

EPA Response. EPA believes that the high dose used in the study represents an MTD that was well-tolerated by the test animals. Moreover, the toxicity seen at the high dose level does not alter the finding of malignant liver carcinomas at that dose. With respect to the hypothesis that acephate causes female mice to respond as if they were male mice, Valent provided little support for this hypothesis. Moreover, it is uncertain that this hypothesis has been peer reviewed or found acceptance in the scientific community. In the absence of any data to support its contentions, EPA believes that the acephate induces cancer in animals.

Comment. Valent also raised a number of points concerning the individual mutagenicity studies for acephate, suggesting that they are flawed by today's scientific standards, and thus do not support an induce cancer determination.

EPA Response. Although individually, Valent's points may have merit, the mutagenicity data base is considered in its entirety and only in a supporting capacity to a determination of carcinogenicity. That is, while positive evidence of genotoxicity may support a weight of evidence finding that a pesticide is carcinogenic, the lack

of a complete mutagenicity data base, or deficiencies or negative results in individual mutagenicity studies, do not negate positive cancer findings in other studies. Acephate's mutagenicity studies, while perhaps less than optimal by today's standards as noted by Valent, overall showed consistently positive responses in in vitro studies, and in any case do not negate the clear finding that acephate induces cancer in animals.

Comment. Valent argued that the 409 tolerance for acephate is not needed, for several reasons. Valent argues that EPA improperly requires a 409 tolerance for every use in a food handling establishment without regard to whether residues actually occur. They further state that use of acephate does not result in finite residues, that no finite residues have ever been found, and that EPA's establishment of the 409 tolerance at the level of quantification implicitly recognizes that no residues are expected to be present. Finally Valent states that, since the 409 tolerance is not needed, the use of acephate need not be cancelled, and that it is in the public interest to retain the use.

EPA Response. Contrary to Valent's assertion, EPA does not ''automatically'' require a food additive tolerance for all pesticides used in food handling establishments. EPA considers the nature of the pesticide and how it is applied in determining whether residues are likely to result in food, and therefore that a 409 tolerance is needed. For example, an insecticidal bait enclosed in a ''bait station'' would normally not require a 409 tolerance because the use is not likely to result in residues in food. Bait station uses in which the pesticide is contained are, however, a far cry from typical food handling establishment insecticide applications, which are applied in an relatively uncontained manner through sprays and dusts. While a crack and crevice treatment (such as that for acephate) may be less likely to result in residues in food than a broad general treatment, EPA believes that there is sufficient likelihood that residues may occur from crack and crevice treatments that the pesticide is a food additive for which a 409 tolerance will normally be needed.

Valent goes on to assert that ''no detectable residues have ever been found'' in food, and would not be expected to result from its use pattern. Valent cited in support of its contention a 1981 study in which acephate was applied at twice the maximum label rate, and residues were not found above the limit of detection.

However, in this study, residues were found in some samples at close to the detection limit. At an application rate of 1 percent active ingredient, residues were found in lettuce at 0.02 ppm and in cheese at 0.009 ppm, at or close to the limit of detection of 0.01 ppm. At 2X rates, quantifiable residues were found in lettuce (0.034 ppm), meat (0.016 ppm), bread (0.023 ppm) and apple juice (0.011 ppm), all above the limit of detection. Thus at a 2X rate, finite residues at or above the level of detection can be expected. Valent's study clearly demonstrates that quantifiable residues can result in at least some foods at label rates. It is difficult to argue that these data demonstrate that residues are not likely to be present.

For several reasons, EPA believes that it needs a demonstration of no residues using highly exaggerated rates (considerably higher than 2X) to be persuaded that there is no reasonable expectation of residues in food such that a 409 tolerance is not needed. First, food handling establishments cover a wide range of operations, from processing facilities such as bakeries, canneries and dairies, to restaurants and grocery stores. Thus the circumstances under which food might be exposed to the pesticide may vary considerably in a manner that is difficult to capture in a single residue study. Second, EPA requires residue studies using a representative but relatively limited set of foods, which is necessary given the number and variety of foods that may be present in a food handling establishment and the impracticality of determining residues for all foods individually.

Valent cites its label instructions and admonitions as further support of their contention that the use pattern would not be expected to lead to residues in food. Even within the permissible label instructions, however, the actual application of the pesticide may vary. Applicators may mix and apply the pesticide differently, using application equipment and techniques that lend themselves to higher amounts of actual pesticide deposited. Moreover, the applicator's ability to physically control the application so as to comply with label admonitions about food and surface contact may be highly variable. While label instructions and warnings if followed will minimize the possibility that the pesticide will contact food or food surfaces, they still allow considerable judgment and skill on the part of the applicator. The applicator cannot know the extent to which he has been successful in his efforts to ''avoid contamination of food'' or to ''use care to avoid depositing the material onto exposed surfaces or introducing the material into the air.'' EPA cannot rely on the fact of label instructions as assurance of success in precluding residues in food, particularly in light of data that demonstrate actual residues in food from application according to label instructions.

Moveover, the presence of residues from a particular application is not totally dependent on how well the applicator can comply with label instructions. Factors unrelated to the application itself, and therefore unrelated to label instructions, may contribute equally to residues in food. Environmental factors such as temperature, humidity, and ventilation, and product characteristics such as volatility cannot be controlled by the applicator. Therefore, label instructions alone are not sufficient proof that residues will not result from application.

EPA categorically rejects Valent's claim that EPA's use of the level of quantitation as the numerical tolerance level implies that EPA believes that there is no reasonable expectation of residues from use of acephate in food handling establishments. EPA has never so stated. Moreover, the data cited by Valent in its comments indicate that residues close to the detection limit of the analytical method are possible under actual use conditions. The Agency believes it is appropriate in these circumstances to set numerical tolerance limits, especially considering the potential variability in foods, exposures, and application that may result in quantifiable residues. Accordingly, tolerances are established at the limit of quantitation of the analytical method. This is a logical approach to the regulation of residues generally in food handling establishments, and cannot be read as supporting any EPA belief that residues are unlikely to occur.

Finally, since EPA believes that use of acephate requires a 409 tolerance which is not permitted under the Delaney clause, arguments concerning public health considerations or the benefits of use are not relevant to EPA's decision to revoke the FAR for acephate. The Delaney clause does not permit such considerations.

B. Triadimefon

Comment. Bayer comments that a 409 tolerance on milled fractions of wheat is unnecessary, because milled fractions of wheat are not ready-to-eat.

EPA response: EPA considers that milled fractions of wheat, or wheat bran, are ready-to-eat human food, as EPA noted in its notice proposing to revoke

the 408 tolerance for wheat (61 FR 8189, March 1, 1996).

Comment. Bayer argues that the residues of triadimefon do not concentrate above the 408 tolerance, and thus EPA should revoke the 409 tolerance on the grounds that it is unnecessary. Bayer asserts that EPA based its determination that a 409 tolerance for triadimefon was necessary on processing studies that do not reflect the current label of the registered pesticide product, and that EPA has failed to consider the degree to which triadimefon residues are further diluted by mixing and blending with untreated wheat, and by further dissipation of residues during the time the food leaves the processor until it reaches the supermarket shelf.

To prove that residues in wheat bran do not exceed the 408 tolerance, Bayer relies on ''extensive monitoring data'' conducted by industry and FDA to support its argument, and points generally to 27 FDA market basket surveys and samples collected under FDA's regulatory monitoring program. More specifically, Bayer asserts that as part of its routine monitoring, FDA tested 86 samples of whole grain wheat and 178 various food forms of wheat for levels of triadimefon between the years of 1985–1992. None of the 264 samples contained residues of triadimefon above the analytical limit of quantification. Bayer asserts that these data are ''slanted towards high residue situations'' and thus are ''worst case surveillance conditions.''

Finally, Bayer argues that EPA is legally required by the language of the flow-through provision and the statutory definition of a food additive to determine whether a 409 tolerance is needed based on the measured residues on the actual commodities and not on theoretical calculations that do not reflect actual use practices or label requirements. All of the commenters raised some variant of this argument in their comments. According to Bayer, the definition of a food additive requires that the intended use of a substance must actually result in, or reasonably be expected to result in, directly or indirectly, the substance becoming a component of food. Based on the current label for triadimefon and based on the likelihood of additional dilution and degradation of residues from current processing methods, Bayer asserts that EPA can have no reasonable expectation that triadimefon residues will be present in processed foods at levels above the 408 tolerance.

EPA Response. EPA disagrees with the commenter's assertion that EPA improperly failed to consider several factors that could result in significantly diluted residues in wheat bran and that EPA improperly relied on studies that do not reflect current triadimefon use practices. EPA based its determination that triadimefon residues in wheat bran were likely to exceed the 408 tolerance on processing studies demonstrating that triadimefon residues were present at higher levels in wheat bran than in wheat.

EPA has considered that triadimefon residues will be diluted by mixing and blending of treated wheat. In accordance with the policy discussed in its June 1995 policy statement (60 FR 31305, June 14, 1995), EPA compared the highest average residue values from field trials times the concentration factor to the 408 tolerance, and determined that residues in wheat bran would likely exceed the 408 tolerance. As EPA noted above, the average concentration factor in the processing of milled fractions of wheat is 3.7 and the HAFT for triadimefon on wheat is 0.14 ppm. Because multiplying the average concentration factor by the HAFT exceeds the adjusted section 408 tolerance for triadimefon on wheat (0.2 ppm), EPA believes that it is likely that some milled fractions will contain residues exceeding the 408 tolerance.

It is true that EPA did not consider the extent to which farmers may be applying triadimefon at lower rates, or the extent to which wheat bran containing triadimefon residues is mixed with wheat containing no residues, but for the reasons discussed at 60 FR 31302–31306, EPA has determined that such considerations would be inappropriate. It is also true that EPA did not consider further degradation of residues during the time the food leaves the processor until the moment it is actually eaten, but it is not apparent how EPA could take this into account, other than to the extent the effects of degradation are captured in the processing study. In any event, if wheat bran at one stage of its production and marketing has residues that exceed the 408 tolerance, it is no defense to a charge of adulteration that at some later time in the production and marketing scheme residues will be below the 408 tolerance. EPA has also previously discussed the rationale for this decision at length in 60 FR 31305.

Further, EPA does not conduct studies to support the registration or tolerance for a particular pesticide. FIFRA and the FFDCA clearly place that responsibility on the manufacturer seeking to register or to establish a tolerance for a pesticide product. To the extent that EPA is relying on data that Bayer believes no longer reflects actual conditions of triadimefon use, it is Bayer's responsibility to submit new processing studies that accurately reflect whether triadimefon is likely to concentrate above the 408 tolerance. Under the statutory scheme, which requires EPA to rely on data conducted by manufacturers to determine whether a tolerance level is safe, EPA is legally justified in basing its regulatory decisions on the data presented to it. Should Bayer submit new processing studies EPA will consider the data, as appropriate.

As EPA has previously noted at 60 FR 31305–31306, the Agency bases its concentration determinations primarily on whether processing studies show that the processing of a commodity results in a level of residues in the processed food which is greater than the level of residues in the raw food. However, EPA has acknowledged that it would consider data from marketplace studies and FDA monitoring, where circumstances permit. The relevance of marketplace studies, however, would depend on how the marketplace study was conducted. For example, the principal reason marketplace studies have been conducted in the past is to obtain better data concerning actual residue values close to the point at which food is consumed. Thus, marketplace studies generally involve sampling commodities in retail grocery stores. A tolerance for processed food would not only apply to foods in retail stores, but at all prior points at which the food moved in interstate commerce. This fact would need to be taken into account in assessing the relevance of a marketplace study in determining the likelihood of residues in processed food in excess of the 408 tolerance.

Monitoring data can also be relevant to determining the likelihood of processed food exceeding the 408 tolerance. However, FDA monitoring data, especially monitoring data on processed foods, generally have been limited and thus may not be a reliable predictor of the level of residues of triadimefon in milled fractions of wheat. The monitoring referred to by the commenter is not so thorough and reliable that it would cause EPA to ignore the results of the processing studies.

Comment. Bayer contends that triadimefon does not induce cancer because the high doses used in both rat and mice studies exceeded the maximum tolerated dose (MTD), and thus tumors seen at these levels are not related to administration of triadimefon. Bayer also asserted that the mid-dose level of these studies did provide an adequate MTD for purposes of

evaluating the carcinogenic potential of triadimefon. Therefore Bayer argues that carcinogenic potential should be evaluated on the basis of the findings at the mid-dose level rather than the purportedly excessive high dose level. Bayer also cited the fact that mutagenicity studies showed that triadimefon is not genotoxic or mutagenic.

EPA Response. EPA disagrees with Bayer that the data from the high dose were not appropriate to consider in making the ''induce cancer'' determination, and also that the mid-dose was adequate in these studies. In both the rat and mouse studies, the high dose (1800 ppm) is considered adequate because there were no signs of excessive toxicity at that level. Moreover, the mid-dose level in each study (300 ppm) was not considered adequate as an MTD because the effects seen at that level were relatively minor increases in liver enzyme levels and liver weight, as well as slight to moderate liver hypertrophy and cell changes. EPA does not consider these changes adequate to demonstrate that an MTD has been achieved. By comparison, at the high dose level (which still did not show excessive toxic effects), liver effects were more pronounced, and included (in the rat) increased food consumption, increased fat in the liver, significant physiological and cellular changes in liver cells and formation of hyperplastic nodules. Similar evidence of increased liver damage was seen in the mouse at the high-dose level.

As stated in EPA's response on acephate, mutagenicity studies are considered only supporting evidence of carcinogenicity and do not negate clear evidence of carcinogenicity from other studies.

Comment. Bayer argued that the increase in follicular cell thyroid adenomas seen in the rat study occurred as a result of a hormonal effect, an increase in thyroid stimulating hormone, and thus is not directly caused by the triadimefon.

EPA Response. In its final notice revoking tolerances for mancozeb on oat bran (March 22, 1996, 61 FR 12003), EPA noted that the legal relevance of secondary mechanisms claims to the Delaney clause ''induce cancer'' finding has not been resolved. In that notice EPA also specifically discussed whether thyroid tumors could be demonstrated to occur via a secondary mechanism and the scientific information needed to support such a contention. Bayer has submitted no such information. EPA reiterates its position on thyroid tumors as stated in that notice. With respect to triadimefon, EPA has determined that, independent of any possible secondary mechanism that might be operating for the thyroid adenomas, the hepatocellular adenomas were related to the administration of triadimefon, and thus the question of a secondary mechanism need not be addressed.

C. Iprodione

Comment. Rhone-Poulenc argued that a 409 tolerance for iprodione in raisins is not required because (1) raisins should be classified as a RAC; and (2) because, even if not a RAC, iprodione does not concentrate in raisins above the 408 tolerance for grapes.

EPA Response. As noted in Unit VII, these revocations were proposed before EPA modified its tolerance policies in June 1995 and January 1996. Comments on the RAC status of dried commodities have been addressed in the Agency's interpretive policy of January 25, 1996 (61 FR 2386), in which EPA concluded that raisins are a processed food because they are dried for the purpose of creating a new marketable commodity, and not incidental to storage or transportation needs of the raw agricultural commodity grapes.

With respect to the assertion that residues in grapes do not concentrate in raisins, Rhone-Poulenc cited studies previously submitted in 1982 and 1983 in which residues in raisins did not exceed the current 60 ppm tolerance in grapes. Rhone-Poulenc, however, failed to note in its comments that in 1994, it petitioned EPA to reduce the tolerances for both grapes (from 60 ppm to 10 ppm) and raisins (from 300 ppm to 50 ppm). In conjunction with the petition and to satisfy reregistration data requirements, Rhone-Poulenc submitted additional residue data. These data show that the HAFT for grapes is 4.1 ppm, and the average CF, based on 8 sets of processing studies, is 3.56. The simple calculation of likely residues in raisins, therefore (4.1 ppm X 3.56 = 14.6 ppm), shows that residues would exceed the proposed 10 ppm tolerance in grapes. As noted in Unit III, EPA is using its latest residue data to inform its decisions on revocation of tolerances under the Delaney clause.

Comment. Rhone-Poulenc raised secondary mechanism issues associated with iprodione, namely that Leydig cell tumors seen in male rats are caused by a ''mechanism operative only at the high test doses'' and the ovarian tumors observed in female mouse studies are caused by ''a prolonged and profound perturbation of sex hormone regulation at the target organ level.'' Moreover, Rhone-Poulenc asserts that the Leydig cell tumors have no relevance to humans.

EPA Response. In neither case were supporting data submitted to demonstrate that these speculative mechanisms of action occur. In the absence of any evidence of the plausibility of the secondary mechanisms, EPA considers the observed tumors to be evidence that iprodione induces cancer in animals. EPA cannot judge the argument that Leydig cell tumors are not relevant to humans, since, from the data currently available to EPA, no specific mechanism of action of any hormonal alteration has been clearly characterized for iprodione. In any event, whether tumors observed in animals are relevant to humans has no bearing on a determination that iprodione induces cancer in animals.

Comment. Finally, Rhone-Poulenc also contended that liver tumors in mice were observed only at dose levels at the MTD.

EPA Response. EPA considers the dose level to be adequate (but not excessive) in both rat and mouse studies for the purpose of assessing carcinogenicity.

Commenters on acephate, iprodione and triadimefon all raised the issue of the MTD, and suggested that tumors observed only at dosage levels above the MTD should not be considered to support an ''induce cancer'' finding. Indeed, each suggested that unless tumors result at levels that do not express ''excessive'' non-cancer toxicity, EPA should reverse its finding that the pesticide induces cancer.

EPA Response. EPA disagrees in each case with commenters that dosage levels were excessive, and believes that the tumors are attributable to the pesticide in question.

IX. Procedural Matters

A. Filing of Objections and Requests for Hearings

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a

statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Any person wishing to comment on any objections or requests for a hearing may submit such comments to the hearing Clerk on or before September 12, 1996.

B. Effective Date

This final rule is effective September 27, 1996. In addition, if EPA does not receive objections to this order, this order and the factual and legal basis for this order, become final and are not judicially reviewable. See section 409(g)(1), 21 U.S.C. 348(g)(1) and *Nader v. EPA*: 859 F.2d 747 (9th Cir. 1988), cert. denied, 490 U.S. 1931 (1989). For example, if an interested person disagrees with a necessary finding in this order but agrees with the outcome, that person must file timely objections to that finding in this order; if no objection to the finding is made, the finding will become final for purposes of any future proceedings to which that finding is relevant.

C. Request for Stays of Effective Date

A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be submitted to the Hearing Clerk on or before August 28, 1996. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that:

(1) The petitioner will otherwise suffer irreparable injury.

(2) The petitioner's case is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting the stay.

(4) The delay resulting from the stay is not outweighed by public health or other public interests.

Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice.

Any person wishing to comment on any stay request may submit such comments and objections to a stay request to the Hearing Clerk, on or before September 12, 1996. Any subsequent decisions to stay the effect of this order, based on a stay request filed, will be published in the Federal Register, along with EPA's response to comments on the stay request.

D. Public Docket

A record has been established for this rulemaking under the docket number [OPP–300360B] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not ''significant.'' Nevertheless, EPA submitted this action to the Office of Management and Budget (OMB) for an informal review. Any changes made during that review have been documented in the public record.

Three of the 409 tolerances being revoked today because they violate Delaney (iprodione/raisins and ginseng and triadimefon/wheat) also have 408 tolerances. If the uses and 408 tolerances remain in effect without needed 409 tolerances (prohibited by the Delaney clause), lawfully treated foods could potentially be adulterated, and subject to seizure. In each case, however, EPA believes that there is little likelihood of adulterated food.

Raisins. Grapes grown for raisins are generally not extensively treated for *Botrytis* rot (the almost exclusive use of iprodione in California). Grapes intended for fresh market are more likely to be treated with iprodione because they may be exposed to late-season rain, or need protection against rotting in post-harvest storage. A grower whose grape crop is intended for raisins is likely to make that decision early in the season because of the differing cultural practices that are employed in fresh market production, and thus will not typically use significant amounts of iprodione.

Iprodione is used on approximately 9 percent of the total grape acreage in California. EPA has little information on use of iprodione segregated by the intended use of grapes, but estimates that iprodione is used on less than 4 percent of grapes intended for raisins, but up to 20 percent of grapes for fresh market use.

In 1994, total California grape production was 5.253 million tons of fresh grapes (California Agricultural Statistics Service, September 1995). Of that total, 36 percent was dried into raisins. If iprodione were applied equally to all grapes, regardless of ultimate use, a maximum of 170,200 tons of raisins containing iprodione residues could be estimated ($.09 \times .36 \times 5.253$ million tons). However, as noted, EPA believes this is a significant overestimate, since in typical years grapes intended for raisins would seldom be treated with iprodione. Similarly, in typical years, grapes grown for the fresh market would not be

expected to be diverted to the raisin market in large quantities, and all raisins produced from iprodione-treated grapes would not be expected to contain residues above the RAC tolerance. Accordingly, although EPA believes that revocation of the 409 tolerance for iprodione on raisins would result in some raisins being subject to seizure, the Agency estimates that the tonnage of raisins subject to seizure would not be substantial taking into account annual production figures. However, as noted earlier, evidence shows that some percentage of the grape crop is diverted to raisin production.

Wheat. Today's action does not affect the current 408 tolerance for wheat, which will remain in effect. As noted in Unit IV.E, EPA estimates that residues in wheat bran based on recent residue data can be expected to be as high as 0.5 ppm. While such residues would exceed an adjusted 408 tolerance of 0.2 ppm, they are not likely to exceed the existing 1 ppm tolerance. In any event, as noted in EPA's proposed revocation of the 408 tolerance for wheat (March 1, 1996, 61 FR 8174), triadimefon use on wheat is insignificant (generally in the range of 1 percent or less), and thus the potential for seizure of large amounts of wheat bran is low.

Ginseng. Today's action does not affect the current 408 tolerance for ginseng of 2 ppm (§ 180.399). EPA believes that, at this level, there may be some adulterated ginseng, but does not have sufficient information to estimate how much. Residue field trial data from Wisconsin (which produces 90 percent of ginseng) conducted at the maximum label rate and minimum pre-harvest interval (PHI) of 36 days indicate that residues in fresh and dried ginseng were below the 2 ppm RAC tolerance. Other data from North Carolina indicate that residues in dried ginseng could be as high as 3.3 ppm, but these data were based on a shorter PHI than allowed by the label. From this limited field trial data, EPA cannot determine whether the existing 2 ppm tolerance is adequate to cover residues in all dried ginseng.

Food handling establishments. For the purposes of this economic analysis, EPA has assumed that revocation of the 409 tolerance for use of acephate in food handling establishments results in the elimination of this use. EPA estimates that discontinuing the use of acephate in food handling establishments will cause negligible overall economic impact, since there are numerous cost-effective alternatives for insect control in food handling establishments.

Target pests in food handling establishments are cockroaches and stored product pests. Any impacts that would occur would most likely be where acephate is used for cockroach control, not for stored product insect control. For cockroach control alternatives include, but are not limited to, chlorpyrifos, cyfluthrin, boric acid, hydramethylnon, diazinon, propetamphos, and bendiocarb. Acephate has quick ''knockdown'' capability, and less resistance problems than most quick knockdown alternatives, but there are sufficient alternatives that EPA believes economic impacts from the loss of acephate will not be significant.

Barley. EPA is today revoking both raw food and processed food tolerances for triadimefon on barley because they are not needed. The impacts associated with the revocation of the 408 tolerance on barley are expected to be minimal because the use of triadimefon on barley was cancelled by the registrant in August 1993. EPA believes that the three years that have elapsed are sufficient for existing stocks of product and treated barley to clear channels of trade.

Citrus oil. For this 409 tolerance, the 408 tolerance and registered use will remain effective, and therefore, no impact is expected.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency must consider whether a regulatory action will have an adverse economic impact on small entities. Section 605(b) requires the Agency to either certify that the regulatory action will not have a significant economic impact on a substantial number of small entities, or prepare a regulatory flexibility analysis. For the reasons cited in Unit X.A. of this document, EPA certifies that this regulatory action does not impose significant adverse economic impacts on a substantial number of entities, large or small. Therefore, a Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

This order does not contain any information collection requirements subject to review by Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act and Executive Order 12875

Under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this action does not result in the expenditure of $100 million or more by any State, local or tribal governments, or by anyone in the private sector, and will not result in any ''unfunded mandates'' as defined by Title II.

Under Executive Order 12875 (58 FR 58093, October 28, 1993), EPA must consult with representatives of affected State, local, and tribal governments before promulgating a discretionary regulation containing an unfunded mandate. This action does not contain any mandates on States, localities or tribes and is therefore not subject to the requirements of Executive Order 12875.

E. Review by Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, report and recordkeeping requirements.

40 CFR Part 185

Food additive, Pesticides and pests.

Dated: July 18, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, Subchapter E, is amended as follows:

1. In part 180:

PART 180—[AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.410 [Amended]

b. By removing from the table in § 180.410 the entries for ''Barley, grain,'' ''barley, green forage,'' and ''barley, straw.''

2. In part 185:

PART 185—[AMENDED]

a. The authority citation for part 185 continues to read as follows:

Authority: 2l U.S.C. 346a and 348.

§ 185.100 [Removed]

b. By removing § 185.100.

§ 185.800 [Removed]

c. By removing § 185.800.

§ 185.3650 [Removed]

d. By removing § 185.3650.

§ 185.3750 [Removed]

e. By removing § 185.3750.

[FR Doc. 96–19076 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–F

federal register

Monday
July 29, 1996

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fire Administration

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: August 28, 1996.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the Federal Register on Friday, June 21, 1996, 61 FR 32036–32256.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office.

FEMA is pleased to announce that the Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at:

http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and

''Deletions.'' For the purposes of the updates, the three categories mean and include the following:

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: July 23, 1996.

John P. Carey,

General Counsel.

The update to the national master list for the months of June and July 1996 follow:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 7/18/96 UPDATE

Index and property name	PO box/Rt No. and street address	City, State/Zip	Telephone
ADDITIONS			
CA:			
CA1470 SUPER 8 MOTEL, FORTUNA	1805 ALAMAR WAY	FORTUNA, CA 95540	(707) 725–2888
CA1471 HOWARD JOHNSON HOTEL AT FISHERMAN'S WHARF.	580 BEACH ST	SAN FRANCISCO, CA 94133	(415) 775–3800
CT:			
CT0271 RED ROOF INN #212	100 WESTON STREET	HARTFORD, CT 06120	( ) –
CT0273 HERITAGE MOTOR INN	1472 BOSTON POST ROAD	OLD SAYBROOK, CT 06475	(203) 388–3743
CT0272 DAYS INN HOTEL	135 HARVARD AVENUE	STAMFORD, CT 06902	(203) 359–7100
DC:			
DC0051 DAYS INN DOWNTOWN CONVENTION CENTER.	1201 K ST. NW	WASHINGTON, DC 20005	(202) 842–1020
DC0052 GALLAUDET UNIVERSITY KELLOGG CONF. CENTER.	800 FLORIDA AVE. NE	WASHINGTON, DC 20002	(202) 651–6000
DC0053 WESTIN HOTEL	2350 M ST. NW	WASHINGTON, DC 20037	(202) 429–1000
KS:			
KS0160 SLEEP INN–LIBERAL	405 EAST PANCAKE	LIBERAL, KS 67901	(316) 624–7113
MD:			
MD0291 DAYS INN HISTORIC ANNAPOLIS	2520 RIVA RD	ANNAPOLIS, MD 21401	(410) 224–2800
MS:			
MS0108 ISLE OF CAPRI CASINO CROWNE PLAZA RESORT.	151 BEACH BOULEVARD	BILOXI, MS 39530	(601) 435–5400
MS0106 SLEEP INN	708 DESOTO COVE	HORN LAKE, MS 38637	(601) 349–2773
MS0109 HARVEY HOTEL AND SUITES JACKSON NORTH.	5075 I–55 NORTH	JACKSON, MS 39204	(601) 366–9411

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 7/18/96 UPDATE—Continued

Index and property name	PO box/Rt No. and street address	City, State/Zip	Telephone
MS0110 HARVEY HOTEL DOWNTOWN JACKSON.	200 EAST AMITE STREET	JACKSON, MS 39201	(601) 969–5100
MS0105 SLEEP INN	1301 HAMILTON AVE	MERIDIAN, MS 39301	( ) –
MS0104 SLEEP INN	7412 TUCKER ROAD	OCEAN SPRINGS, MS 39565	(601) 872–0440
NC:			
NC0366 SLEEP INN	1915 CEDAR CREEK ROAD	FAYETTEVILLE, NC 28306	(910) 433–9090
NC0368 SHONEY'S INN & SUITES	1103 LANADA ROAD	GREENSBORO, NC 27407	(910) 297–1055
NC0367 SLEEP INN – HICKORY	1179 13TH AVE. DRIVE, SE	HICKORY, NC 28602	(704) 323–1140
NC0365 LA QUINTA INN #944–RALEIGH	1001 HOSPITALITY COURT	MORRISVILLE, NC 27560	(800) 531–5900
NE:			
NE0121 SLEEP INN	303–23 ST.	COLUMBUS, NE 68601–2761	(402) 562–5200
NE0122 SLEEP INN	3400 N.W. 12	LINCOLN, NE 68521	(402) 475–1550
NY:			
NY0632 COMFORT SUITES	600 U.S. RT. 11	CANTON, NY 13617	(315) 386–1161
SC:			
SC0221 LAQUINTA INN #927–ANDERSON	3430 N. MAIN ST	ANDERSON, SC 29621	(864) 225–3721
SC0222 COMFORT INN OF BEAUFORT	2227 BOUNDARY ST	BEAUFORT, SC 29902	(803) 525–9366
SC0223 SCOTTISH INNS OF BEAUFORT	2221 BOUNDARY ST	BEAUFORT, SC 29901	(803) 521–1555
SC0220 CHARLESTON HILTON	4770 MARRIOTT DR	CHARLESTON, SC 29406	(803) 747–1990
SC0224 COMFORT INN SOUTH	1391 E. MAIN ST	DUNCAN, SC 29334–9647	(864) 433–1333
SC0225 PALMETTO INN	64 WYMAN BLVD	ESTILL, SC 29918	(803) 625–4322
SC0226 SLEEP INN—SPARTANBURG	501 S. BLACKSTOCK RD	SPARTANBURG, SC 29301	(864) 595–4040
SC0227 CAROLINA LODGE X	1011 BELLS HWY	WALTERBORO, SC 29488	(803) 538–7708
SC0229 DAYS INN	RT. 4 BOX 890	WALTERBORO, SC 29488	(803) 538–2933
SC0228 SOUTHERN INN	1306 BELLS HWY	WALTERBORO, SC 29488	(803) 538–2280
TN:			
TN0311 BEST WESTERN HERITAGE INN	7641 LEE HWY	CHATTANOOGA, TN 37421	(423) 899–8311
TN0307 ACUFF COUNTRY INN	1156 HWY 28	JASPER, TN 37347	(423) 942–6370
TN0310 SHONEY'S INN LEBANON	822 S CUMBERLAND ST	LEBANON, TN 37087	(615) 449–5781
TN0308 SHONEY'S INN	2420 MUSIC VALLEY DR	NASHVILLE, TN 37214	(615) 885–4030
TN0305 DAYS INN	206 S ILLINOIS AVE	OAK RIDGE, TN 37830	(423) 483–5615
TN0306 HAMPTON INN	208 S ILLINOIS AVE	OAK RIDGE, TN 37830	(615) 483–5615
TN0309 SUPER 8 MOTEL	1590 OAK RIDGE TURNPIKE	OAK RIDGE, TN 37830	(423) 483–1200
TX:			
TX0699 FAIRFIELD INN, REGAL ROW	1517 REGAL ROW	DALLAS, TX 75247	(214) 638–6100
TX0698 HAMPTON INN DOWNTOWN DALLAS.	1015 ELM STREET	DALLAS, TX 75201	(214) 742–5678
TX0700 HARVEY HOTEL DOWNTOWN DALLAS.	400 NORTH OLIVE ST	DALLAS, TX 75201	(214) 922–8000
TX0689 CONCOURSE CLARION HOTEL	6789 BOEING	EL PASO, TX 79925	(915) 778–6789
TX0688 RADISSON SUITE INN, EL PASO	1770 AIRWAY	EL PASO, TX 79925	(915) 772–3333
TX0696 COURTYARD BY MARRIOTT	3131 WEST LOOP SOUTH	HOUSTON, TX 77027	(713) 961–1640
TX0691 DAYS INN ASTRODOME	8686 KIRBY DRIVE	HOUSTON, TX 77054	(713) 796–8383
TX0695 FAIRFIELD INN	3131 WEST LOOP SOUTH	HOUSTON, TX 77027	(713) 961–1690
TX0694 FAIRFIELD INN, I–10 E	10155 EAST FREEWAY	HOUSTON, TX 77029	(713) 675–2711
TX0697 HOLIDAY INN INTERCONTINENTAL AIRPORT.	15222 JFK BLVD	HOUSTON, TX 77027	(713) 449–2311
TX0692 HOLIDAY INN SELECT DFW AIRPORT NORTH.	4441 HWY 114 AT ESTERS BLVD	IRVING, TX 75063	(214) 929–8181
TX0686 SLEEP INN	22105 KATY FREEWAY	KATY, TX 77450	(713) 395–4800
TX0690 RODEWAY INN	517 W. VETERNS MEMORIAL BLVD.	KILLEEN, TX 76541	(817) 634–1001
TX0701 NORTHPOINTE EXECUTIVE SUITES MOTEL.	202 NORTHPOINTE	LA GRANGE, TX 78945	(409) 968–6406
TX0693 ALAMO EXECUTIVE SUITES, INC.	12079 STARCREST DRIVE	SAN ANTONIO, TX 78247	(210) 494–1008
TX0687 HOMEWOOD SUITES HOTEL–RIVERWALK.	432 MARKET ST. & ST. MARY'S	SAN ANTONIO, TX 78205	(800) 225–5463
TX0685 SLEEP INN, SAN ANTONIO	8318 I H 10 WEST	SAN ANTONIO, TX 78205	(210) 344–5400
VA:			
VA0652 LA QUINTA INN #933–BRISTOL	1014 OLD AIRPORT ROAD	BRISTOL, VA 24201	(703) 669–9353
VA0654 BEST WESTERN FALLS CHURCH INN.	6633 ARLINGTON BLVD	FALLS CHURCH, VA 22042	(703) 532–9000
VA0653 QUALITY INN GOVERNOR	6650 ARLINGTON BLVD	FALLS CHURCH, VA 22042	(703) 532–8900
WI:			
WI0239 INTERLAKEN RESORT & COUNTRY SPA.	W4240 STATE ROAD 50	LAKE GENEVA, WI 53147	(414) 248–9121
WV:			
WV0219 SLEEP INN BRIDGEPORT	115 TOLLEY DR	BRIDGEPORT, WV 26330	(304) 842–1919
CORRECTIONS/CHANGES			
AZ:			
AZ0257 LA QUINTA INN #939 FLAGSTAFF	2015 S. BEULAH BLVD	FLAGSTAFF, AZ 86001	(520) 531–5900
CA:			

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 7/18/96 UPDATE—Continued

Index and property name	PO box/Rt No. and street address	City, State/Zip	Telephone
CA0778 HOLIDAY INN RANCHO CORDOVA.	11131 FOLSOM BLVD	RANCHO CORDOVA, CA 95670	(916) 638–1111
CT:			
CT0254 CLINTON MOTEL	163 EAST MAIN ST	CLINTON, CT 06413	(203) 669–8850
CT0260 COMFORT INN	111 BERLIN ROAD	CROMWELL, CT 06416	( ) –
CT0007 IRON MASTERS MOTOR INN	229 MAIN ST	LAKEVILLE, CT 06039	(860) 435–9844
CT0006 WAKE ROBIN INN	106 SHARON RD	LAKEVILLE, CT 06039	(860) 435–2515
CT0267 MARE'S INN	333 COLONEL LEDYARD HIGHWAY.	LEDYARD, CT 06339	(203) 572–0483
CT0255 Y.M.C.A	284 CHURCH STREET	NAUGATUCK, CT 06770	(203) 729–8239
CT0264 ADMIRAL HOUSE MOTOR INN	43 SPENCER PLAINS RD	OLD SAYBROOK, CT 06475	(203) 399–6273
CT0266 CASTLE INN	HARTLANDS DRIVE	OLD SAYBROOK, CT 06475	(203) 388–4681
CT0263 COMFORT INN	100 ESSEX RD	OLD SAYBROOK, CT 06475	(203) –
CT0262 OLD SAYBROOK MOTOR HOTEL	7 NORTH MAIN ST	OLD SAYBROOK, CT 06475	(203) 388–3463
CT0261 SAYBROOK MOTOR INN	1575 BOSTON POST RD	OLD SAYBROOK, CT 06475	(203) 395–926
CT0150 RESIDENCE INN BY MARRIOTT	1001 BRIDGEPORT AVE	SHELTON, CT 06484	(203) 929–9000
SC:			
SC0006 CAPE COD INN	4020 CLEMSON BLVD	ANDERSON, SC 29621	(864) 224–4464
SC0007 HOWARD JOHNSON'S	PO BOX 5022	ANDERSON, SC 29623	(864) 226–3457
SC0008 PARK INN INTERNATIONAL UNIVERSITY.	3430 N. MAIN ST	ANDERSON, SC 29621	(864) 322–3721
SC0148 QUALITY INN	3509 CLEMSON BLVD	ANDERSON, SC 29621	(864) 226–1000
SC0219 THE JAMESON INN	128 INTERSTATE BLVD	ANDERSON, SC 29621	(864) 375–9800
SC0009 HOLIDAY MOTEL	701 N. MAIN ST	BAMBERG, SC 29003	(864) 245–2426
SC0192 COMFORT INN	RT1. BX 1058 I–26 HWY. 56 EXIT 52.	CLINTON, SC 29325	(864) 833–5558
SC0025 DAYS INN	I–26 & HWY. 56	CLINTON, SC 29325	(864) 833–6600
SC0182 DAYS INN AIRPORT	1386 E. MAIN ST	DUNCAN, SC 29334	(864) 433–1122
SC0040 DAYS INN EASLEY	121 DAYS INN DR	EASLEY, SC 29640	(864) 859–9902
SC0168 STAR MOTEL	4237 CALHOUN MEMORIAL HWY	EASLEY, SC 29640	(864) 269–1311
SC0049 BEST WESTERN CAROWINDS	3482 HWY. 21	FORT MILL, SC 29715	(864) 548–8000
SC0050 BEST WESTERN GAFFNEY	100 ELLIS FERY RD	GAFFNEY, SC 29340	(864) 489–1699
SC0051 COMFORT INN	143 CORONO DR	GAFFNEY, SC 29341	(864) 487–4200
SC0147 BEST WAY MOTEL	1304 POINSETT HWY	GREENVILLE, SC 29609	(864) 271–1700
SC0054 CAMELOT INN	4500 AUGUSTA RD	GREENVILLE, SC 29605	(864) 277–8430
SC0200 COMFORT INN EXECUTIVE CENTER.	540 PLEASANTBURG DR	GREENVILLE, SC 29607	(864) 271–0060
SC0059 COURTYARD BY MARRIOTT	70 ORCHARD PARK DR	GREENVILLE, SC 29615	(864) 234–0300
SC0055 DAYS INN	3905 AUGUST RD	GREENVILLE, SC 29604	(864) 277–4010
SC0060 FAIRFIELD INN BY MARRIOTT	60 ROPER MOUNTAIN RD	GREENVILLE, SC 29615	(864) 297–9996
SC0062 GREENVILLE HILTON HOTEL	45 W. ORCHARD PARK DR	GREENVILLE, SC 29615	(864) 232–4747
SC0061 HAMPTON INN	246 CONGAREE RD	GREENVILLE, SC 29607	(864) 288–1200
SC0063 HOLIDAY INN HAYWOOD AREA	850 CONGAREE RD	GREENVILLE, SC 29607	(864) 297–6300
SC0064 HYATT REGENCY HOTEL	220 N. MAIN ST	GREENVILLE, SC 29604	(864) 235–1234
SC0056 LA QUINTA	31 OLD COUNTRY RD	GREENVILLE, SC 29607	(864) 298–3500
SC0057 MARRIOTT AIRPORT	1 PKWY. E	GREENVILLE, SC 29607	(864) 297–0300
SC0058 MOTEL 6	224 BRYCE RD	GREENVILLE, SC 29606	(864) 277–8630
SC0195 QUALITY INN HAYWARD	50 ORCHARD PARK DR	GREENVILLE, SC 29615	(864) 297–9000
SC0160 RED ROOF INN #095	2801 LAURENS RD	GREENVILLE, SC 29607	(864) 297–4458
SC0188 RESIDENCE INN GREENVILLE	48 MCPRICE CT	GREENVILLE, SC 29615	(864) 297–0099
SC0210 COMFORT INN	1215 NE HWY. 72 BYPASS	GREENWOOD, SC 29649	(864) 223–2838
SC0065 HOLIDAY INN	1014 MONTAGUE AVE	GREENWOOD, SC 29646	(864) 223–4231
SC0066 INN ON THE SQUARE	104 E. COURT ST	GREENWOOD, SC 29646	(864) 223–4488
SC0075 TRAVEL INN	621 N. HARPER ST	LAURENS, SC 29360	(864) 984–0558
SC0142 LIBERTY HALL INN	621 S. MECHANIC ST.	PENDLETON, SC 29670	(864) 646–7500
SC0189 ECONO LODGE	RT.1 BX 1820 I–77 EXIT 65 AND HWY. 9.	RICHBURG, SC 29729	(803) 789–3000
SC0176 DAYS INN	11015 N. RADIO STATION RD	SENECA, SC 29678	(864) 885–0710
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SC0119 COMFORT INN WEST	I–26 & 2070 NEW CUT RD	SPARTANBURG, SC 29303	(864) 576–2992
SC0120 COURTYARD BY MARRIOTT	110 MOBILE DR	SPARTANBURG, SC 29303	(864) 585–2400
SC0177 ECONO LODGE	710 SUNBEAM RD	SPARTANBURG, SC 29301	(864) 578–9450
SC0116 HAMPTON INN	4930 COLLEGE DR	SPARTANBURG, SC 29301	(864) 576–6080
SC0151 HOLIDAY INN SPARTANBURG WEST.	200 INTERNATIONAL DR	SPARTANBURG, SC 29301	(864) 576–5220
SC0117 MOTEL 6	105 JONES RD	SPARTANBURG, SC 29303	(864) 573–6303
SC0208 QUALITY HOTEL AND CONFERENCE CENTER.	7136 ASHEVILLE HWY	SPARTANBURG, SC 29303	(864) 578–5530
SC0118 RAMADA INN	1000 HEARON CIR	SPARTANBURG, SC 29303	(864) 578–7170
SC0179 RESIDENCE INN SPARTANSBURG.	9011 FAIRFOREST RD	SPARTANBURG, SC 29305	(864) 576–3333
SC0180 WILSON WORLD	9027 FAIRFOREST RD	SPARTANBURG, SC 29301	(864) 574–2111

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Index and property name	PO box/Rt No. and street address	City, State/Zip	Telephone
TN:			
TN0087 SHONEY'S INN	1954 S CHURCH ST	MURFREESBORO, TN 37130	(615) 896–6030
TX:			
TX0674 LA QUINTA INN #938	14925 LANDMARK	ADDISON, TX 75240	(214) 404–0004
TX0626 HAWTHORN SUITES HOTEL–AUSTIN SOUTH.	4020 I–35 SOUTH	AUSTIN, TX 78704	(512) 440–7722
TX0632 QUAILTY INN AIRPORT	909 E.KOENIG LN	AUSTIN, TX 78751	(512) 452–4200
TX0321 HOWARD JOHNSON LODGE	8887 GATEWAY W	EL PASO, TX 79912	(915) 591–9471
TX0645 RAMADA INN DFW/WEST	2155 W. AIRPORT FREEWAY	EULESS, TX 76040	(817) 283–2400
TX0485 ALLEN PARK INN	2121 ALLEN PARKWAY	HOUSTON, TX 77042	(713) 521–9321
TX0629 RESIDENCE INN BY MARRIOTT BY THE GALLERIA.	2500 MCCUE	HOUSTON, TX 77056	(713) 840–9757
TX0482 BEST WESTERN CLASSIC INN	901 W. YOUNG	LLANO, TX 77373	(915) 247–4101
TX0352 HOLIDAY INN COUNTRY VILLA	4300 W. WALL	MIDLAND, TX 79701	(915) 697–3181
TX0623 FREDONIA HOTEL & CONVENTION CENTER.	200 N. FREDONIA ST	NACOGDOCHES, TX 75961	(409) 564–1234
TX0625 HAWTHORN SUITES HOTEL	250 MUNICIPAL DR	RICHARDSON, TX 75080	(214) 669–1000
TX0627 HAWTHORN SUITES HOTEL—SAN ANTONIO.	4041 BLUEMEL RD	SAN ANTONIO, TX 78230	(210) 561–9660
TX0562 MOTEL 6 #1350	5522 N. PAN AM EXPWY	SAN ANTONIO, TX 78218	(210) 661–8791
TX0570 MOTEL 6 #0183	138 N.W. WHITE ROAD	SAND ANTONIO, TX 78219	(210) 333–1850
TX0536 COMFORT INN	1705 HWY. 34 S	TERRELL, TX 75604	(214) 563–1511
VA:			
VA0290 WASHINGTON DULLES AIRPORT HILTON.	13869 PARK CENTER ROAD	HERNDON, VA 220710000	(703) 478–2900
VA0610 SUPER 8 MOTEL—TAPPAHANNOCK.	1748 RT 17 & RT 360	TAPPAHANNOCK, VA 22560	(804) 443–3888
DELETIONS			
CT:			
CT0057 BRIDGEPORT MOTOR INN	100 KINGS HWY. CUT–OFF	FAIRFIELD, CT 06430	(203) 367–4404
CT0028 PEQUOT MOTOR INN	3471 POST RD	FAIRFIELD, CT 06430	(203) 259–7885
TX:			
TX0027 SUPER 8	2616 N.N.W. LOOP 323	TYLER, TX 75702	(903) 593–8361

[FR Doc. 96–19192 Filed 7–26–96; 8:45 am]

BILLING CODE 6718–08–P

federal register

Monday
July 29, 1996

Part VI

The President

Proclamation 6910—National Korean War Veterans Armistice Day, 1996

Proclamation 6911—Parents' Day, 1996

Federal Register
Vol. 61, No. 146
Monday, July 29, 1996

Presidential Documents

Title 3—

The President

Proclamation 6910 of July 25, 1996

National Korean War Veterans Armistice Day, 1996

By the President of the United States of America

A Proclamation

Forty-three years ago, a negotiated cease-fire ended 3 years of open warfare on the Korean peninsula. This cease-fire came after more than 54,000 American deaths and the capture of thousands of our brave soldiers, sailors, airmen, and Marines. For those who returned home, the armistice brought mixed emotions—too many of their comrades-in-arms remained prisoners of war or missing in action, and the importance of this Cold War conflict was yet to be fully understood.

Today, as the United States and South Korea maintain a strong partnership and democracy continues to sweep the globe, we remember the extraordinary sacrifices made by our men and women in uniform during the Korean conflict, and we pay tribute to their courage and their commitment to freedom. As American service men and women support the cause of peace around the world, we honor the proud legacy of our Korean War veterans who gave of themselves so that others might live in liberty. And as a testament to their proud and selfless service and sacrifice, the Korean War Veterans Memorial stands today in our Nation's Capital.

The Congress, by Public Law 104–19 (36 U.S.C. 169m) has designated July 27, 1996, as ''National Korean War Veterans Armistice Day'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 27, 1996, as National Korean War Veterans Armistice Day. I call upon Government officials, educators, and the American people to observe this day with appropriate ceremonies and activities that recognize and give thanks to our Nation's distinguished Korean War veterans. I also ask Federal departments and agencies, interested groups, organizations, and individuals to fly the American flag at half-staff on July 27, 1996, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–19418
Filed 7–26–96; 11:29 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6911 of July 25, 1996

Parents' Day, 1996

By the President of the United States of America

A Proclamation

No job presents greater challenges, demands broader responsibilities, or promises more profound rewards than parenthood. Parents are daily caretakers and lifelong role models. They guide us and share the values and lessons that enable us to grow and flourish. Throughout our lives, we remember our parents' example, recognizing that their joys and aspirations, triumphs and disappointments, have shaped our experience and given us meaningful direction.

Our Nation has always depended on strong families, and we must continue to do all we can to help hardworking men and women shoulder the duties of parenthood. It is vital to support today's parents, to honor those who have taught us so much, and to impress upon young people the awesome responsibility of parenthood.

On this day and throughout the year, let us take time to celebrate the special, enduring bond between parents and children. Foster parents and stepparents, biological and adoptive mothers and fathers—all deserve our respect and gratitude. Parents open their homes and hearts to nurture and protect us; let us offer in return our deepest appreciation for their devotion and care.

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 and consistent with Public Law 103–362, do hereby proclaim Sunday, July 28, 1996, as Parents' Day. I call upon the States, communities, and all Americans to observe this day with appropriate ceremonies and activities to express affectionate thanks to our Nation's parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–19419
Filed 7–26–96; 11:30 am]
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.